INSECURE FAMILIES

Early adoption practices in New South Wales.

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ABSTRACT

Effective legal provision for the adoption of children was not introduced into New South Wales until the passage of the Child Welfare Act of 1923. This paper examines some of the less formal and less effective practices which preceded that Act. The lack of adequate legislation affected all of those arrangements, creating problems out of issues which are today assumed to be solved. The early difficulties are seen to shed some light on modern discussions.

Introduction

Effective legal adoption is a creature of statute. At common law the rights, duties and liabilities of parenthood cannot be relinquished by any act of the parents themselves. Any permission they give for others to care for their children can be revoked at will. Legislation must provide for the consent of the parents to be made effective by the order of an appropriate tribunal.[1] The essential feature of such an order is the extinguishing of the child's relationship with its natural parents and the substitution of a new relationship with the adoptive parents. Other problems, such as the rights of inheritance from both sets of parents, the taking of a new name and the question of secrecy of records will need to be addressed by legislation.

Absence of Provision

In the absence of such provisions, adoption, as it is currently known, cannot occur. Any arrangements which are made, although called by the same name and however deep the relationships they generate, will be less than secure. They will, in effect, be long-term foster care placements. The absence of proper legislation may well act as a deterrent to those who might otherwise seek to adopt children and many human problems will arise when arrangements break down.

The absence of the legislation does not mean that **de facto** arrangements will not occur. It is likely that the success of such adoptions will provide a good case for enacting appropriate legislation, and pressure from those involved may well provide political impetus. The first appropriate legislation for the adoption of children in New South Wales occurred in the Child Welfare Act of 1923.[2] This Act empowered the Supreme Court to grant orders of adoption which fulfilled the conditions necessary to make the adoptions secure.

This paper will examine two sources from which children were available for **de facto** adoption prior to the passage of this legislation. The earlier cases come from the Orphan Schools which formed a major part of the initial child care system in New South Wales.[3] These schools were replaced by the foster care system which commenced in 1881 and the possibilities for adoption were expanded. It was the success of the operations of the new State Children's Relief Board which laid the foundations for the Act of 1923.[4]

Companions of Solitude

The Orphan Schools of New South Wales, Protestant and Roman Catholic, began in 1800 and lasted until 1886 when their last inmates left to be fostered out. The

majority of the children who were admitted to them remained until they were twelve years of age, when they were apprenticed to a trade, most often as domestic servants (if female) or farm labourers (if male). Children were occasionally returned to their families. A very small minority of these children were adopted. Between 1840 and 1870 it is possible to identify about sixteen such cases. Some details are known about fourteen of them. They were usually below the age for apprenticeship, the youngest being three years, with the majority between nine and eleven years. This was clearly not a programme for the adoption of infants.

Not a Program

It was not in any sense a programme at all. The arrangements were made individually as favours to those who applied. They were not considered usual, nor, in general, desirable. One application in 1864 for a girl from the Protestant Orphan School was rejected because it was not

> in any way an exceptional case, and as there (were) many people in the same circumstances, if it were granted it would form a precedent for numerous applications of a like nature.[5]

The circumstance was that of being childless, now recognised as a major justification for adoption.

Relatives

Some of the children were adopted by relatives who were too distant to be regarded as natural inheritors of the children or who sought to care for them after they had been admitted to the schools. There must have been many cases of relatives caring for children which did not come to official notice. The use of the extended family in this way would have been considered quite proper and officialdom would not have seen itself as playing any role at all, if it had not already been involved in some way.

All the children adopted, with the exception of one from the Roman Catholic Orphan School in 1870, were recorded as having neither parent living. This child's mother was on her deathbed and signed a form of consent in which she named the foster-parents as good Catholics and fit to bring up her daughter.[6] In general, the adopting parents were recommended by a clergyman or other prominent citizen.

The following more detailed cases will outline the problems and issues considered by both applicants and administrators to be of significance.

