Ethical issues in adoption

As part of its remit to critically evaluate adoption policy and practice, the Evan B Donaldson Adoption Institute, based in New York, recently held a major international conference on the role of ethics in adoption. In collaboration with former Institute Director Madelyn Freundlich, Rena Phillips reports on some of the conference discussions and debates around four key ethical issues in adoption: secrecy and openness; the role of race, culture and national origin; market forces; and the relationship between adoption and the emerging reproductive technologies. Parallels and differences are drawn between the United States and the UK, and questions are raised as to how ethical standards can be developed and monitored.

Introduction

A social worker described adoption to one of the authors as ‘an ethical minefield I would not touch with a barge pole’. As this sentiment aptly reflects, adoption practitioners, policy-makers and researchers, in the USA, the UK and elsewhere, are expressing serious concerns about the ethics of current adoption practice and feel some trepidation about confronting the morass of complex issues raised. To this end, in November 1999, the Evan B Donaldson Adoption Institute co-ordinated an international conference in Anaheim, California.

In this article we explore a range of issues that were identified and discussed at the conference in four key areas:

- the impact of secrecy and openness on members of the triad;
- the role of race, culture and national origin;
- the market forces of adoption;
- the relationship between adoption and the emerging reproductive technologies.

The impact of these issues in both the United States and the UK are addressed.

A values framework for considering ethical issues in adoption

An ethical framework can help make explicit the question of what ought to be done in any situation, all things considered; and promotes a decision-making process that is as impartial, rational, thorough and realistic as possible (Abramson, 1990, p 30). Although definitions vary, most people agree that ethics necessarily involves articulation of values that can guide the decision-making process around complex issues (Holland and Kirkpatrick, 1991; Siegel, 1998).

The Evan B Donaldson Institute has developed a working framework of values based on the principle of the ‘best interests of the child’. Values are recognised at two levels: first, values at the ‘individual’ level inform the way professionals might view the needs, interests, rights and obligations of persons involved in adoption; second, values at the ‘systems’ level inform the ways in which adoption services are designed, developed and evaluated.

Individual values include:

- *respect* – the recognition of the dignity and worth of each individual served through adoption;
- *beneficence* – the promotion of good for each individual served;
- *autonomy* – ensuring an individual’s ability to determine his or her life course and make personal decisions;
- *knowledge* – the provision of information that promotes the individual’s ability to make a fully informed decision.

The systems level includes the values of fairness and equity as well as accountability, ie service providers’ responsibility for ensuring that their services benefit those served or, at minimum, do not harm them.

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This framework encompasses values that are often cited as underlying social work and child welfare services in general (see Abramson, 1990). For example, Wolfson (1999) writes that a social worker’s ‘ethical framework embodies universal values such as justice, respect, individual self-determination and personal ethics’ (p 269). Clark (2000) states ‘the pursuit, mastery and renewal of knowledge, and its disciplined application, are indispensable to morally defensible practice’ (p 169). Holland and Kirkpatrick (1991) more specifically identified three key dimensions, each with a spectrum of approaches:

- the focus of decisions, which ranges from an emphasis on outcomes (accountability) to an emphasis on means or principles (fairness and equity);
- interpersonal orientation, which ranges from a primary focus on autonomy to reliance on the concept of mutual responsibility (fairness and equity);
- the basis for the authority to make decisions, which ranges from use of individual judgement to compliance with external rules and standards.

Referring specifically to adoption Dukette (1984) argues that:

... any assessment of value issues in adoption must be made in the context of the only reason for the institution of adoption to exist: providing for the healthy rearing of children. (p 241)

Babb (1999, pp 67–70) identifies principles underlying the adoption system in the United States, with an emphasis on relationships and professionalism. She describes the duty to help the helpless child, the importance of recognising human relatedness in the context of families, acknowledgement of each individual’s innate worth and dignity, and the value of expertise and science, as expressed through professional behaviour. Siegel (1998) identifies several more specific key values of self-determination, autonomy, the duty of aid and truth-telling in adoption.

Key ethical issues in adoption

The impact of secrecy and openness on members of the triad

A key issue that impacts on members of the triad is the extent to which they have access to information. In the USA, unlike the UK, adult adoptees do not have legal access to their original birth certificates or any other identifying information in their birth records. From the 1930s to the early 1970s, all but two states (Kansas and Alaska) enacted laws sealing adoption records, including the adoptees’ original birth certificate and denying access to identifying information by all parties to the adoption (Carp, 1998). However, the ban on information access was never absolute. In all states, parties may petition a court to open records upon a showing of ‘good cause’; in many states, there are mutual consent registries through which members of the triad may find one another if there is a ‘match’; and in some states, there are designated intermediaries who may obtain identifying information and determine the respective wishes of triad members in having information shared or contact made (Kuhns, 1994; Hollinger, 1998). These alternatives have been criticised for their ineffectiveness and for being unethical because they make adult adoptees’ right to information conditional on the expressed wishes of others.

