

## **PUBLIC AND PRIVATE PROVISION OF ADOPTION SERVICES**

This paper is an edited and expanded version of a paper presented to the Auckland Medical Aid Trust in Auckland during December 1999. Both papers are based on extracts from my MSocSc thesis, *The Role of the State and the Private Sector in the Provision of Placement and Long Term Support Adoption Services In New Zealand*

### **BACKGROUND**

When I was considering the research I would undertake for my masters thesis, I initially backed away from pursuing anything to do with adoption. I lived with this stuff, as a member of the adoption community: did I want to spend a year writing about it? As an undergraduate I had from time to time used adoption as the basis for looking at various issues in public policy and administration, and each time felt that I was undertaking at least two tasks – one, addressing the assignment before me, and two, presenting adoption as something problematic, that could be interrogated in a variety of ways by a self confessed survivor. But did I want to continue to do this in a major piece of work?

The answer, almost inevitably, was yes. Several things contributed to the topic I eventually chose. I had already undertaken a major project as an undergraduate, looking at the responses of successive governments to the issue of intercountry adoption, and the attitudes of various interest groups in the adoption community. I had made submissions to Parliament about intercountry adoption legislation, and placed myself on the side of those who did not wish to see private groups play a role in the provision of placement services. I knew, or at least thought I knew, that there was a dearth of appropriate specialist or generic services for people whose lives were touched by adoption. Like most informed New Zealanders, I was aware of the keenly contested debate in this and in other parts of the world about the best way to provide and deliver goods and services to communities and individuals, and the associated structural reforms which reflected the hegemonic perspective. I had worked as a paid worker and as a volunteer in community agencies which were predominantly dependent for their existence on contracts with state funders. I had also been the member of a committee which disbursed funding to non-profit groups. And a seed had been sown a couple of years before when I'd talked to a friend at a funeral: I'd asked her if she had any ideas about a thesis topic, and she'd said, why not look at privatisation – it's going to become an issue.

So, these threads came together to provide me with a topic, that of considering the role of the state and the private sector (which for my purposes included the non-profit sector) in the provision of adoption services, both placement and long term support. I examined these within an overarching problem: who is seen as a credible knower about adoption? Whose views have legitimacy when it comes to making policy?

The research included outlining the historical background in this country, investigating current policy and practice here and overseas, establishing the theoretical models which might be useful for assessing the data I gathered, surveying 50 birthmothers about their satisfaction or lack of it with support services, and undertaking a content analysis of successive groups of submissions regarding the role of private groups, particularly in regard to intercountry adoption.

## INTRODUCTION

The New Zealand government has made commitments to values which should inform adoption policy. Our role as a signatory to the United Nations Convention on the Rights of the Child is an endorsement of the necessity to be vigilant regarding the vulnerability of children, and for adoption to be an option of last resort. Our own child welfare legislation, the Children, Young Persons and Their Families Act, incorporates recognition of the value of kinship links to a child's well-being, and attempts to replace the zero-sum outcomes of an adversarial approach to decisions with a negotiated win-win philosophy, in which process is as important as outcome.

The concept of equity, as opposed to equality, has been an important influence on policymaking in the last quarter of a century, with the recognition that cleavages such as gender, ethnicity, and disability are significant determinants of individuals' life chances, because of biases which place material and ideological barriers in the way of their full participation as citizens. Challenges to the legitimacy of authority which have also characterised the last part of the twentieth century have resulted in a greater acceptance of the role of consultation and informed consent. Our national engagement with Treaty of Waitangi issues has led to agreement by the state that it is appropriate that the Crown should make reparations for injustices of the past, even where they have not been perpetrated by present day politicians or officials.

While it is not difficult to find evidence of breaches of all these precepts, and there is plenty of disagreement about their practical implementation, they are values the state has indicated it wishes to honour. Therefore, they are criteria which should be crucial in shaping the future direction of adoption policy. Adoption is still generally seen as an acceptable instrument of social policy, and is unlikely to be abandoned as such in the short term. This country leads other Western countries in the numbers of adoption orders ever made (Iwanek 1997:67) and despite a considerable reduction in numbers of placements since the era of closed stranger adoption, there are comparatively few challenges to adoption *per se*.

## ADOPTION PLACEMENT SERVICES

Adoption placement comes into the category of those services in which the state should still have a considerable interest. History and current events here and overseas with regard to domestic and intercountry adoption provide ample evidence that opportunism and self-interest are rife, and that markets exist for children (earlier in my thesis I had set out various examples of this, locally and internationally). These markets may be about the exchange of material consideration for children, or may operate on a more subtle level, where no money changes hands but the vulnerability of women and children is exploited through a lack of support for some categories of parenting, social preferences for a particular type of family structure, and the ability of more advantaged groups to press their claims, personally and collectively. As an area where a number of judgements with a high discretionary element must be made, there is potential for judgement in adoption placements to become unjust bias, reflecting one's own interests and prejudices. The shortage of adoptable children, particularly in the most popular category of healthy white infants, and the general lack of informed knowledge about adoption, adds to the chance that adults will pursue their own agendas, while invoking the interests of children.