Own Child

In March, 1852 a Mrs Barton wrote to the Governor-General seeking to adopt Malinda Rivers, aged six years, from the Protestant Orphan School as her "own child". She had already had some contact with the school and had received good reports about the girl. She expressed her motivation in these terms:

> My two daughters and myself are particularly fond of children and living very retired the Child would be an amusement to us while it would be highly desirable for the little Girl. My Chief inducement for applying for her is that I think it would be a healthful amusement for my daughters who devote more time to study than I think good for their health.[7]

The application was approved although the Governor-General thought

> she would enter into some agreement which will secure the girl a proper education and maintenance until she may be of an age to earn her own livelihood.[8]

This case, in addition to highlighting expectations about young ladies' capacities for study, treated the child as serving the interests of those adopting her. Mrs Barton was correct in assuming that everyone would agree that the child would be well served by serving her and her daughters. The Governor-General did not see her as ultimately sharing the life of study and amusement enjoyed by Mrs Barton's natural daughters. It was anticipated that she would be a temporary member of the family and later make her own way in the world.

Solace

In February, 1853, Mrs Mary Newbury, a schoolmistress of Chippendale,[9] sought to adopt John Moneypenny, aged three years. Mrs Newbury had also already made contact with the school before applying to the authorities. She had borne ten natural children, all of whom she had lost in early infancy. She was

> anxious to rear a little one as a solace in (her) declining years.[10]

Her application was supported on the basis of personal knowledge by the Rev Benjamin Chapman, a Wesleyan minister. Leading Wesleyan layman, George Allen, also supported her on the basis of his knowledge of Mr Chapman. Mrs Newbury offered to enter into a bond to care for the child. Mrs Betts, matron of the Protestant Orphan School, thought that adoption was "the best thing the Government (could) do for the child" and the application was approved. In this case also, the child's usefulness to the adopting parent was of prime consideration. The benefits accruing to the child were a natural consequence. This form of thinking is in stark contrast to modern attitudes.

Bond

In both the above applications the question was raised of the adopter entering into a bond. A copy of such a document has survived in respect of the adoption of Mary Ann Trott from the Protestant Orphan School in 1864.

This bond repeats exactly the words of Governor-General's instructions in the application of Mrs Barton. It is therefore likely that this is the form of bond in use from 1852 and which is referred to in other cases. As evidence of the intentions of the adopter it may have been useful, but it was simply a declaration and provided no redress either to the authorities or the child.

Mary Ann Trott's adoption was to test the whole policy. In November, 1864, the Rev Dr John Dunmore Land wrote to the colonial secretary requesting adoption of children on behalf of two women. The first, Mrs Denham, had borne five natural children, all of whom were now dead.

> . . .in her isolation she wishes to have an orphan girl as a companion of her solitude. . .[12]

Mrs Hugh Cunningham was the wife of a childless marriage who also wished to adopt an orphan girl. It was her case which was considered likely to create an undesirable precedent. Once the maternal instinct had been awakened but sadly frustrated, sympathy was readily evoked. Mrs Denham, like Mrs Newbury was granted a child. In commenting on these two applications, Mrs Betts referred generally to the policy, noting with approval the extreme caution used in granting requests for adoption. Caution was necessary because

> In giving children up to be adopted, the Government has no control over them, they are not like an apprentice, where the Master is bound under certain penalties, but the child is absolutely at the mercy of the party who adopts, hence it is thought better as a rule to allow the children to reach the proper age and be bound in the usual manner.[13]

Mary Ann Trott, the child given to Mrs Denham was to demonstrate the accuracy of Mrs Bett's comments. She was nine years of age when she left the school. In November, 1869, aged fourteen, she was returned by a neighbour, bruised from beatings and clothed in rags. Although well-treated in the early stages of her adoption her situation had then declined. She was not returned to the Denhams'.[14]

This incident occurred at a time when there was no specific legislation concerning the proper care and treatment of children. Thus an offending parent was free to mistreat a child, providing the mistreatment fell short of being criminal. Discipline of children was expected to be severe. But the case brought an effective end to adoptions from the Protestant Orphan School. In February, 1870, Thomas Taylor of Newtown, who had in 1860 adopted his wife's young cousin from the school,[15] sought a second child. His application was refused.

> The case of M.A. Trott already reported, proves that the Government should retain the power of interfering if considered necessary. I would therefore recommend that Mr Taylor be informed that though his references are considered satisfactory his application cannot at present be complied with — the subject of adoption of children being under consideration.[16]

No evidence of any government review of the policy has been discovered.