Since the early 1990s, efforts have been made in a number of states to repeal ‘sealed records’ laws and give adult adoptees access to their birth certificates and adoption records. However, these efforts have been vehemently opposed by those who believe the integrity of adoption is based on confidentiality and who argue, despite evidence to the contrary, that access to such information will increase abortion rates and decrease rates of adoption (National Council for Adoption, 1997). The debate centres on the extent to which adoptees are entitled to information about themselves as a matter of right, how far birth parents have cognisable privacy rights, and the need to balance the autonomy interests of adoptees against those of birth parents and adoptive parents. In adoption situations, where there is a conflict of rights, the legal position is usually
that the child’s best interests are paramount. If this is the case in childhood, we need to ask why such interests are not paramount when the adoptee is an adult (Cole and Donley, 1990).

In contrast to the United States, adopted people in the UK (aged 18 in England and Wales and Northern Ireland, and 17 in Scotland) have had legal access to their original birth record for many years. Nevertheless, some basic human rights to information are not being met. It has been pointed out that denying access to those below 18 is against the spirit of the United Nations Convention on the Rights of the Child in regard to seeking and receiving information. Recent preliminary findings of a study on an adoption helpline for anyone under 26 years old indicate that some children and young adults are finding out that they are adopted in very distressing ways (Adoption & Fostering Newpoints, 1999).

At the conference intercountry adoption was seen as presenting unique challenges to children’s and adopters’ rights to accurate and truthful background information. Differences in culture, language, terminology, technology and the competence of medical resources in sending countries profoundly affect this process. Some US adoption agencies require prospective adopters to sign disclaimers for liability by agencies for concealing information about children. This is seen as an attempt by those organisations to insulate themselves legally and financially against any responsibility for placements that may disrupt because adopters were not in a position to conduct background investigations themselves.

Another practice which was criticised concerned agencies lying about prospective adopters and falsifying documents, for example in relation to sexuality, age and marital status when they could not meet the sending countries’ criteria in these areas. For instance, China originally required that prospective adopters had no other children, and would not consider single parents nor place more than one child with a family. Lying and failure to abide by the policies of another country were seen as ethnocentric and a blatant disregard of that country’s beliefs and culture. As one participant put it: ‘We are modelling lies for children when we do not respect other countries’ rules.’

The importance of information as a tool for choice and control in adoption was a unifying theme in a variety of adoption scenarios: couples seeking donor insemination were often not supplied with information on adoption as a possible option; the advisability was stressed of giving pregnant women who are considering placing their children for adoption the opportunity to read the home study of the prospective adopters; some adoptees may not want birth families to come back into their lives and may look at this as a violation of their rights. Kinship care has been an area of growth in the last decade in the United States (McFadden, 1998), yet minimal resources and services are available to relative caregivers. They require comprehensive information to explore available options and make informed decisions. For instance, they need to understand the differences between long-term foster care, legal guardianship, subsidised kinship care and open adoption.

A scenario of ‘secrets and lies’ has been highlighted by recent substantial critical reviews of adoption policy and practice in the UK. Studies have shown that many adopters are dissatisfied with information about the adopted child, court procedures, support services and adoption allowances (Department of Health, 1999). Crucially, the two main complaints centred on lack of information on the child’s background and the inaccuracy of some information. Children reported missing information both about their past and their new adoptive families. One comprehensive review of adoption services in England and Wales revealed that sometimes relevant information is deliberately concealed from prospective adopters, or may be out of date (Lowe et al, 1999). The availability of background information has particular implications for disabled children who can have complicated medical histories (Turnpenny, 1994; Phillips, 1998). With the increasing awareness of the significance of personal genetic biographies, questions arise about
whether information about a child’s genetic profile should be disclosed to a child, and if so at what stage and to what extent (Plumtree, 1995).

Birth families have a right to information at various stages of the adoption process and particularly ongoing news about their children’s progress. Writing about post-adoption issues, Sawbridge (1996) describes the lack of information as one of the chief causes of anguish and grief for birth parents:

There cannot now be many people who do not understand the needs we were all so slow to recognise – that of a birth parent to know whether their child is alive or dead, and that of children to know the same about their parents. (p 107)

To what extent does each person have a right to information and, alternatively, a right to protect information from disclosure to others? For example, Shardlow (1995), writing on confidentiality, accountability and the boundaries of client–worker relationships, asks:

Do I keep information from the client? If so, what sort of information and why, and most importantly, does the client know that I keep information to myself? (p 82)

Professionals are often gatekeepers to information. They need to be clear about how to recognise their primary accountability and to reconcile competing rights. There are threats to fairness and equity if professionals and agencies use different standards in defining their obligations in this regard. Clarification is needed on users’ entitlement to challenge and change records or appeal against denied access (Banks, 1995).

