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INTER-COUNTRY ADOPTION POLICY IN AUSTRALIA

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Recent revelations in the media about the status of some Taiwanese children adopted by Australians raised again the issue of safeguards, official policies and practice in inter-country adoption. For many of the people significantly engaged in urging a raising of standards, the present situation and future possibilities foreshadowed in official quarters leave little room for optimism. In spite of well documented arguments for a uniform code of practice, responsibilities remain divided, offering loopholes for those who believe they have a special case that puts them outside the laid down procedures for assessment and approval. This paper argues that governments in Australia (State and Commonwealth) must not be allowed to walk away from responsibilities in inter-country adoptions, responsibilities which are firmly established and recognised as appropriate in domestic adoptions.

The Present Situation

The law has long been recognised as something of a blunt instrument in dealing with matters of human relationships. The various adoption laws in Australia have given ample testimony to this view in recent years. Because of the unfortunate variations between the Australian States and Territories in regard to adoption law in spite of so called uniform legislation, attempts to develop an Australian Government policy, particularly with regard to inter-country adoption, remain frustrated. Not only does each State have its own Adoption Act, but two Commonwealth Departments, Immigration and Foreign Affairs, have an interest in inter-country adoption. In addition State and voluntary agencies are involved in the practice as are a number of organisations representing the interests of adoptive parents—actual and potential. It is presumed that one common goal unites the actions of them all—the best interests of children living outside Australia for whom inter-country adoption has been deemed their most suitable means of enjoying the benefits of family life. If this presumption is correct, the children's best interests will be served by policies and practices that facilitate adoption and at the same time safeguard the participants. The present authors argue that such safeguards can only be guaranteed if responsible governments act to prevent self-interested parties from taking advantage of loopholes and anomalies in adoption procedures.

Indeed, it can be argued that there could well arise a situation in which self interested parties are encouraged to assume even greater responsibility for determining the fate of children yet to set foot in Australia.

One of the most interesting developments in recent years has been the shift in official thinking about the necessity for government involvement in the regulation of inter-country adoptions. For a long time leading the regiment from behind like the Duke of Plaza Toro, official policy now seems about to conclude that if you can't see the action in the front line it doesn't exist; *ergo* one need not be concerned with it. This is a classic example of the Pontius Pilate Syndrome known to affect bureaucratic minds from time to time. In the short space of 5 years a complete reversal of policy has taken place. Five years ago (4th August 1977) the then Victorian Minister for Social Welfare Mr Brian Dixon, made a statement regarding inter-country adoptions following a meeting that day of Commonwealth and State Welfare Ministers.

Mr Dixon said that Victoria had been asked to draft legislation, affecting inter-country adoptions, which would be considered as uniform legislation by the Commonwealth and all States.

The legislation proposed was to allow automatic recognition of adoptions which had been made by foreigners (persons other than Australian residents) in any other country, provided that the adoption met the legal requirements of that country.

For Australian residents, Mr Dixon said, foreign adoptions would be facilitated by the proclamation of foreign countries with which adoption agreements were reached by Australian States. Mr Dixon said "If Australians are approved as suitable adopting parents before going overseas, or have lived in the country concerned for at least two years, the adoption will be recognised,

> ". . .only where adopting parents had not sought approval, or had not satisfied the residency requirments above, would the situation become more complicated. Then, the adoption would have to be supervised for twelve months after the adopters and child return to Australia."
> (Press Release re Inter-Country Adoptions, Minister for Social Welfare, Victoria, 4th August, 1977.)

Mr Dixon's statement foreshadowed the Australian Inter-Country Adoption Delegations which visited eight Asian countries in an endeavour to establish specific arrangements for adoption of overseas-born children by Australian residents.

The Australian delegation were able to negotiate working arrangements with three countries, yet none of these agreements has been signed into effect. Informal agreements were reached with another three countries on procedures to be followed. (Fopp, Peter. "Inter-Country Adoption: Australia's Position" in Australian Journal of Social Issues, 1982, Vol. 17, No.1.)

What Mr Dixon's statement did not presage, however, was the agreement by all Australian States in February 1978 to delete from all adoption acts the residency clause required for recognition of foreign adoptions by Australian residents as endorsed by him

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in his statement of 4 August 1977.