At No Cost to the State

The dominance of large congregate child care institutions in New South Wales was ended by the State Children's Relief Act of 1881,[17] which instituted boarding-out or foster care as the official policy of the state. In addition to empowering the State Children's Relief Board to place children in foster homes, the Act authorised the adoption of children.[18] The regulations issued under the Act set out the terms of adoption.[19] The Act was amended in 1896[20] and consolidated after Federation by an Act of 1901.[21] The basic arrangements for adoption were unchanged and remained in force until 1923.

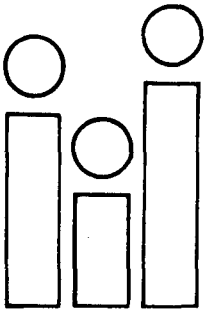
Adoption under the State Children's Relief Board was foster care without the payment of any subsidy to the foster-parents. The legislation contained none of the features necessary for legal adoption as practiced today. The adopting parents were subject to inspection by government officials and honorary Lady Visitors, and the children could be removed at any time. When of an age to be apprenticed (fourteen years) the board had the power to arrange indentures, unless it chose to authorise "permanent foster-care" in which case inspection was continued until the child was nineteen years of age.

Despite Restrictions

Despite these restrictions, the number of adopted children increased steadily. The board commenced operations on 5 April, 1881, with 59 children in its care. By 1916 it had the control of 5,068 children. Three children were adopted in 1882, and by 1916 the number was 281. Adopted children represented between five and seven percent of all those in the care of the board. Details of individual cases are not available but in his successive annual reports the board's president commented on various aspects of the policy.

Lack of Permanency

In his report for the year ending 5 April, 1883 the first President, Dr Arthur Renwick, commented on the lack of permanency in adoptions. Except in special cases, only orphans could be adopted as there was always the possibility that children could be reclaimed by their natural parents. He sought legislation which would ensure that parents who surrendered their children for adoption would have no further control over them. In an uncharacteristic outburst he asserted:



SECOND AUSTRALIAN CONFERENCE ON ADOPTION

CURRENT CONCERNS & ALTERNATIVES FOR CHILD PLACEMENT & PARENTING

28th May - 2nd June, 1978

UNIVERSITY OF MELBOURNE
VICTORIA

ENQUIRIES TO:
Second Australian Conference on Adoption,
Conference Office,
c o The Royal Women's Hospital,
132 Grattan Street,
CARLTON, VIC. 3053 Telephone: 347 5338

PLEASE REGISTER EARLY

PROGRAMME

SUNDAY, 28th MAY, 1978.

1.00 - 3.00	Registration
3.00	Opening Keynote Address Mrs. Elizabeth Cole – "Emerging Issues and Trends in Adoption".
7.30	Hospitality for interstate and overseas guests

MONDAY, 29th MAY, 1978.

9.00 – 10.30	Plenary Sessions – National Adoption Standards, Policy and Law.
10.30 – 11.00	Tea
11.00 – 12.15	State Reviews of Progress from 1st Australian Conference.
12.15 – 2.00	Lunch. (available on campus or at restaurants near University).
2.00 – 3.00	Workshop groups.
8.00	Public meeting – "Finding homes for the 'Hardest to Place' children" – Miss Phillida Sawbridge.

TUESDAY, 30th MAY, 1978.

9.00 – 10.30	Plenary Session – Alternatives to Adoption.
10.30 – 11.00	Tea
11.00 – 12.15	Workshops
12.15 – 2.00	Lunch
2.00 – 3.00	Dramatized Vignettes
8.00	Public meeting. Dr. John Triseliotis – "Rights of Children, Adoptive Parents and Original Parents".
9.15	Close

WEDNESDAY, 31st MAY, 1978.

9.00 – 10.30	Plenary Session – Rights of Children, Adoptive Parents and Original Parents.
10.30 – 11.00	Tea
11.00 – 12.15	Continuation
12.15 – 2.15	Lunch
2.15 – 4.15	Workshops
7.30	Conference Dinner

THURSDAY, 1st JUNE, 1978.

9.00 – 10.30	Evaluation criteria
10.30 – 11.00	Tea
11.00 – 12.15	Continuation
12.15 – 2.15	Lunch
2.15 – 4.15	Workshops

FRIDAY, 2nd JUNE, 1978.

