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Jonathan Dickens

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Social policy approaches to intercountry adoption

● Jonathan Dickens

This article proposes a social policy framework for thinking about intercountry adoption (ICA), drawing on theories of welfare regimes and globalization. Typologies of fundamental welfare approaches, or ‘regimes’, originated in analyses of nation-state policies, but nowadays have additional value as models for understanding globalization. The framework shows how ICA interacts with national child and family welfare policies in receiving and sending countries; and beyond that, how it links with wider, global social policy. Looking at ICA in this way highlights the tensions and ambiguities of its policy contexts and consequences, and the possibilities of a more radical approach. Romania’s ban on ICA is discussed as an example.

Welfare regimes

Esping-Andersen’s (1990) typology of welfare state regimes in developed capitalist countries has become a much-used starting point for international social policy comparisons and analysis. A fundamental challenge for Western, democratic nation-states with capitalist economies is to balance the role and responsibilities of the state for ensuring the well-being of its citizens with two other requirements: upholding private and family life, and promoting the effective working of the free-market economy. Esping-Andersen identified three archetypal approaches to this challenge: liberal or neo-liberal, conservative

Key words ● child welfare reform ● globalization ● Hague Convention
● intercountry adoption ● Romania ● welfare regimes

corporatist and social democratic. The model has frequently been used and adapted by other researchers and commentators (summarized by Abrahamson, 1999). In fact, the underlying ideas have long historical roots, with their origins in the great political philosophies of libertarianism, utilitarianism and egalitarianism. The endurance of this elemental three-way split makes it a powerful framework for looking at national and global social policy, and is particularly useful for ICA.

Like all models, Esping-Andersen's framework is a simplification of a complex reality, a caricature rather than a photograph. So it is important to recognize that the three approaches do not exist anywhere in their pure form: rather, reality is marked by ongoing conflict, overlap and ambiguity. Having said that, the USA can be seen as an exemplar of the neo-liberal approach, France and Germany as typical of the conservative corporatist approach, and the Scandinavian countries as the leading examples of the social democratic approach. The current UK approach draws explicitly on all three approaches (Levitas, 2005). In any country, though, there is a range of views, and for politicians and policy-makers the most effective strategy is to support policies that, on the surface, appeal to all perspectives – and ICA is a prime example of that.

Welfare regimes and social services for children

The liberal or neo-liberal approach holds that the welfare needs of an individual or family are best met by purchasing the services they need from the free-market economy – so, private rather than state-run health care, private pensions, private childcare. Charities might provide services for those who cannot afford to pay. The state has a minimal role to ensure legality and protect the most vulnerable; otherwise it keeps out of the welfare business. This approach obliges individuals and families to take maximum responsibility for their own well-being, seeing this in itself as a social good. In some activities, such as adoption, unadulterated market-place principles may not be judged appropriate, and legislation would prohibit the direct purchase of children, while still allowing payment for reasonable fees and expenses. So this approach would give a major role to independent adoption agencies, run either for profit or on a not-for-profit basis, and also for private, non-agency adoptions, arranged directly between the adopters and the birth parent(s), perhaps with the help of an intermediary. In keeping with the market-place ideology, there is an emphasis on choice: prospective adopters and birth parent(s) would be free to choose which agency to use, and even to select one another. This leads to a highly competitive market for healthy babies, exemplified by on-line profiles

of prospective adopters (effectively, advertisements) hoping that a birth parent will choose them. There would also be state-run child protection services to monitor the most risky cases of children living with their birth families. Some of these children might be removed from their families and placed with adopters by the statutory agencies. There is a mistrust of state care, and there will be tight timescales and legal provisions to ensure that children – especially young children – are moved out of care as quickly as possible, either back to their birth families or on to adoption.