Most of the discussion in the literature about the structural arrangements supporting adoption placements come from North America, where adoptions are arranged through various mechanisms, depending on the state in question: private arrangements, often through an intermediary or facilitator; private agencies which may be for profit or not for profit; and state agencies. Debates focus on two sets of contrasts, independent versus agency adoptions, and the private sector versus public agencies.

## Independent Versus Agency Adoptions

Independent adoptions are those made by for profit individuals or groups. Sometime the term facilitator or intermediary is used. The general thrust of the cited advantages are the removal of red tape, and the opportunity for the adults involved to retain control of the adoption process. The perceived problems lie in the vulnerabilities of the various parties in regard to possible corruption and bad practice.

### Cited Advantages

1. More control given to birthmother: She is able to have input into the choice of adoptive parents, either directly deciding whom they will be, or specifying their characteristics (Amlung 1990; Daly and Sobol 1994; Lobar and Phillips 1994, 1996), and see her child go directly from her to the new home, without having to spend time in foster care (Meezan, Katz and Russo 1978; Wells and Reshotko 1986; Cohen 1987). As an extension of choosing the child's parents, the birthmother may be able to enter into an open adoption, where there is some sort of ongoing contact (Cohen 1987). If she does not want the birthfather to be involved, facilitators may not be as concerned as agencies to involve him in the decision (Meezan et al. 1978; Wells and Reshotko 1986).
2. Help adoptive parents locate possible birthmothers: Agencies frequently have long waiting lists, in the absence of children being available for adoption (Meezan et al. 1978; Lobar and Phillips 1994, 1996; Daly and Sobol 1994; Duncan 1995), and adopters may feel that they will be disqualified by virtue of age before they are able to obtain a child:
3. Financial support for birthmothers during pregnancy: While it is illegal in the United States to pay women as a means of persuading them to relinquish their children, most states allow the prospective adopters to pay the medical expenses of the birthmother. Some states also allow the adopters to pay her living expenses, and the birthparents' legal costs (Wells and Reshotko 1986; Atwell 1988). The argument for allowing such transfers to occur is that it is in the best interests of the child that the mother be adequately cared for during her pregnancy, and thus the payments are for the benefit of the child, not the mother (Atwell 1988). For nearly one-third of the birthmothers surveyed by Meezan et al. (1978) this access to support was significant in determining their choice of independent adoption.
4. Availability of healthy white infants: With the scarcity of children in this category, adopters may find that agencies are most likely to offer them older children, children of different ethnicity, or children with special needs. The use of an intermediary may appear to provide the best opportunity of locating a desired category of child (Meezan et al. 1978) and give adopters a feeling of control over the process (Wells and Reshotko 1986; Daly and Sobol 1994).
5. Agency requirements for parents: Agencies may have strict criteria about who is acceptable as an adopter, in terms of age, sexual preference, marital status, and length of marriage (Meezan et al. 1978; Wells and Reshotko 1986; Rosenberg 1992). Facilitators may be much more flexible about these matters (Lobar and Phillips 1994) and thus be receptive to adopters who have been declined by an agency.
6. More homes for needy children: Adoption is a way of securing permanency and families for children, and this should be facilitated by as few impediments as possible (Bartholet 1995) so that children do not languish in foster homes.
7. Discrimination against adoptive parents: Bartholet (1993, 1995), an adoptive parent herself, has been a constant critic of the regulatory aspect of adoption through agencies, arguing that because parents who form families through birth are not subject to assessment and monitoring, adoptive parents should

similarly be free of bureaucratic oversight. Bartholet contrasts the ability of human assisted reproductive technology to operate freely in the United States, with the constraints in adoption law and practice where the 'parental screening requirement is a very real deterrent to many who might otherwise consider adoption' (1993:).

### Cited Problems

1. The accountability of lawyers who act as intermediaries: Adoptive parents, who pay the bills, may be seen as the primary clients (Meezan et al. 1978; Daly and Sobol 1994:). Yet, within adoption law, the best interests of the child are assumed to be paramount (Podolski 1975), and the birthmother has interests which are not the same as those of the adoptive parents (Silverman 1988; Amlung 1990):

As a pbm [prospective birthmother] you are not their client. You are there to "supply" their client with what they want (a baby). How do they handle it if you have a change of heart? I have talked to many birthmothers who felt coerced by facilitators to relinquish.

(Birthmother posting on Internet adoption mailing list April 4 1997)

Meezan et al. (1978) found that 'almost one-third [of the birthmothers they interviewed who took part in independent adoptions] felt that the intermediaries' primary interest was in arranging the adoption - not the mothers' well-being'. The person acting as intermediary is in effect substituted for an agency (Briggs 1991) yet is free of the monitoring to which an agency is subject. Client confidentiality is likely to be threatened (Silverman 1988), with one person being privy to information from all parties.