The deletion of this clause, intended to enable recognition of overseas adoptions by foreigners, had become a much more sweeping recognition of all legally valid adoptions carried out overseas by both foreigners and Australian residents. This extension enabled the otherwise problematic adoption by Australian migrants of children, sometimes related, from their home countries to be recognised. However, it was a simplistic approach to a complex problem, and opened a Pandora's box of dilemmas regarding protection of the children affected.

A measure perhaps, of the alarm caused by the proposed legislative amendment, was the long delay before any State moved to effect the change.

New South Wales was the first to do so, in March 1980, as part of considerable changes to the N.S.W. Adoption of Children Act, 1955.

A strong lobby of protest, led by the New South Wales Standing Committee on Adoption, objected to the deletion of the residency clause.

The N.S.W. Committee, in a statement circulated to all N.S.W. Parliamentarians and relevant Ministers said this:

> "There are no safeguards for the children under the proposed legislation. The plight of a child who has been the subject of an hasty and ill concealed adoption, and whose adoption breaks down, could indeed be desperate. The most likely solution for the child would be that it would become a Ward of the State."
>
> "The dangers in the proposed legislation are that some couples or persons seeking to adopt (either those who have been rejected as unsuitable. . . or those who have become impatient) will take the matter into their own hands, travel to a foreign country, find a child, obtain an order of adoption and return to New South Wales with a child who is legally theirs."

The New South Wales Committee said such parents would be doubly deprived in that they would have no advance preparation for the adoption and would not automatically have available the support of adoption staff in the event of adjustment difficulties for their child and/or themselves.

In an unheeded warning, the N.S.W. Committee said further:

> "There are enormous discrepancies between the laws of various countries as related to Australian adoption law—eg, in Taiwan there are a large number of agencies and orphanages involved in the "export" of children. There is no Government control over adoption, it is done without supervisory period. It involves the signing of a contract between parties, ie the parents or guardian and the adoptive parents or their proxy in front of two witnesses in the local district court, and the report of the change to the District Court of the child's name in the family registry."
> (Ref. p.9, "Procedures of International Social Service Asian Regional Correspondent and Staff Meeting on Inter-Country Adoptions 9-7 September 1975.")
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> "Automatic Recognition of such adoptions could unwittingly promote unacceptable adoption practice, including the sale of children and the denial of the rights of natural parents. Adverse publicity arising from association with such practice could have wide ranging implications in the aura of foreign affairs."
> (New South Wales Standing Committee On Adoption, Statement in response to the Adoption of Children (Amendments) Bill 1980.)

Following the lobby against this provision of the Bill, the Bill was passed and became the Adoption of Children (Amendment) Act No. 78, 1980; but was not proclaimed. However, the Minister for Youth and Community Services moved to have the Section of the Amendment Act, which repealed the "residency clause", Section 46 (2) (b) of the Adoption of Children Act, proclaimed separately. It came into effect from 1st January 1982.

In a letter to an adoptive parent group in New South Wales, the Department of Youth and Community Services stated that the proclamation made it no longer necessary for the Department to make application to Court for adoption orders in respect of children adopted overseas. Instead, parents who had obtained a foreign adoption order, could apply to the State Supreme Court for a declaration of validity and on receipt of this, could then obtain a New South Wales birth certificate for the child, showing them to be the child's parents. (Letter of 5th February, 1982, quoted in ASIAC Newsletter, March 1982).

A new solution to the "problem" of intercountry adoptions is now mooted at official levels. This follows on from the agreed legislative amendment deleting the residency clause, now in effect in New South Wales only, and is also a reflection of the inconclusive nature of the discussions with foreign countries undertaken by the Australian delegation.

In principle, the suggested solution, now circulating to State authorities, is that State Welfare authorities need not necessarily take a principal role in intercountry adoptions. This is particularly encouraged by the number of Asian countries (eg. Sri Lanka, Indonesia) who require adoptive applicants to travel to the child's country for the adoption. Whilst these countries require an approval of the applicants from an acceptable authority in their country, other countries who also provide for couples to undertake an adoption whilst briefly resident in the child's country, do not require an approval (eg. Taiwan). Given that it is now agreed that all Australian States will amend adoption orders, it is seductive to suggest that insistence upon compulsory assessment, placement and post-placement supervision is superfluous to many intercountry adoptions. Those adoptive applicants who *choose* to seek assessment and approval, either because the country of their choice insists upon this requirement, or because they do not wish, or cannot afford, to travel to a foreign country in order to adopt an overseas child or because of their own moral assessment, may be encouraged to seek the services of an assessing agency, but the choice will be theirs.