9.00 – 10.00	Preparation for Final Plenary
10.00 – 10.15	Tea
10.15 – 12.15	Final Plenary and Close of Conference.
12.45	Conference Lunch

> It may, perhaps, appear to be unnatural and unjust to sever the tie between a parent and child in any circumstances; but it is still more unjust that a stranger shall have the trouble and expense of properly training and educating the offspring of an unworthy person who has wilfully neglected all parental obligations — (this is the class who surrender their offspring: and that when such children have become useful and pleasant companions, a dissolute or undeserving father and mother should have the power of reclaiming them . . .[22]

Clause nine of the amending act of 1896 provided as Renwick requested, but the legislation was not effective. A subsequent President, Sir Charles Mackellar, raised the issue again in 1912, noting that mothers of illegitimate children placed for adoption often subsequently married men who were willing to accept those children. Their mothers then sought to reclaim them.

> After all, this is a natural outcome of the maternal feeling and the law does not offer any adequate protection to the foster-mothers, who are thus victimised.[23]

In the following year he noted, without publishing any figures, that the number of children reclaimed was very low, but that the uncertainty created in the minds of intending adopting parents was the real problem.[24]

Despite uncertainty

Despite this uncertainty, the number of applications far exceeded the number of children available. The shortage, however, was caused entirely by the limitations imposed under the inadequate legislation then in existence.

The terms of the agreement signed by adopting parents emphasised the tenuous nature of the relationship. Parents agreed to return the child if they left the colony (unless the permission of the board was obtained).[25] The child could be reclaimed by the board at any time.[26]

More secure

A.W. Green, President from 1915, believed that adopting parents were more secure if they negotiated private arrangements outside the control of the State Children's Relief Act. Compliance with the law was to their disadvantage.[27] Private adoptions, no more effective legally than those arranged by the board, had the advantage of secrecy. Natural parents reclaiming their children in such circumstances had few resources with which to pursue their case and no officially accountable organisation to approach. Although the board did not approve of the reclaiming of children, it was, at least, obliged to act legally.

Advertisements

Advertisements seeking parents for private adoptions appeared regularly in the daily press and were the subject of regular comment in annual reports from 1911 onwards. Informal approaches to the newspapers failed to halt the practice.[28] Mothers wishing to dispose of their children in this way offered as an inducement the Maternity Allowance (Baby Bonus) of 5, which had been introduced by the Commonwealth Government in 1912. This practice attracted persons who were interested in the money, although the sum was not sufficient to provide for long term care. As a result, babies were in great danger of being neglected.[29] In addition to legislation controlling advertisements, the board pressed for changes in the payment of maternity allowances.[30] Part II of the Children's Protection Act of 1902, which was entitled "Adoption of Children" was designed to regulate the care of children apart from their parents and where payment was made. It was, however, ineffective in this kind of case.[31]

In all of this discussion it may appear that the needs and interests of adopting parents occupied the minds of the official administrators to an excessive degree. It should, however, be remembered that they were absolutely convinced of the virtue of rearing children in families. The foster-care system was based on this principle and they saw adoption as a limited but superior extension of fostering.[32] Their attention was thus concentrated on those aspects of the arrangements which might hinder more children from being adopted. Thus the interests of adopting parents were seen as crucial. But they did not see the surrendering of children for adoption as a positive, responsible act on the part of the natural parents. Adopters occupied as a result a higher moral position and were entitled to the attention they received.

The board's insistence on supervising adoptions through its inspection arrangements was also a possible deterrent to adopting parents. The report of 1887 noted that some of them objected to being inspected and emphasised the discretion with which inspections were carried out.[33] As the 1906 report stated:

> The children are visited by the Inspectors to ascertain that the condition of the adoption are being performed, but the inquiries are necessarily of a particularly discreet character, because of the relationship existing between the foster-parents and the children. The visits are made in the character of a friend, and the Inspector's identity with the Department is not disclosed to the child.[34]

Conjuring up a vision of such "friendly visits" may well tax the imagination of the modern student, but the difficulty in relinquishing inspection needs to be appreciated. In-

spection was the key to the success of foster care wherever it was introduced in Australia. In the absence of adequate legislation it offered the only protection available against the maltreatment of dependent children. Sophisticated methods for the selection of adopting and foster parents were not available and the board was unwilling to abandon its statutory responsibility.

