

Current Adoption Policy and Practice - a comparison between North America and Australia

Introduction

I am often asked about current adoption policy and practice in Australia and how this differs from policy and practice in North America. Although I have never worked in a situation where adoptions were actually taking place, I have had considerable experience in post-adoption services for the last fifteen years and, in that time, I have counselled many whose lives have been affected by adoption. I have also been able to acquire some understanding of current adoption policy and practice from colleagues in the field. During my visits to North America and through my contacts with colleagues there, I have also gained some background information on current adoption practices in North America. It seems to me that there are fundamental differences between what I perceive to be happening with domestic adoptions in Australia and what I perceive to be happening with domestic adoptions in North America.

I recognise that adoption policy is, in both places, subject to state rather than federal legislation and so there are variations in policy and practice from state to state (in this article, for simplicity, I have referred to 'state' legislation, although I am aware that in both North America and Australia there exist states, territories and provinces). My comments are, therefore, of a general nature only, as I appreciate that there are many local variations. I am most familiar, of course, with policy and practice in my home state of South Australia, but I am aware that most other states in Australia operate in similar ways. Adoption policy and practice in South Australia are based on the *South Australian Adoption Act (1988)* and have been in effect since that act was passed in 1989. Since 1989, it has been possible to appraise and monitor the outcomes of this legislation and the act was officially reviewed in 1994. At that time, submissions were invited from members of the public, as well as groups with an interest in adoption. Some minor alterations to the act were made on the basis of this review and there have been no official moves to make any alterations to the legislation since that time.

South Australia was the first state in Australia to put in place adoption legislation which seeks to protect and support the relationship between a newborn child and his or her families of origin, as well as allowing equal access to adoption information when the adopted child becomes an adult. Other states have followed with similar adoption acts.

Adoption agencies

Private adoptions are illegal in all states in Australia. All domestic adoptions are enacted by State Government departments. There are no commercially-based adoption agencies which are licensed to manage these adoptions, which means that there are no payments of any kind connected to the adoptions of these children.

In contrast, in North America, private adoption agencies are licensed to arrange domestic adoptions. Because adoption has been allowed to acquire a commercial status in North America, there are financial advantages for agencies in arranging as many adoptions as possible. Agencies in North America, therefore, have an incentive to attract customers, just as any other business does.

Many people have expressed to me that they find the fact that money and children change hands in the same transactions to be at the very least distasteful, if not, in fact, immoral.

Expectant mothers

Expectant mothers in Australia, regardless of their circumstances, are generally encouraged and supported to prepare for raising their children. After the birth, a Parenting Payment is available from the Federal Government to anyone, regardless of their gender or marital status, who is a permanent resident of Australia and who has custody of a child. This payment, which is means-tested, is a recognition by the Australian government that children are the

basis of a country's future. The government, therefore, makes financial support available to parents to assist them to provide for their children. As far as I am aware, there is no corresponding payment available at a Federal Government level in North America, although I have been advised that there may be tax benefits for parents who are in paid employment.

While there is still a degree of disapproval in some quarters towards single parenthood, there is a much greater level of acceptance in Australia than there was in the past. This has resulted in a dramatic decrease in the number of adoptions in Australia over the last thirty years. Last year in the state of South Australia (which has a population of more than two million people), for example, only one Australian-born child was adopted.

The term 'birthmother' (or 'birth mother') is currently out of favour with many of the support groups in Australia and certainly would never be used, as I have heard it used in North America, to describe an expectant mother. I have even heard the term 'birthmother-to-be' used to describe a pregnant woman. This sinister use of the term 'birthmother', before the birth has even taken place, implies that the separation of mother and child is a foregone conclusion. Expectant mothers in Australia, on the other hand, are generally encouraged to concentrate on their approaching motherhood throughout their pregnancies and no decisions regarding their child's future are expected to be made until after the birth has occurred. This is an acknowledgement of the fact that it is not possible for a mother to know how she will feel about being separated from her child until after the child has been born.