2. Lack of counselling for birthmothers: Facilitators often do not assist the birthmother to work through the implications of her decision (Meezan et al. 1978; Amlung 1990), yet women considering relinquishment are vulnerable, because the perceived expertise and status of a lawyer, for instance, may be very influential (Amlung 1990). Consent may be viewed as a one-off event, when the consent papers are signed, whereas the concept of informed consent involves a process, where information is given, with time to reflect and seek other inputs (Atwell 1988). Where birthmothers later attempt to revoke consent, legislation generally places the burden on them to demonstrate that consent was not freely given (Amlung 1990)
3. Difficulty in regulating intermediaries: Because intermediaries are subject to little or no monitoring, problems may not be apparent until after an adoption is a *fait accompli* (Podolski 1975). There is no licence to be withdrawn as a sanction when bad practice occurs (Broadbent 1997).
4. Ethical issues: Codes of practice which regulate the behaviour of professionals, such as doctors and lawyers, are formulated without regard to their possible role as intermediaries (Podolski 1975). Professionals, in the absence of clear guidelines, can risk compromising their reputations and futures (Silverman 1988; Amlung 1990).
5. Fees paid by adoptive parents: Adoptive parents commonly pay expenses incurred by the birthmother, such as medical, legal and counselling fees. This may give rise to a possible conflict of interest for lawyers (Amlung 1990) who see a birthmother's consent as offering the best chance of getting a fee paid. While intermediaries are allowed to charge fees for professional services, they may also charge a 'finder's fee', which in effect makes them child brokers (Cohen 1987; Briggs 1991). Although some court decisions have opposed such brokerage fees, the potential exists for inflating or distorting overall costs (Wells and Reshotko 1986; Silverman 1988). Adoptive couples may feel under duress to give a birthmother extra financial help, out of fear that she might (according to the intermediary) withhold

consent if the money is not forthcoming (Briggs 1991; Lobar and Phillips 1996). The line between ‘grey market’ and ‘black market’ adoptions may be crossed, so that facilitators derive a profit from their activities (Silverman 1988). Adopters desperately wanting a child are vulnerable to monetary exploitation (Lobar and Phillips 1994, 1996).

6. Commodification of children: Exchanges of money, plus the ability for fees to be massaged to include non-legislated extras, can result in children being seen as something able to be bought and sold. A market is established, driven by the demands of adopters (Podolski (1975) who may have expectations of a ‘quality product’. Meezan et al. (1978)) found that ‘almost 40% of the biological mothers either were told directly or believed that if the child were born with a physical or developmental problem, the adoptive parents would not accept the child’. Because facilitators tend to charge higher fees than agencies, children are more available to those adopters who have the capacity to pay (Wells and Reshotko 1986; Daly and Sobol 1994).
7. Inadequate screening of prospective adopters: Intermediaries may rely on self-reported, unverified information given by those wishing to adopt (Briggs 1991), while adopters may, in their keenness to obtain a child, not give an accurate account of themselves. Briggs (1991) found that 75 percent of the couples in his sample of 40 couples seeking to finalise adoptions before an Indiana court ‘had not been required to undergo any type of professional evaluation or psychological testing prior to having the child placed into their custody by the intermediary or the biological mother’.
8. Adoption treated solely as a legal event: In contrast to agency programmes, which may include pre- and post-adoption services (such as infertility counselling and parenting training), intermediaries are unlikely to provide such resources, or recommend them to clients (Meezan et al. 1978; Silverman 1986; Briggs 1991; Daly and Sobol 1994).
9. Risk of adoptions not being properly concluded: Because birthparents’ consent may not be properly taken, and the lack of monitoring, the adoptive parents may find that the adoption has no legal standing (Wells and Reshotko 1986). Such situations may leave children in a legal limbo, with uncertain status (Meezan et al. 1978).
10. Courts expected to act as a rubber stamp: Courts are presented with a *fait accompli* at the time that the application to adopt is made. The child may already be in the home of the adopters, prior to any investigation of their suitability, with the new relationship in the process of being established (Meezan et al. 1978; Atwell 1988; Silverman 1988), and even where there may be suspicion of procedural improprieties, ‘judicial pragmatism’ (Cohen 1987) may be in favour of letting the adoption proceed. This contrasts with an agency adoption where approval of the new parents takes place before the child is placed (Silverman 1988).
11. Underlying supposition of equality of power and access to information for all parties: Meezan et al. (1978:) say there is a presumption that the birthparents and adopters have equal capacity to make decisions, on the basis of access to information, and maturity: ‘extensive social work experience in the adoption field does not support such an assumption’. Social inequalities resulting from gender mean that birthmothers’ vulnerability is increased (Singer 1992).
12. Question of best interests of child: In a relationship focused on adoption as the end product, there may be no opportunity for the mother to have access to information about alternative choices for herself and her

child (Meezan et al. 1978), such as welfare benefits and other support which could enable her to care for the child herself.