The conservative corporatist state places the greatest value on social stability and aims to mitigate the worst effects of capitalism without undermining the smooth running of the economy. Indeed, its aim is to facilitate the smooth running of the economy (rather than the neo-liberal approach which, in its pure form, leaves this to market forces). It is conservative in the sense that it seeks to uphold traditional social values and family roles, and corporatist in that it seeks to work with the private and voluntary sectors in coordinating welfare services. It aims to preserve existing social structures and differentials, holding that these serve the interests of society as a whole. So, for example, higher wage-earners will pay more in social insurance contributions but will benefit from higher payments when they need them. This ‘buys in’ the support of the middle classes, crucial to social stability. The echo of utilitarianism is the emphasis on the overall good of society. In this model, the state is likely to have a planning and funding role for welfare services, while independent agencies are more likely to be delivering the services. So one would expect to see a prominent role for private and voluntary sector child welfare services and adoption agencies, perhaps linked with churches or other traditional providers of welfare support. In distinction from the neo-liberal approach, one would expect the state to be playing a more active role in working with independent organizations, for example through joint planning, commissioning services and issuing detailed regulations to ensure quality provision, not just minimal standards.

The social democratic state sets its greatest value on social equality, and aims to intervene actively in social and economic life to ensure this. It will have redistributionist tax policies to shift resources in favour of the least well-off. The state itself will be a primary provider of welfare services, which are seen as non-stigmatizing, high-quality services of first resort for all citizens (rather than residual services of last resort for the poorest people, as in the neo-liberal approach). In terms of social services for children and families, one would expect to see a wide range of support services for parents, day-care facilities

and after-school activities. The priority would be to keep families together or to reunite them if they are separated; but at the same time, there would be a more positive view of out-of-home care than in the neo-liberal or conservative approaches, seeing it as a service that can itself help children and support families. In this sense there would be a greater willingness to use care than in the other models. However, there would be a reluctance to institute legal proceedings to make separation permanent, so one would expect fewer children to be available for adoption, and children are more likely to stay in care for longer (Thoburn, 2007).

Globalization and welfare regimes

Globalization raises the fundamental social policy questions to a new international level (Deacon, 2000, 2007). There are hotly contested debates about the characteristics of globalization, its costs and benefits, what it is, what it could be and what it should be (Midgley, 2007). There are new arguments about the proper roles of the state, the family, the market and the not-for-profit sector in generating economic growth and ensuring social welfare, but beneath them are the older themes of neo-liberalism, conservative corporatism and social democracy.

Proponents of the first position hold, broadly, that globalization should proceed along the lines of free-market capitalism, with only minimalist, safety-net provision by national governments for the very poorest. The second perspective is that governments and international agencies should work together to regulate the worst excesses of global markets, to 'socialize' global policy. The third position is that globalization should prioritize social justice and welfare for the poor in developed and developing countries alike. As with the nation-state level of this framework, there are overlaps and ambiguities among the perspectives, and competing views within and between different organizations. For all that, the dominant ideological and economic model for the last 20 years has been the neo-liberal which, at least until the 2007–9 global economic crisis, has shaped the parameters for the others.

Globalization and intercountry adoption

The old national policy debates have acquired an international dimension, and the focus here is how this framework can shed light on ICA. The discussion looks in turn at receiving countries, sending countries, international regulation and then at Romania as an example of a more radical approach.

Receiving countries

ICA has been characterized as a demand-led market (Chou and Browne, 2008; Högbäck, 2008; Kapstein, 2003; Selman, 2002, 2006). The number of would-be adopters has risen for various reasons, including the delayed child-bearing of many couples, and the fact that more single people and same-sex couples wish to adopt. Domestic supply is not able to meet the demand, in terms of quality or quantity. A neo-liberal welfare state will have children available for domestic adoption – the ones removed from their birth families by state agencies and babies being relinquished by their birth mothers – but children in the former group may be older and troubled, and the number in the latter group insufficient. For those with enough money, the archetypal liberal response is to go to market: if you want a healthy baby and one is not readily available in one's own country, look elsewhere. In this regard, it is significant that the USA, which fits the stereotype of a neo-liberal welfare state, has such a large number of ICAs (17,438 in the year ending 30 September 2008: US Department of State, 2008). Certainly these are still in the minority compared with domestic adoptions (Flango and Caskey, 2005), but the market dynamic means that the children who are harder to place are more likely to be left in care.