Expectant fathers

I know that, in North America, fathers who are not married to the mothers of their children have a difficult time being heard. In South Australia, an unmarried mother who is considering adoption will always be asked to name the child's father and attempts will be made to include him in the decision-making process. If the father is named on the birth certificate or if a man is recognised by the court as being the father of a child, then his consent is necessary before that child can be adopted. The father will be allowed time to establish paternity. If the father wishes to raise the child, he has the right to do so. If the mother and father do not agree with regard to the child's future, the matter may be decided by the Family Court. This would happen before any consent to adoption had been completed.

Consent to adoption

Under the *South Australian Adoption Act (1988)*, consent to adoption cannot be given until the child is at least fourteen days old. Counselling after the birth is compulsory and must be completed at least three days prior to consent being given. The mother of the child must also be given information in writing regarding the consequences of the adoption, prior to any taking of consent. After the consent has been signed there is a period of twenty-five days during which the consent may be revoked. This period can be extended by up to fourteen days, but it cannot be shortened.

In practice, the consent to adoption is sometimes not finalised until several months after the birth. While this may not be an ideal situation, it is felt to be of prime importance that children have every opportunity to be raised within their families of origin. This will prevent the long term complexities in the lives of those children and their parents, which would occur if an adoption took place. During this period the child may remain with the mother and/or father.

I have heard of cases in North America, tragically, in which adoption consents have been signed even before the birth, or very soon after the birth. I have also heard of cases where attempts to revoke the consent the day after it had been signed have failed.

Meetings with prospective adopters

In Australia there is never any contact of any kind between expectant mothers and prospective adopters. I know that there are many who agree with me that such contacts are intrusive,

disempowering to the expectant mother and potentially exploitative. They may even serve to encourage an inappropriate sense of 'ownership' in the prospective adopters, which, I believe, shows a lack of respect for and understanding of the sanctity of the mother/child bond. I am aware that this shocking practice is considered by many to be unethical.

In South Australia, only after the consent to adoption has been signed and after the twenty-five day revocation period has expired will the government department involved select adopters for the child. After this decision has been made, a meeting may take place between the prospective adopters who have been selected and the mother, if the mother requests such a meeting. Prospective adopters will not have any contact at all with the child until after the revocation period has expired and they have been notified that they have been selected to adopt.

I find it hard to understand how anyone can support the practice of having prospective adopters meet with expectant mothers and try to induce them to consent to the adoption of the child they are carrying. I believe that prospective adopters are sometimes even allowed to be present at the hospital while the birth is taking place. I was appalled to hear that this happens in North America. I find such behaviour totally inappropriate and unethical. It concerns me greatly that prospective adopters who behave in this way are not thereby considered as unsuitable to adopt.

Birth certificates

In South Australia, if the adopters are willing, they can have their names added to the child's original birth certificate instead of having a new one issued. This means that, after the adoption, the names of both the parents and the adopters appear on the same document, which is the child's legal birth certificate. The mother of the child has access to the original birth certificate from the time that the adoption takes place. The father also has access if his name appears on the birth certificate.

Regardless of the type of birth certificate issued, adopted adults in South Australia have access to their original birth certificates and other documentation pertaining to their adoption, when they are eighteen years old. The original birth certificate has details of their parents, including their names and addresses at the time of the adoption. They may have access prior to the age of eighteen with the consent of their adopters. The mother of the adopted child also has access to the replacement birth certificate when the adopted child becomes an adult, at the age of eighteen years. This document has details of the child's adopted name and the names of the adopters and their address at the time of the adoption.

These documents are also available to the children of the mothers, either if the mother gives permission or after her death and to the children of an adopted adult, if the adopted adult gives permission or after their death. Similar access to adoption information is available in all states, although in some cases, the release of information can be prevented by a person involved in the adoption. Fathers also have the right to access information about their children under certain circumstances. The legislation which allows this access has been in effect in South Australia since 1989.