Ergo, the provision of protection for the child would rest with the child's country of birth, irrespective of the resources that country may have to devote to the welfare of children, and to the sensitivities and concern of the adoptive parents. The Australian authorities would provide a rearguard resource—if the adoption fails the child would then be able to be assisted only through the channels available to all Australian-resident children whose family bonds break down.

This proposal, discussed at the February 1982 meeting of the Commonwealth and State Social Welfare Ministers, has generated further difficulty with the demarcation of responsibility between Commonwealth and State authorities, in that the issuing of a visa to a child who had been adopted by Australian residents would be subject to the Commonwealth Department of Immigration and Ethnic Affairs satisfying itself as to the likely validity of a foreign adoption order. This is a position this Department has never been willing to assume. So the debate continues, and again Australian authorities create confusion at home and abroad about their responsibilities in inter-country adoption.

Reasons for changing official attitudes

There are two distinct responses to changing official attitudes to inter-country adoption. One argues that experience, during the last five years in particular, has convinced statutory authorities that prospective inter-country adopters and the organisations representing their interests have proved themselves responsible and capable of self-regulation. Conversely, the cynical observer argues that inter-country adoption is so hard to regulate and in any case represents such a small number of families that it does not warrant the time, effort and difficulty it presently demands. The truth probably lies somewhere in the middle.

When Australian families and couples first began to pressure Australian authorities for permission and assistance to adopt children from overseas countries they were met with strong resistance and antagonism. Little practical assistance was available, persistent families met obstruction and, in some cases, direct antagonism from welfare bodies and government departments. This was to an extent understandable as both parties were operating in an area with few established guidelines and little practical experience.

In some States a significant change in the approach of both welfare authorities and adoptive families occured at the time of the overwhelming crisis of the collapse of Cambodia and Vietnam and the resulting airlift of children to a number of Western countries. In these States, the airlift threw authorities and parent bodies into intensive co-operative efforts in order to cope with the demands of the situation. In Victoria in particular, parents assumed as much of the administrative and even initial screening functions of the welfare agency involved in inter-country adoptions in order to free social workers for assessment of the many families it was thought might be needed for placement of hastily evacuated children. After the crisis, the relationship between some parents and some welfare authorities had changed.

The change in the situation since 1975 has brought a change in the approach of most families and couples who seek an inter-country adoption. Increasingly, parent bodies involved in assisting and supporting people seeking inter-country adoptions found them more patient, more prepared to wait and more thoughtful in their approach to the issues involved in parenting a child from another race and culture.

People who decide to adopt an inter-country child still, however, represent a considerable range of viewpoints and backgrounds from those who firmly believe they have a right to have a child, through those who are childless and hope that they will be able to adopt from overseas in order to create a family, to those who have children and want to have more but who want to offer their home, family and love to a child already in the world without these things; to those who for a complexity of reasons want to help a deprived child. Adoptive applicants still include people who are impatient of any system which tells them to wait or which appears to question their personal worth. Most applicants however, are people who, whilst scared of the probing of an adoption assessment, and worried that they may not be considered suitable as adoptive parents and who may even be critical of the approach taken by welfare authorities, nevertheless accept the safeguards as being in the interests of the children they are seeking.

Changes in official thinking and, ultimately, in official involvement in inter-country adoption, will not only deprive these latter applicants of desirable and necessary supports, but will also give licence to those who believe they need not submit themselves for assessment. Indeed, there is strong circumstantial evidence to suggest that some of these know that they would not meet the assessment criteria.

Is inter-country adoption different from domestic adoption?