Complicated

The situation was complicated by the practice of adopting older children. Initially children were available up to the age of eight years.[35] The age was later lowered to seven.[36] The upper limit was set to prevent children being adopted to become unpaid servants. The usefulness of children as servants has disappeared along with domestic service generally, so this problem would not now arise. It must, however, have been the case that the adoption of older children was then, as it would be now, much more difficult than the adoption of infants. Thus some interest on the past of the authorities may not have been misplaced.

Relationships

Strong relationships were nevertheless often formed. In his 1886 report, Renwick provided the following examples.

> Our law prevents hotel-keepers from being guardians. Two well-to-do persons had adopted infants, and two years afterwards they purchased hotels. It therefore became necessary that either the hotels or the children must be given up. In both cases the hotels were sold at serious monetary loss, one guaridan sacrificing nearly 200.[37]

Central to all these considerations was the question of cost. Adopted children were fostered at no charge to the state. In 1883 the losses due to unfilled applications were estimated to be 650.[38] In 1884, the actual savings were 333.18.0,[39] and by 1895 they had risen to 1612 per annum.[40] Extension of the system was therefore of considerable public benefit. In this context Renwick was attracted to some New Zealand legislation which extinguished the rights of parents who deserted their children by leaving them in the care of the government for more than three years. He pressed for the acceptance of a similar policy in New South Wales.[41] By this means many more children could be made available for adoption. No such legislation was ever passed.

The desire thus to sever the link between children and their defaulting natural parents was not confined to government officials. The voluntary Central Methodist Mission Children's Home accepted only children given entirely into its care.[42] In order to give effect to this rule, parents were required to sign a document entitled "Agreement of Adoption" and surrender all authority over their children in consideration of the expenses incurred by the Home. Needless to say, this document was of no legal effect.

Conclusion

There can be no doubt that the success of the adoption programme of the State Children's Relief Board was influential in the eventual passage of effective legislation. The problems of the earliest experiments were solved by the practice of inspection which brought adoption into good repute. But no amount of inspection and concern could compensate for the absence of security in the adopting relationship. Only legislation could remedy such a deficiency. Apart from this central problem, the early history discussed in this paper raises two questions which are still subjects of concern: the relationship of the adopted child with the natural parents and the place of the needs and interests of adopting parents in the arrangements for adoptions.

Effective Severing

The effective severing of the natural parent/child relationship was central to the promotion of adoption. Legislation was the formal part of this section, but the practice of confining adopting to the placing of infants meant that actual relationships were less formed. Whilst moral indignation was expressed towards those who failed to accept their parental responsibilities, the severing of a "natural" relationship was not easy. Still less easy was the transformation of the consent to adoption from a wilful abandonment of the child to a socially responsible action. Without effective protection from interference, adopting families remained insecure.

Renewed Interest

There is now a renewed interest in the relationships of adopted children and their natural parents, expressed most forcefully in the apparent creation of a right to "know one's origins." This interest is indeed strange at a time when beliefs in the "natural order" of the family are under attack. Whether or not this right will be pressed so far as to revive the insecurity of the adopting family is a question which, on historical grounds, should receive close scrutiny.

Early attention to the interests of adopting parents has already been noted and partly accounted for. Such attention is, nevertheless, in stark contrast to the novel modern

idea that the interests of children should be paramount. When children were seen as subsidiary parts of an established social order, their interests automatically flowed from the interests of the major actors. Despite the acceptance of the new principle in modern legislation, the interests of adopting parents have not disappeared. The current shortage of children to be adopted has led to a wide ranging search for children in those countries seen as disadvantaged in comparison with Australia. Such ventures are clearly motivated by the needs of the prospective adopters. It is to be hoped that the welfare of the children is also served. In this context it is sufficient to note that the acceptance of an exclusive principle of legislation may instruct judges how to act, but it cannot alter the world. Applicants will continue to be motivated by their own interests and a successful policy will need to take account of this.

For the State Children's Relief Board, the problem was how to make adoption safe for the maximum numer of children. Modern adoption is assumed to be safe, but children are in short supply. These facts draw attention to the limitations of this paper. Adoption occurs in a context in which there have been many social changes. These affect the level of family breakdown and the supply of unwanted children. Yet the establishment of successful adoption practice required a considerable conceptual leap and involved issues which are still of considerable importance.

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Acknowledgement

I wish to thank the Archives Authority of New South Wales for permission to quote from records in their control.