13. Falsification of birth certificate: The intermediary may persuade the birthmother to use the adoptive mother's name, so the child is registered as being born to the adoptive couple (Silverman 1988).

Despite the variety of concerns about the activities and risks of intermediaries, there is no suggestion anywhere in the North American literature that they should be eliminated. The emphasis, instead, is on finding ways to address the problems they pose while acknowledging that they provide choice, and take the pressure off agencies. Professionals are urged to specifically address adoption in their codes of practice and ethics, particularly with regard to fee-setting and conflict-of-interest risks (Sobol and Daly 1995). Silverman (1988) suggests that a total ban might result in overload for already strained agencies and stimulate more blackmarket activity. For her, the solution is to maintain independent adoptions but to increase regulation and monitoring of such activity, in order to protect all parties. She critiques a draft model adoption bill, which enables 'reasonable' fees to be paid, arguing that it is necessary to set explicit limits. Agencies could improve their practices by not insisting on secrecy, so that the birthmother is able to know where her child has gone (Cohen 1987). With a feeling of increased control over the process, agencies might become more attractive to women considering relinquishment.

Although no New Zealand legislation allows this type of adoption placement where individuals can set up in for-profit business to arrange adoptions, it is still worth examining for the underlying discourses. The cited advantages tend to come from those who promote adoption and believe that prospective adopters, so far as possible, should be enabled to find an adoptable child. Some of the arguments are not relevant to the New Zealand situation. We do not have the large numbers of children languishing in foster homes which characterise the United States child welfare scene, and thus there is no substantial pool of children potentially available for adoption. Pregnant women without financial resources in this country have access to free health care during pregnancy, and if they decide to have the child adopted, will be involved in the choice of the adoptive parents.

However, New Zealand law does allow private adoptions to be arranged, either directly between the parties or through the mediation of a third party. A criticism of our version of private adoption, that the Court is expected to endorse an already established arrangement, is repeated in North America. So too is the warning that the birthmother may be ill equipped to withstand a couple who are determined to adopt and, knowingly or unknowingly, take advantage of a woman who is vulnerable through youth, poverty, fear, or lack of advocacy on her behalf.

## **Public Versus Private Sector Adoption Services**

In contrast to the debate about the virtues of agency and facilitated adoptions, there is a much more limited discussion about the advantages and disadvantages of private and public sector agencies. In the Israeli context Jaffe (1986, 1991, 1995) argues that a government monopoly gives intending adopters no alternative, and there is a state responsibility beyond 'the best interests of the child' to meet the needs of those who want to adopt children. The role of the private and NGO sector in adoption in North America is possibly so normalised that, with regard to agencies, distinctions are frequently not made.

Some of the arguments in favour of private agencies are based on a desire to limit the numbers of abortions. Private groups are endorsed by Yoest (1997) as being a successful way of placing special needs children, because NGOs are more proactive than public agencies which she describes as 'bureaucratic', unmotivated and inadequately resourced. She argues that if more 'unadoptable' children were placed, the abortion rate would decrease, because women who believe their unborn children have disabilities would know there was an alternative to adoption. Yoest cites examples of private groups which she says have been very successful in finding adoptive homes for such children, and attributes their success to being 'passionate about adoption' (1997). However, the popular assumption by anti-abortion activists, such as Yoest and Allen (1989), that increased abortion rates are responsible for the decreased number of children offered for adoption, is challenged by Medoff (1989) who argues that a woman's decision to adopt is positively correlated with her marital status, education and religious affiliation, with abortion and adoption not being substitutes for each other.

Daly and Sobol's 1994 study compares the services and accessibility of private intermediaries (lawyers and social workers) and public agencies in Canada. Each route, they suggest, is driven by a different set of interests: in the public sector, adoption is part of a wider child welfare agenda, underpinned by a stated commitment to the interests of the child, whereas for private intermediaries, the client is the paying customer, whose needs may become of prime concern. They found that each group had different clientele, with private facilitators attracting older, more educated couples. There was no marked difference between the birthmothers who used each type, but the children were 'radically different' (1994) with healthy infants constituting 91 percent of the private placements, and 42 percent of the public placements which had a preponderance of special needs children and those older than one year of age. The public agencies did not charge parents, except for some nominal sums, but cost was a factor in private placements, averaging \$3,461. Post-adoption services were much more likely to be provided by public agencies, which also had longer waiting lists. Daly and Sobol conclude that while there is a place for both types, public agencies ought to close long waiting lists because they offer an unrealistic hope, and private intermediaries need to move beyond seeing adoption as a legal event, and acknowledge its lifelong nature by offering services that extend beyond placement.