The role of race, culture and national origin in adoption

Race and culture play significant roles in adoption in the United States, both domestically and internationally. African-American children make up 15 per cent of the US child population, but constitute half of those in foster care who are waiting for adoptive families (US Department of Health and Human Services, 2000). This reality has raised significant questions regarding:

... the disproportionately high number of African-American children being removed from their biological families, the delays in termination of parental rights, the inequities in length of stay in out-of-home care, and the obstacles to African American adoptions. (McRoy et al, 1997, pp 100–01)

As Courtney (1997) has noted, the debate on the issue of race and culture in adoption in the United States has been intense, with ‘scant middle ground’ (p 750). Arguments are made, on the one hand, that transracial adoption, by rendering race and culture irrelevant, is a ‘blatant form of race and cultural genocide’ (Merritt, 1985). On the other hand, it is contended that either transracial adoption provides the means to remove children from a harmful ‘subculture’ and give them access to ‘mainstream American culture and language’ (Kramer, 1994, p 23) or that transracial adoption is consistent with the values of a ‘colour-blind’ society (Kennedy, 1994). US law prohibits the consideration of the race of either the child or the prospective adoptive parent in making an adoptive placement (Courtney, 1997; Brooks et al, 1999).

An issue voiced by conference participants was the extent to which agencies have obligations to ensure that children who are adopted transracially have the opportunity to develop the skills to deal with the majority culture and are able to identify positively with that of their minority (McRoy and Zurcher, 1983; Andujo, 1988). For a child to develop a healthy racial identity, ‘parental nurturing ... [must] offset the effects of an antagonistic society’ (Comer and Poussaint, 1975, p 110). People at the conference feared that too little attention is given to the selection of families who can best parent children who are transracially adopted, or to the supports and services that they would need.

The placement needs of ethnic minority children create similar challenges in the UK. Again they are over-represented in the
care system and tend to stay there longer (Barn, 1993, 1999; Okitikpi, 1999). Ethnic matching is a hotly-debated area beset by value judgements, polarised positions and lack of clarity as to how such terms as ‘black’, ‘race’ and ‘ethnicity’ are used (see Kirton, 2000). Phoenix (1999), in an examination of the contribution of psychological knowledge to the controversies about transracial versus same-race placements, concludes that holding inflexible positions is no longer tenable, as the intricacies of the issues cannot be usefully settled in favour of one side or the other. Furthermore, the link between black positive identity and self-esteem needs to be seen in the light of the concept of identity increasingly being viewed as plural, dynamic and dependent on social contexts.

Recent research suggests that agencies are working towards ethnic matching (Dance et al, 1997; Ivaldi, 1998), but a Social Services Inspectorate report (1997) indicated that 50 per cent of placements were transracial. The evidence on transracial family placements in the United States and the UK points to satisfactory outcomes in over 70 per cent of placements (Rushton and Minnis, 1997, 2000). However, there is as yet very little research beyond adolescence and into adulthood (Triseliotis et al, 1997). Needless to say, just because transracial adoption has so far been successful, it does not mean that minority ethnic children should be placed with white families – we need to ask whether the ends justify the means.

There are encouraging signs in the UK that the same-race debate is moving into other important and challenging arenas, such as the neglected needs of Irish children (Garrett, 2000) and Jewish children (Smith, 2000).

International adoption is broadly embraced in the United States, where it has grown at a significant rate, with more than 16,000 children from other countries adopted by US families in 1999 – a 70 per cent increase over 1995 (United States Immigration and Naturalisation Services, 2000). The extent to which international adoption should be promoted by agencies and other intermediaries specialising in this service, however, continues to be debated and was an issue with which conference participants grappled. Some argued that international adoption is a viable and humanitarian way to assist helpless children living in deplorable conditions in developing countries. Others held the view that birth parents are exploited, and questioned whether the decisions of birth parents in children’s countries of origin are truly autonomous.

Conference participants were concerned that agencies give inadequate thought to the racial and cultural heritage of children adopted internationally and that the adoptive parents may not receive the requisite knowledge about their children’s racial and cultural identity needs. Kim (1995) notes that:

In comparison to the emphasis on ‘blackness’ of black children adopted by white families and white adoptive parents’ familiarity with black culture, there has been little discussion of ethnic heritage of foreign-born children adopted by American families. (p 152)

Intercountry adoption is less prominent in the UK than in the United States but it is on the increase – in 1998 the number was estimated at 258 (Department of Health, 1999). Many social services departments have been reluctant to be involved in this area of work. In the words of one social worker:

Opting to adopt from abroad suggests that our own older children are not ‘good enough’, that they are somewhat beyond hope and likely to be too damaged to be worth considering. (Stevens, 1999, p 63).