There are further consequences of the neo-liberal approach, which reach beyond the specifics of adoption. The involvement of the wealthy and middle classes is essential to ensuring the maintenance of high-quality public services in any country. The ease with which such families can meet their individual welfare needs in a foreign country may reduce the stake that they feel in ensuring that welfare services in their own country are of high quality. It thereby contributes to the residualization of state welfare, as state expenditures on services such as health, education and social protection are cut back in the drive to achieve global economic competitiveness. Thus state services for children and families in the wealthier countries are vulnerable to neo-liberal globalization, as much as in the poorer countries, and ICA plays a part in that.

The dynamic is different under a social democratic system, but the end result is similar – look abroad. In the past this may have been inspired by a humanitarian commitment, but Yngvesson (2002: 233) holds that motives have changed since the 1960s and 1970s, and are now more about responding to infertility than social justice. There are very few domestic adoptions, so the majority of adoptions are intercountry – as high as 98 per cent in Sweden and Norway in 2003 (Chou and Browne, 2008: 43). While the USA is by far the largest importer of children in raw numbers, when one looks at the rate of children adopted

from abroad compared with the receiving country's birth rate it is the social democratic countries that are the largest importers (Selman, 2002, 2006). So despite the different ideological positions, ICA is an accepted feature of the welfare landscape in both systems.

From the conservative point of view, one would expect the state to support ICA if this serves the needs of the economy, the wishes of the middle classes and the general stability of society. Western countries with sub-replacement birth rates might well need a population boost from ICA. At the same time, however, such countries are likely to have children of their own in state care, and a culture and relative ease of adopting children from abroad may detract attention from them. Chou and Browne's (2008) study of 25 European countries shows a positive correlation between rates of ICA and rates of institutional care for children aged under three, in receiving as well as sending countries.

Sending countries

The principal sending countries are not Western states with capitalist economies, so the three-part model cannot simply be transposed on to them (Gough and Wood, 2004). Its value here is to expose how ICA reflects the dominant neo-liberal characteristics of contemporary globalization, and how it distorts the development of in-country welfare services. Markets and money are the key factors.

In terms of markets, we have to look at the supply-side as well as the demand. Here, a significant point is that children for ICA tend not to come from the very poorest countries, notably those of sub-Saharan Africa. Indeed, Korea, now a relatively wealthy country, is still one of the world's top exporters (Selman, 2006). Korea's situation may be understood in terms of its long history of sending children to the USA for adoption, the activity of ICA agencies with their own interest in organizational survival (Sarri et al., 1998), its strong traditions about family bloodlines and its welfare regime, recently characterized as residualist (Park, 2008). The point is that ICA goes where there are favourable cultural traditions and legal provisions, and a reliable supply chain. The very poorest countries may not meet these market-oriented requirements, so business goes elsewhere.

Having said that, sending nations are certainly among the poorer countries, with some of their populations in very great need – and so money comes into play. The potential for illegal payments to birth parents, bribery and extortion is well known (Graff, 2008; Kapstein, 2003), but there are also possibilities for legal gain, which can have a corrosive impact on domestic services. An example is getting a job

with one of the ICA agencies. Dickens (2002) shows how jobs in ICA were an attractive option for many Romanian social workers in the 1990s: the pay was better than in the local authority services, the facilities and working conditions tended to be better and there was the possibility of foreign travel. It is a reasonable choice for each of the individuals concerned, but the wider result is the weakening of domestic services.

The power of foreign money also has an impact on public commitment to domestic services. In situations of economic hardship and in cultures where extra payments or gifts for services are widespread (never mind more extreme forms of corruption), the purchasing power of wealthy foreigners is overwhelming. Attempts to incorporate foreigners' payments into the domestic system, say by requiring a donation to an orphanage or to support in-country services, tend to compound the problem because potential domestic adopters are less lucrative for the agencies. This makes it likely that international adopters will be selected over in-country candidates, or over efforts to support birth families (Dickens, 2002; Post, 2007; Smolin, 2007). As Smolin (2007: 451) puts it:

Rather than contributing positively to an effective family or child welfare system, intercountry adoption has the potential to distort whatever system is already in place. The monetary incentives to place children internationally can in practice totally overwhelm the appropriate priorities of a social welfare and services system.