In a subsequent paper, Sobol and Daly (1995) examine the differing attitudes of the public and private sectors. Public agencies believed they were the appropriate body to handle all adoptions, whereas private groups wanted to leave only hard-to-place children in the public arena. Fees were a contentious area, with public practitioners being opposed, and private practitioners defending their services as non-bureaucratic. The authors suggest that professional standards should be set where fees are charged.

## **Positions in New Zealand**

In my own research, I looked at various submissions made when there had been an opportunity for the public to have input into law reform. The key documents were the submissions made about the 1994 Supplementary Order Paper, which would have enabled NGOs to provide some intercountry adoption services, and its reincarnation in 1996, which eventually became the Adoption (Intercountry) Act 1997. I

used content analysis to code the themes that emerged from submissions, and to identify where possible, from internal evidence or by my own knowledge, the role of the submitter in the adoption community.

On both occasions, there was a clear dichotomy, with almost no overlap, between the views of adoptive parents, and those of birthmothers and adopted people. Adoptive parents passionately supported the work of the group Intercountry Adoption New Zealand which had positioned itself as the likely contender to become a service provider, if the law was passed. Adopted people and birthmothers argued for the retention of placement services within the aegis of the state. Submitters with a background in research tended to side with the opponents of privatisation. All groups believed New Zealand should participate in the Hague Convention on Intercountry Adoption. The new Act allowed private agencies to be contracted to provide some categories of placement services in intercountry adoption.

The indications are clear, from the literature, and from my research, that those who most want the state to retreat from adoption placement, here and overseas, are those who have most to gain, either a child, or business as paid or unpaid brokers of children. With the recent legislation, New Zealand is following a trend identified in the United States by Singer (1992:1478) where 'there has been a change in the perceived purpose of American adoption law, from promoting the welfare of children in need of parents - traditionally and unproblematically a "public" function - to fulfilling the needs and desires of couples who want children'. While there has never been a time when the desires of prospective adopters have not had some sway, the new Intercountry Adoption Act is a much more explicit signal that adopters are clients who should be given service.

Supporters of the new Act do not include, to any significant degree, adopted people and birthmothers. Yet adopted people and birthmothers have been amongst the most trenchant critics of Social Welfare's practices, and this dissatisfaction was manifested in the sustained lobbying for the Adult Adoption Information Act. The birthmothers I surveyed are not unequivocal fans of the Department, in the past or the present, but despite grievances about past practices and complaints about present inadequacies, this group would prefer to see AISU retain its control of adoption placement.

This can probably be attributed to, in part, the responsiveness shown by AISU, by individual workers and the agency as a whole, to the demands of the adoption community for access to records and information. Though the state has an unhappy history with regard to its adoption policies and practices before and after the 1955 Act, it has demonstrated a capacity to learn in more recent years. The Adult Adoption Information Act was an acknowledgement that the state had a duty to remedy past deficiencies, and the endorsement of support groups by the Department has helped create links between some social workers and the support group sector of the adoption community. Some sense of partnership has developed, however fragile it might be at times, and the regard in which the National Manager of AISU is held by many has undoubtedly contributed to this relationship. The restructuring of DSW in 1992 which resulted in the establishment of AISU has gone some way to mitigate the criticisms of the 1990 Working Party that practices were inconsistent between social workers and between offices, with the Office of the Commissioner for Children recently comparing AISU favourably with other parts of CYPFS.

Under the new legislation, the licensed agency is permitted to charge fees, With money coming into the picture, there may be an expectation on the part of prospective adopters that their payment entitles them to a child. The idea that it is an exchange for service may seem academic if a child does not result. The part played by money also means that affluent couples are better equipped to pursue an adoption than those who are not so well resourced financially. This is an indication that in fact such adoptions are very much to meet a private interest. On the other hand, if intercountry adoptions are going to be a deliberate part of our foreign policy, and we really believe they constitute a worthwhile contribution to the welfare of other



countries, there should be equity of access for all prospective adopters. Because child welfare services and resources are targeted at New Zealand families, perhaps the budget (but not the monitoring functions) for intercountry adoption services should come from another department, such as the Ministry of Foreign Affairs and Trade which has responsibility for overseas aid.

Money *is* inevitably involved in the adoption of a child: social workers, lawyers, judges are paid. There are aspects of life where society finds it acceptable to place a monetary value on children, for instance if compensation, through insurance or legal action, is paid for their death (Quah and Rieber 1989). Human assisted reproductive technology (ART) is another field where price tags have been fixed to children, but in a way which is commonly (though not universally) seen as morally reprehensible: ART is unequivocally driven by private needs, because there can be no justification in terms of rescuing a child or helping a woman or family without resources. In this case, researchers and doctors represent themselves as providing the means to avoid the suffering of the childless (Perry 1997:A22), and again, the private desires of those who want children are seen as overriding any consequences for the children who result from such interventions. The ethical boundaries of what it is acceptable to buy and sell are never fixed, and logic alone cannot be the sole definer of what should be commodified, and what should be outside the market.