Any discussion of inter-country adoption must have regard to its similarities to, and differences from, domestic adoption. Although there are certain inescapable differences, like the child's birth in another country and likely future interest in a culture essentially different from that of Australia, the similarities predominate. In seeking to facilitate all adoptions, governments, welfare authorities and other interested parties should be concerned about the long term as well as the immediate future. Over many years domestic adoptions have become subject to regulations by welfare authorities acting in the best interests of the child. Hambly and Turner have commented thus on the introduction of the principle of paramountcy of the welfare and interests of the child embodied in current adoption laws:

> It leads to new restraints upon people who wish to adopt a child and to a curtailment of the rights which were formerly attributed to natural parents. In most jurisdictions it has contributed to the introduction of a process for arranging adoptions which permits official intervention and control to a much greater degree than was possible under the old legislation.
> (Hambly, David and Turner J. Neville (1971) Cases and Materials on Australian Family Law, the Law Book Co. p.592.)

The other important provision in the uniform Acts is that which controls so-called private or independent adoptions which involved placement without the prior approval of a State government department or an approved adoption agency. The arrangement of adoptions in Australia is restricted to approved State agencies or adoption societies, with the notable exception of the adoption of children by relatives. Moreover, the regulations associated with the uniform Acts specify criteria for assessing the suitability of prospective adopters. For example Regulation 31 of the Victorian Adoption of Children Regulations 1965 states:

> The Director-General or the principal officer, as the case may be, shall determine the suitability of applicants to adopt having regard to their age, marital status, state of health, educational background, religious upbringing or convictions (if any), personality, physical and racial characteristics, reason for seeking to adopt a child, general stability of character and employment, financial position, and the accommodation they have available.

As late as 1976 review bodies in New South Wales and South Australia made detailed recommendations regarding assessment criteria.

It seems curious, to say the least, that having taken so much care to specify criteria for the regulation of domestic adoptions, which, after all, take place in a most advantageous climate vis a vis access to all the parties, authorities should now contemplate reducing or abandoning criteria and supports in adoptions likely to be complex because they involve children and authorities in other countries. Does this imply some value judgment about the relative worth of the children involved?

The case for continued official involvement

What is at issue is the nature and desirability of official involvement in the

inter-country adoption process. At a time when the field of adoption is expanding, taking in both children with special needs and inter-country children, it becomes important to re-assert the rationale for official involvement, and at the same time consider the hostile feelings of some prospective adopters. Kirk* refers to the involvement of a "middle man" in the procurement of the child to be adopted. "Middle man" involvement differs in kind and can range in some countries from a mother directly placing her child with prospective adopters, to a doctor facilitating a transfer of a child between parents, an entrepreneur acting solely for profit, or a legally approved agency carrying out its placement functions. In whatever manner the arrangement is carried out, it is clearly in the child's best interests if those acting on his behalf do so with a clear understanding of the complex social, psychological and legal ramifications of adoptions. Governments have a responsibility to clarify these ramifications and make them known through the use of properly constituted agencies. The necessity for having adoption agencies rests on the fact that adoption is not, and should not be, a private matter. The State as *parens patriae* must take responsibility for the welfare of children. That responsibility must include those who will become citizens by virtue of inter-country adoption processes.

The values underlying agency practice must also be made explicit in order to test their acceptability to the public and to research their validity. Where there is conflict between these values and their acceptability to an interested group in the community, public confidence in agencies is undermined. If the self-interest of a minority determined to circumvent accepted standards is allowed to continue, how long will it be before those involved in domestic adoptions demand a similar freedom from official regulation? The logical outcome would be a return to the dark days of baby farming and the questionable practices of private adoptions.

What is urgently needed is a clear statement of policy by all official parties to inter-country adoptions backed by the commitment to thorough and impartial implementation. It is intolerable for there to be two sets of standards for domestic and inter-country adoption. If what is now foreshadowed is allowed to become policy chaos must ensue. By not participating actively at the beginning of the adoption process, ie assessment, government and agencies will be abandoning the concept of the paramountcy of the child's best interests. By encouraging individuals or private organisations to "go it alone" they will sow the seeds of future breakdowns and hardships. The recent Taiwanese scandal would become the norm. Sooner or later official action will be necessary but that will be like calling the fire brigade after the building has burned down. It is morally indefensible to see official responsibility as only beginning when the child is actually in Australia.