Regulation of intercountry adoption

Law and policy on ICA is the responsibility of individual nation-states, but within an international framework shaped primarily by the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

The strength of the Hague Convention is that it appeals, in some ways, to supporters of all three perspectives; its weakness is that it does not fully satisfy any of them. Like any international treaty, it has to be ambiguous if it is to be adopted worldwide. It fits best into the conservative corporatist mould, in that it gives the fundamental regulatory responsibility to the state and a vital role to non-state agencies to deliver services; but it relies on nation-states to implement and enforce it, which may be unwilling or unable to do so effectively. It appeals to neo-liberals because it permits ICA and secures a place for for-profit agencies and private (non-agency) adoptions. Neo-liberals criticize it, though, as unduly restrictive, adding to cost and delay, and making it harder for children to be adopted (Bartholet, 2007; Varnis, 2001). Social democrats appreciate that at least it brings some

regulation, but are suspicious that it is weak and allows market-place behaviour to continue. Lammerant and Hofstetter (2007), for example, discussing the different arrangements for the Convention in six European countries, highlight the dangers of competitive, market-place relations between accredited agencies. Ethica, a US campaign group for ethical adoption practices, criticizes regulations relating to payments because they increase the dangers of children being bought and sold (Ethica, 2006).

To pick up on the themes of conflict and ambiguity, there is a significant difference between the Hague Convention and the 1989 UN Convention on the Rights of the Child (CRC). The Hague Convention states that ICA 'may offer the advantage of a permanent family to a child for whom a suitable *family* cannot be found in his or her State of origin' (emphasis added). The CRC, meanwhile, recognizes that ICA may be appropriate in certain cases, but only if the child cannot be cared for 'in any suitable manner' in his/her country of origin (Article 21). This could conceivably include a wide range of alternatives, such as small family-type homes, child-headed households and informal community-based solutions. Such options may be more suitable than ICA for many children who do not live with their birth families, given that very few separated children are abandoned or orphaned healthy babies (Graff, 2008; Saclier, 2000).

There is tension between the two approaches and the Hague Convention appears to be in the ascendancy, but there are efforts to gloss over the differences. Ambiguity is the key diplomatic skill. This is apparent in the United Nations Children's Fund (UNICEF)'s Position Statement on ICA. UNICEF looks to the CRC as its touchstone and has an ambivalent position on ICA. It says that it supports the Hague Convention but considers ICA 'one of a *range* of care options which may be open to children, and for *individual* children who cannot be placed in a permanent family setting in their countries of origin, it *may* indeed be the best solution' (UNICEF, n.d., emphasis added).

A radical approach: the case of Romania

ICA, then, chimes with aspects of all three welfare models, but also raises problems for each of them. All three are, in a sense, conservative because they each seek, in their own way, to support the market economy and preserve the status quo. But social policy offers other perspectives that call for a truly transformative approach to ending poverty, tackling exclusion and securing people's rights (Ferguson et al., 2002). Given the divisive and distorting effects of ICA on domestic welfare services, ending it would be a step towards those goals. Romania

provides an interesting and challenging glimpse of the benefits of this radical step.

The history of ICA and child welfare reform in Romania over the 1990s is well-known (Dickens, 1999, 2002; Dickens and Groza, 2004). Despite legislation professing the priority of family support services and domestic adoption, the number of ICAs far exceeded domestic ones throughout the 1990s (IGIAA, 2002). In 2001 the Romanian government introduced a moratorium, which was subsequently extended and then incorporated into a permanent ban from January 2005 (except for adoption by grandparents who live abroad). There are three policy aspects to draw out: the challenges for in-country services in the 1990s, the complex international context and the progress of domestic services since 2001.