If society continues to use adoption as an institution, perhaps a useful model is that of ‘the gift relationship’ as in Titmus’s (1970) eponymous work. Titmus compares blood donation services in the United Kingdom, where people are not paid for donations, to blood donation in the United States, where payment is given. He says ‘blood as a living tissue may now constitute in Western societies one of the ultimate tests of where the “social” begins and the “economic” ends’, and the same could be said of adoption. Titmus argues that a break down in altruism in one part of society will inevitably lead to the corrosion of other parts of the community, and policy has a role in encouraging or discouraging altruistic behaviour.

The analogy with blood donation can be taken only so far. To donate blood is different from the ‘donation’ of a child. Blood is replenishable, whereas a child in his or her individuality is not replaceable. Blood saves lives, whereas infertility, while distressing and painful, is not life threatening. The rhetoric of altruism has too often been abused to persuade single mothers that their children will be better off with other parents, instead of being harnessed to assisting women to raise their children themselves. But, the point worth taking is that the economic model and its associated discourses are limited in explaining social relationships and in fact have the potential to distort existing exchanges. Where adoptive parents must pay in order to obtain a child (apart from extra costs such as travel and lawyers’ fees), whether consideration passes to a birthfamily, a facilitator, an agency, an institution or some other party, we are dangerously close to selling children. Once a market is established, goods are ranked in terms of desirability and supply, and, as I argued earlier in the thesis by giving examples of the cost of adopting in the US, this has happened to adoptable children in the United States.

Any implicit expectations that money will be saved by the state in contracting out, either with the new legislation or through any future moves, are probably mistaken. Given the already discussed high discretionary element, and the difficulty in appropriately operationalising a quality service in terms of inputs and outputs, the ensuing necessity to monitor practice will require resources. The hope of less bureaucracy, so often expressed by the supporters of ICANZ, may be illusory: if adoptions are to be processed to the same standard as local ones, then the checking, and parent preparation, all the things that take time, will still be a slow process.

The state’s need to retain a core capacity, in order to have sufficient resources and knowledge to monitor contracts, means that the state must preserve an informed involvement at some level. Any dilution of the ability to access and process information will threaten the state’s capacity to control adoption. Under the new

legislation, there will be a choice between AISU and whichever agencies are licensed, which does ensure that AISU is still actively involved in the field. But if all adoption placement services were to be contracted out, the state's capacity to adequately monitor agencies' activities might be placed in jeopardy.

The rhetoric of choice has been significant in rationalising the new Act, but choice has been constructed in a narrow sense. The only choices enhanced are for adoptive parents, who have thus been constructed as the client. Choice needs to be looked at more widely, in terms of choices for families and children. The problem with increasing choices for one group is that as a corollary, the choices for another group may be narrowed. The doctrine of paramountcy, that the best interests of the child should be served, carries with it an implication that the best interests can be met only by the availability of a range of options. The weight of choice needs to be at the point in determining a child's future that precedes the adoption decision. The model that should prevail should be of citizenship, not the market.

If the state retains its present control over adoption there is still the matter of the type of private adoptions which are permitted in New Zealand. Unlike independent adoptions in the United States, money is not allowed to change hands, and advertising is forbidden. Yet a common problem in both countries is that the court is presented with a situation which it is expected to rubber stamp.

There is a tension, not easily resolved, between the monitoring of the state, and the rights of individuals to make their own arrangements. The present law in some ways allows a sense of choice to the adult parties, but the vulnerability of women who are considering relinquishment, and their children, is a prime concern. The activities of brokers, whose understanding of adoption is possibly rooted in the model that prevailed during the period of closed stranger adoption, are also a problem. However, some of the difficulties inherent in this route to adoption placement might be alleviated by using the consensus model of decisionmaking of the Children, Young Persons and Their Families Act in all adoptions, and making it compulsory for all adopting parents to undertake preparation. Politically, the retention of private adoptions is probably appealing, because it can be presented as providing a sense of choice for the adult parties, but this choice is at a cost to the equity of all parties, including the child who cannot speak for him or herself.

One area in which NGO involvement may be fruitful is in providing equity for Māori, who are clearly dissatisfied. While adoption practice has to some extent acknowledged Māori complaints by no longer placing Māori children with Pakeha parents, the individualised nature of decisionmaking about a child's future still prevails. For nearly a hundred years whangai has been officially recognised only if it has been followed by an adoption through the courts, and it is timely, at a stage when we are grappling with how other Māori customary practices can be recognised, that this issue be faced. The consultation with Māori that was cut short in 1993 should continue, so that they are part of developing new legislation.

In some ways, the notion of privatising adoption placement services is a solution in search of a problem. The mistake made by those who advocate privatisation because it is part of the general government thrust is that they assume that what is structurally suitable for some kinds of services will be applicable as a general rule. Consumer response, as tested by AISU's quality assurance process has been favourable, and the decline in complaints to the Ombudsman is also a sign that the Service elicits a high level of satisfaction from those who deal with it. If there are problems with the service delivery of AISU, and it is possible that it have not been successful at communicating with some prospective adopters, privatisation of some services does not address whatever deficiencies there may be.