I know that there are some states in North America where adopted adults are allowed to access their original birth certificates but there are no states, as far as I am aware, in which parents are allowed to access the replacement birth certificates once their children are adults. I look forward to the time when equal access to adoption information, such as exists in South Australia, will be accepted as a basic human right everywhere in North America. This is an on-going issue of social justice.

The right to raise a child

There seems to be an unhealthy attitude in North America that there are some people who are 'entitled' to raise children (whether their own or someone else's) and that there are others who are not. The result of this seems to be that, rather than adoption existing to serve needy children, adoption seems to exist to a large extent to serve needy adults. In some sectors of the

media in North America, the idea that certain people have a right to acquire a child, by any means at their disposal, seems to go unchallenged. Although this misguided notion does, no doubt, also have some support in areas of the Australian media, I find this attitude to be much less prevalent in Australia than it is in North America.

Removing children from families

I was very shocked to learn that, in North America, parents who are married and already have children are being persuaded to relinquish newly-born infants. The subsequent separation of such a child from a previously intact family is causing enormous losses, for the child, for the parents, for the other children in the family, for the grandparents as well as many other members of the extended family. This does not, to my knowledge, happen anywhere in Australia.

Apparently, having children while on a low income is now perceived as such a crime in some parts of North America, that this dreadful punishment has been devised. If poverty is considered to be a disadvantage to such children, then government initiatives which address the issue of poverty would be more useful to them than replacing the complications created in their lives by poverty with the complications created by adoption.

In my professional opinion as a social worker, any prospective adopters who would be willing to acquire a child in this way, from an established family, would be considered to be unsuitable candidates to be entrusted with child-rearing responsibilities. It seems that a 'supply' of such children, who already have an entire family of relatives, is being engineered to meet the 'demand' created by affluent strangers, who wish to attempt to manufacture a family through adoption. I cannot comprehend how anyone could consider such a transaction to be anything other than exploitative and socially unjust.

Adoptions of older children

While there are many in North America who are working in family preservation programmes to prevent separations of mothers and babies, I am saddened by the fact that there are still those who believe that adoption is an appropriate outcome for older children who are unable to return to live with their families. Adoption is rarely considered to be an appropriate outcome for such children in Australia.

I have heard it said in North America that adoption can provide such children with a sense of security. In fact, in my opinion, the opposite is the case. Children such as these know who they are and to whom they are related. These realities do not change, no matter where the child is living. To deny that identity and those connections by issuing the child with a false birth certificate has, in fact, the potential to create an enormous sense of insecurity. If their identity and their family connections are so dispensable, then how can a child in this situation develop any sense of reality and permanence? We all know that being part of an adoptive family does not provide protection against abuse, death or divorce. Adoption, in fact, does not guarantee permanence of any kind and is actually an attempt to create relationships where none existed previously, rather than honouring those relationships which already exist.

In Australia, children who are unable to live with their families can be provided with a safe home environment, based on an arrangement which accepts and honours the reality of their identity and their existing relationships. This, I believe, can allow them to heal and recover without involving them in the deceit and denial associated with adoption. Some of these children have already been traumatised by the abuse or neglect which they have suffered. In my opinion, it is unnecessarily cruel to add to their trauma by subjecting them to an adoption.

Conclusion

I am not, of course, suggesting that every child in Australia lives in an ideal family environment. However, it is not considered to be appropriate in Australia to try to solve the

problems of poverty and abuse in families, by removing children and arranging for them to be adopted.

Adoption is not a commercial transaction in Australia and it is gradually being replaced by other, more effective means of providing homes for children in need. This suggests to me that Australians respect the advantages in life which cannot be bought, including a sense of knowing who we are and where we fit, a sense of heritage and ancestry and a respect for the intrinsic value of family membership.

I look forward to the day when children all over the world will no longer be removed from what are perceived to be dysfunctional poor families and placed in what too often turn out to be dysfunctional affluent families.

© Evelyn Robinson, MA, Dip Ed, BSW
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