Romania's transition from a state-controlled to a market economy led to rising unemployment and falling wages. The economic collapse and the rising levels of need left many families struggling to cope, and the Romanian government struggling to develop in-country welfare services. In 1997 it introduced a points system that required international adoption agencies to give money to support domestic services. In return, the more points an agency gained, the more children it could take for ICA (Ambrose and Coburn, 2001; Dickens, 2002). The idea of securing payments from rich foreigners to fund domestic welfare improvements has some attractions for all three welfare perspectives: it may be seen as an example of market-place pricing behaviour (selling an asset for the best price), but could also appeal to corporatists (government-agency collaboration) and social democrats (redistribution). Inevitably, it is also very controversial (Hague Conference, 2008, paras 239–48). Such policies only secure a relatively small amount of money, are prone to corruption and have the distorting effects mentioned earlier. In Romania's case the scheme undermined the professed aim of making ICA a last resort, as shown by a significant increase in ICA after 1997 (IGIAA, 2002).

The international context also exposes the conflicts and complex overlaps of the three welfare approaches. Romania was under considerable pressure from the European Union (typifying the conservative corporatist approach) to reform its child welfare system and end ICA, as a condition of being allowed to join (Bainham, 2003). Yet at the same time it was under pressure to continue ICA from the USA (representing the neo-liberal view), and also from other receiving countries, even within the EU, notably France and Italy (Post, 2007). The cracks in the EU's position demonstrate one of the dilemmas of conservative corporatism: how to balance regulation and middle-class demand. Even though the

ban has been in force since 2001, the issue is still controversial, with calls to lift it from the USA (US House of Representatives, 2006) and within the EU (Bartholet, 2007: note 17).

Along with legislation to end ICA, major reform of Romanian law to protect children and promote their rights was passed in 2004, coming into force on 1 January 2005. Its philosophy is that parents, extended families and communities have primary responsibility for raising children, and the state's role is complementary, but with duties and powers to protect children from harm (Article 5 of Law 272/2004). There are also positive provisions to support families, such as a requirement that social workers are employed in maternity hospitals to prevent abandonment (Article 9).

There is evidence of considerable development in domestic child welfare services since 2001. One cannot attribute this exclusively to the ending of ICA because many factors are at play, including the cumulative impact of all the work that has gone on since 1989; but since the moratorium there has been an accelerated pace of change. Official figures give the following picture in December 2008 (source: NAPCR, 2009). The number of children living in institutional care had fallen from 57,000 in 2001 (NAPCR, 2006: 13) to 24,000. The range of support services had grown significantly, and 38,000 children were receiving help. The number of infant abandonments had fallen. When separation does occur, children are more likely to be placed with the extended family or friends (24,000 children) or in foster family care (20,000 children).

Clearly, numbers alone do not tell the whole story and a crucial factor is the quality of the in-country services. There is still room for improvement, as the Romanian authorities recognize (NAPCR, 2006). However, now that the powerful distortions of ICA have been removed, state and non-state agencies are able to concentrate on those improvements. As long as ICA continued, developing in-country options was like trying to fill a bath with the plug out. Romania's bold step has increased its chances of building an effective in-country child and family welfare system.

Conclusion

This article has shown how ICA can be understood in terms of the interplay of the three dominant tendencies of state welfare and globalization, and the tensions within as well as between them. A radical perspective offers a fresh way of approaching things, not just as a fourth position along a spectrum, but as a new angle on the main three. It points against ICA for all three models.

A refreshed social democratic approach would apply its own principles of family support more vigorously in sending countries. A revitalized conservative corporatism would use its regulatory and inter-agency approach to prioritize supportive services for families. Even the neo-liberal approach contains the seeds of its own opposition to ICA. At the heart of neo-liberalism are fundamental human rights and freedoms, including respect for private and family life, and protection from any interference that is not necessary, legal and proportionate (see especially Bainham, 2003). These principles can be threatened by ICA, and a neo-liberalism true to its roots would fight to uphold them.

The overall message is that even though ICA may offer immediate benefits for some children, it is essential to end it in the longer-term interests of all children. Given the demand for ICA and the challenges faced by families and governments in sending countries, it would be unrealistic to expect a ban by itself to yield instant, unequivocal results. Rather, ending ICA should be seen as a necessary but not sufficient condition for a more equitable globalization for children and families around the world.

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Jonathan Dickens is Senior Lecturer in Social Work, School of Social Work and Psychology, Elizabeth Fry Building, University of East Anglia, Norwich NR4 7TJ, UK. [email: j.dickens@uea.ac.uk]