Retaining adoption placement as a state delivered service is not, however, sufficient in the absence of co-ordinated legislation that gives clear, consistent guidelines and is in tune with current knowledge (lay and researched) and practice. Child welfare legislation generally is fragmented, and adoption law is also lacking

in cohesion, with the new Act exacerbating the situation. Possible new legislation dealing with ART must fit with the intentions and provisions of child welfare law. The involvement of different departments, operating from different perspectives, does nothing to resolve the problems. With the implementation of the new Act, another bureau enters the picture, CFA. Presumably it will act on advice from other agencies, such as AISU, SPA and the Department of Justice. But the introduction of another link in the chain of control and accountability creates risk.

It is important that adoption placement services are specialised. The stereotypes and misinformation that have common currency amongst lay people and professionals (as was reported by many of the birthmothers) demonstrate that generic social work or counselling skills are simply not adequate for an appropriate high quality service that takes account of the power relations at all stages of adoption. At the same time, close links with care and protection services must be maintained, so that adoption is not the automatic answer for a family and child whose future together is problematic. A stand alone agency, whether NGO or a state bureau, carries the risk that adoption is its sole *raison d'être*, whereas ideally an adoption service should have solid networks, both state and community based, which enable a range of choices to be considered for a child's future. Duncan (1994:333) suggests that the Hague Convention implies a placement system which in some way is integrated into, or at least has ready access to and information about, the child-care services generally within the country of origin. It also implies a level and range of services which many countries of origin will find hard to achieve.

While this is true, there is a parallel danger that where developed countries separate adoption agencies from other welfare services, adoption becomes an inevitable solution for those families who enter the system through the specialised agency.

## **LONG TERM SUPPORT SERVICES**

With regard to long term support, governments to date have had a minimal involvement in the direct provision of services beyond the facilitation of information and reunion under the 1985 Act. A vacuum exists which is not being adequately met by either the private or public sectors. While the women in my survey were very clear that the state had an obligation to fund, wholly or partially, such services, they were comfortable with NGOs being providers.

A different set of issues arises with respect to this part of the adoption life-cycle. Where long term support is sought by families or individuals, there are a variety of possible avenues including all the services I asked women about in the survey. Other sectors may be also involved: for instance, the education and justice systems may have contact with young adopted people and their families. Problems and issues are not necessarily presented in terms of adoption, but without knowledge of the ways adoption can impact on triad members and their families, there can be no recognition of adoption as a factor that affects behaviour, beliefs and feelings.

The risk of corruption which is highly salient to decisions about placement policy is not a significant issue for support services. Instead, the risks are to do with the ignorance and consequent minimisation of issues by professionals. Lack of information and understanding are the crucial problems, and awareness needs to be boosted within the state and NGO sectors, as well as among the general community. Therefore, for the state, via DSW, to be the only provider of services, would be both inadequate and inequitable. DSW does not have offices in every community, whereas NGOs and professionals working alone are dispersed throughout New Zealand. Choice of service *is* important here: for some adopted people and birthmothers, to be obliged to return to DSW for help would be painful, because of the association of the agency with the trauma they have suffered. This type of choice has been recognised in the Adult Adoption Information Act,

where adopted people may, subject to local availability, have either a departmental or independent appointee hand over their original birth certificate and offer information about searching.

Birthmothers are included amongst the population which is opposed to the contracting out of placement services, yet my survey showed that birthmothers believe a variety of providers could be a source of long term support services. Many of the women were not opposed to making some contribution towards the costs of such services, though none believed they should have to bear the total cost. There may thus appear to be a dissonance between the two attitudes: one sort of service should be firmly within the state's control because of the risk of commodification, while another could be performed by NGOs without a concern about monetary gain being made by those who provide counselling or other support.

A way of resolving these apparently contradictory positions is provided by Zelizer's (1996) model. By focusing on the implicit social significance attached to an exchange, different meanings can be attributed to the role of money in adoption placement and adoption support. Arguments which say that privatisation is a step towards commodifying children, because adoptive parents will make payments to a variety of sources in order to get a child, are based on seeing the exchanges as compensation, the sort of exchange that is associated with the purchase of goods. Arguments for contracting out, as presented in submissions, simply ignored the question of payment, so we cannot be sure how supporters of the legislation view it, except to say that for the proponents, there were no moral debates around the issues. When counselling or other support services are provided, payment assumes a different character, and for the women surveyed, the fact that others would be paid to deliver service was probably not as important as having services available, with the state making a significant contribution in recognition of its role in promoting an institution which has caused a great deal of suffering.