The current hiatus between formal recognition of foreign adoptions and its partial implementation has encouraged some people to feel they can act outside the system. They have gone overseas without formal assessment and approval and have then successfully bulldozed the Departments of Foreign Affairs and Immigration. Let there be no mistake about the appropriateness of legal recognition of foreign adoptions. That is not the issue. The real issue is the failure to develop coherent, coordinated systems of assessment, approval and support. This represents an abnegation of any sense of responsibility for the children involved. It places the onus on prospective adoptive parents to behave responsibly and morally in respect to something they want very badly—a child. The State must accept a role in helping people to be moral and responsible in the situation by developing an appropriate system to facilitate the making of inter-country adoptions.

Finally it should be said that both authors believe in the appropriateness of inter-country adoption as one means of meeting the needs of children without families. We believe that most people seeking placements are well motivated.

Above all, the variety of membership of inter-country groups highlights the dangerous fallacy involved in the pursuit of the "ideal" adoptive parent. The broad spectrum of needs of children without parents must be reflected in the criteria used in selecting parents for them.

*Kirk, H.D. (1964) Shared Fate, Free Press.

An area of debate in adoption practice has been the advisability of combining adoption and foster placements in one family.

Adoptive families have often sought acceptance as foster families and foster families have applied for assessment for adoption. Workers in these fields have had reservations about blending the two forms of placement. These reservations have related both to the effect on the children who have differing placement status within the family, and to the motivations of the parents in both situations. Are the adoptive parents wanting a foster placement to be a quasi-adoption? Do the foster parents feel ambivalent about the lack of permanency in fostering?

The involvement of one adoptive family with a family welfare agency as a foster family, is presented here as a personal statement of experience. *Anne Jeffrey*, of the Copelen Street Family Centre of the Uniting Church, introduces the family's account with a brief explanation of the Family Centre's involvement with adoptive families who move on to fostering.

ADOPTION CASE NOTES

Introduction

The experiences of The Copelen Street Family Centre of the Uniting Church, "Family Sharing Programme" have been with families who have adopted then fostered, fostered while trying to adopt, or fostered then adopted. Only the first category will be discussed here.

We have two families who have adopted a child and then become foster parents. The first family had three of their own children and then adopted a baby. When their children were 17, 16, 13 and 10, they decided as a family to foster babies who would be going to adoptive homes. They wanted to help other adoptive parents in gratitude for their own adoption.

The second family involved a single woman who had adopted a child from

by Anne Jeffrey
The Copelen Street Family Centre

Kampuchea. When her daughter was nearly 8 years of age and had been with her for over 6 years, together they decided to foster a child. The foster mother's interest in fostering was to provide her daughter with the experience of living with another child, and her commitment to helping those in need. The family was accepted initially for short term fostering, although they wanted to foster on a long term basis. The Agency believed that in fairness to the family it was important to see how they coped with grieving and how the daughter felt about sharing her mother with another child. The family will now foster a long term child.

For both these families there were several important factors in determining their success as foster families. Firstly, the foster parents were mature and sensitive. Secondly, they discussed openly with their adopted children about their status and origins. Thirdly, they and their own children were able to grieve. Fourthly, all the children in the foster families were secure with their own interests and friends and high self-esteem. Fifthly, the families were accepting of natural families with different values and attitudes to their own, and could be flexible about access arrangements. Finally, the decision to foster children was made in each case by the whole family.

AN ADOPTIVE MOTHER AND HER DAUGHTER'S EXPERIENCE OF FOSTER CARE—Irene Robinson

We're doing fine.

Seven years ago I was unmarried, working full time and living alone in a luxury flat in Toorak. Today I am still unmarried, haven't worked for two years (owing to an accident) but my home is a small terrace in Richmond cluttered with blocks, dolls, "Weekly Readers", pushers and potties.

My name is Irene Robinson and I am a single adoptive and foster mother. I don't really know when I decided to adopt, I had nurtured the idea for some years and on making general enquiries about adoption found that I was either too young or too old but mainly I was single and working. In the early seventies there were articles appearing in newspapers about war orphans in Vietnam, orphanages which couldn't cope with the numbers of children and small children found wandering in the streets of Saigon. I made up my mind that I would adopt a child from Vietnam but: where did one start, where did you go, that was my number one question. All enquiries I made met with a blank wall, either no one wanted to know or didn't

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