The current situation, with a marked lack of good quality services, is clearly unsatisfactory. The number of women who heard about services they used by 'word of mouth' demonstrates the lack of equity that prevails, even if the service offered is of a high quality. Accessibility is a matter not only of geographic proximity and cost, but also of knowledge: knowledge both of one's right to assistance, and the knowledge of appropriate resources. Fragmentation of services, coupled to a general lack of professional knowledge, is not an adequate response to the need that exists.

In a country with a small population, to have a multitude of dedicated post-adoption centres is not affordable. What is possible however is the establishment (directly or by contracting out) of two or three agencies which are specialist centres of excellence, acting as resource centres for training as well as providing group and individual services. These centres should not be part of any agency that arranges adoptions, although it is vital that good networks exist between them and those arranging adoptions, in order that adoption placement is informed by knowledge about the long term impacts. There is no point in having services which have to deal downstream with abuses at a child or family's point of entry to adoption, or where adoptive parents are presented with a sanitised version of adoption which is inconsistent with scholarly and lay accounts of long term impacts.

As a matter of course, counselling and medical training must pay more than cursory attention to adoption issues, so that all professional helpers are equipped to recognise the significance of adoption as a personal and social event. It is critical that triad members are not seen as pathological, but as people reacting appropriately to what they have experienced (Weger 1995; Pavao 1997), but the reports of women in the survey are evidence of a severe lack of understanding on the part of some helpers. Although triad members may be particularly well equipped, by virtue of personal experience, to work as professional helpers after training, there needs to be an understanding of the politics of adoption: many birthmothers, for instance,

would not feel safe with a counsellor who was also an adoptive parent, and thus openness about personal involvement is important.

It will probably take a political decision to get post adoption services routinely recognised as a legitimate need, so that agencies can be contracted to provide counselling, subject to the normal standards of accountability plus evidence that appropriate staff were employed. There could be some form of national accreditation in the way that Accident Compensation Corporation sexual abuse counsellors are accredited, and perhaps a specific post-graduate qualification could be offered by universities, polytechnics and/or a private provider, to improve the skill base of counsellors who already have generic counselling training.

Most of the women in my survey were or had been part of support groups, and expressed a strong desire for them to continue. These groups could be assisted in two main directions: enough funding or sponsorship to advertise, and training and support for facilitators. The indications from my survey are that facilitation of some groups is poor, and AISU could contribute to improvement by running regional workshops which train group leaders in facilitation and self care. Unlike professional counsellors, voluntary facilitators do not generally have access to supervision, and without such a resource, the risk of burnout is great.

The Accident Compensation model of recognising trauma as a result of accident is a possibility for funding services which has some attractions, though the costs might not be politically appealing. A potential problem with the model is that birthmothers in particular might get caught in having to prove that they were coerced into relinquishing their children, in order to establish that the trauma was not of their own making. Because many of the factors that led to children being placed for adoption were social as well as personal, the onus should not be placed on women to argue the degree of force that operated in their case. It would be much less punitive to provide services which are free or with a small user contribution, where people do not have to prove their right to service. Whatever is provided, locally, regionally or nationally, it has to be backed up by good, high profile advertising. This would serve both to notify people of available services, and to give them a sense of entitlement to assistance. It might also have the spin-off of educating the public at large about adoption.

## **SUMMARY OF RECOMMENDATIONS**

The following summary contains the policy recommendations developed from the findings of my research. The recommendations are not exhaustive: many other issues are outside the scope of this investigation, for instance the question of access of siblings and grandparents to identifying information, and the viability of the veto provision in the 1985 Act.

1. The state should remain as a direct provider of adoption placement services, within a specialised agency which has close connections to other child and family services.
2. It should be mandatory for all adoptive parents, including those in private arrangements, to undergo preparation prior to the placement of a child.
3. In-family adoptions should be discouraged or forbidden, with a greater advocacy of guardianship where families wish to acknowledge the caregiving role of a non-birthparent.
4. An inquiry into practices of the past is needed, with an apology from the Crown for its role in inflicting hurt on triad members who believe they were not well served by adoption practice.

5. All adoption legislation should be reviewed, and reformed so there is coherency in principle and practice between all child and family welfare legislation.
6. Birthmothers and adopted people should have an equal capacity to access records when the adopted person in question turns 18 (if the adoption is closed), and be able to do so without state oversight.
7. Consultation should continue with tangata whenua.
8. Three post-adoption centres should be established, run by either AISU or NGOs, two in the North Island and one in the South Island, and funded by the state. Staff should be triad members, and all parts of the triad should be represented. All should have toll free phone lines, be well publicised and act as both support service and training providers.
9. Facilitators of support groups should have access to regular training, paid for by the state.
10. Funding bodies, such as Lotteries should be given a political directive that adoption support, both voluntary and professional, is to be seen as a legitimate community need.
11. Encouragement should be given to appropriate tertiary institutions to establish a post-graduate qualification in adoption counselling and group work as a specialty area.
12. A consumer advisory panel should be established, with members being nominated by the adoption community and representative of all parts of the triad. Administrative support and travel costs should be borne by the state.

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