On the other hand the Local Authority Circular issued by the Department of Health (1998) recommends that senior managers in local authorities ‘should satisfy themselves that arrangements are in place to meet requests for assessment or for them to be carried out on their behalf’ (p 11).

In the majority of cases intercountry adoptees are far less likely than children born in the UK to be adopted by families
of similar ethnicity (Dance et al., 1997). This raises possible identity issues similar to those in transracial adoptions. Recent British research on 117 young children adopted from Romania and a comparison group of 52 UK-adopted children reports very positive outcomes in both groups, with no breakdowns and a high level of parental satisfaction (Groothues et al., 1998/99). Other studies of intercountry adoptions in the UK have highlighted serious concerns regarding failure to consider kinship care in the sending countries, limited availability of background information and low use of post-adoption support (Greenfield, 1995; Selman and Wells, 1996; Beckett et al., 1999; Harnott and Robertson, 1999). It has been argued that a significant part of intercountry adoption lacks an ethical base (Triseliotis, 2000), but can we turn a blind eye to the needs of families for essential services to optimise such placements?

The issues of race, culture, and national origin in adoption thus raise a host of issues with ethical implications. At the individual level, how should children’s need for permanency be balanced with considerations of racial and cultural identity to ensure respect for a child’s well-being? Even though there are misgivings about intercountry adoption, do the adults who adopt children of other races and cultures have an autonomy interest that must be recognised? At the systems level, the values of justice, equity and accountability are implicated in both the United States and the UK. Tensions surface as efforts to implement social reform measures in relation to anti-racist social work intersect with the individual positions of social workers who are focused on the needs of children of colour waiting for adoptive families.

Writing about competing ethics, Clark (2000) points to an important asymmetry or bias in social work:

In principle, its global concern to remedy defects of resources and social relations in the sphere of every-day life would lead to a broad agenda of social reform. In practice the traditions of individual service has usually predominated over socio-political issues, that some might argue are more fundamental. (p 77)

The market forces of adoption

One recurring theme debated in November 1999 related to ethical challenges arising from the spectrum of adoption service providers who shape the nature of practice and the environments in which they provide services. As in the UK, US public child welfare agencies place ‘looked after’ children with adoptive families, but unlike in the UK, private adoption agencies and independent adoption practitioners (primarily lawyers) place infants and very young children directly from hospitals or from the care of their birth parents. It is estimated that more than one-third of all US adoptions are arranged by private means (National Adoption Information Clearinghouse, 1996).

The declining availability of healthy newborns for adoption (Sokoloff, 1993) and the increased demand for them caused by rising infertility rates (Abma et al., 1997) have led to a widening gulf between the supply of babies and the demand of would-be adopters in the United States. Costs associated with adoption have risen, not only because of this greater demand among adults for young children to adopt, but also as a result of the affluence of prospective adoptive parents and service providers’ assessments of what the ‘market’ is likely to bear (Watson, 1999; Mansnerus, 1998). In private agency and independent adoptions, costs in the range of $20,000 to $30,000 are not uncommon (Pertman, 1998). At the same time, private adoption agencies have proliferated, often drawn to the significant revenues that may be realised from infant adoption. Gritter (1999) has characterised this climate as ‘unabashedly competitive’ and as ‘every-man-for-himself’ (p 10). Although the laws of most states require courts to receive and review an account of all fees and expenses charged to adoptive parents, this process has not exerted controls on costs (Escobar, 1998; Watson, 1999). As became clear in the many conference discussions on this topic, private adoption practice in the United States remains
largely and disturbingly unregulated.

An aspect of this market environment which many participants found particularly distressing is the personal and professional advertising that has become part of the adoption landscape in the United States. Prospective adoptive parents and adoption service providers place advertisements in newspapers and magazines and on the internet, a task sometimes assisted by public relations and marketing firms (Watson, 1999).

Lawyers market their ability to secure healthy babies quickly for prospective adoptive parents, facilitators utilise the internet to post ‘babies due’ with other information that may be of interest to browsing prospective adoptive parents, and agencies promote the quality of their services (Freundlich, 2000).

A major difference in adoption practice from the United States is that third-party and private agency adoptions have been prohibited in the UK since 1982. While this has given some protection from the business ethos of private adoptions, market forces impinge on adoption in other ways, leaving little room for complacency. Ryburn (1996) linked the rising numbers of compulsory adoptions during the 1990s to the market policies of the then government. He suggested that the fiscal management of social need drove a larger wedge between the beneficiaries of the market place and an underclass that depends entirely on state welfare as a means to survival, creating chronic problems for many families. Adopters and birth parents are on different sides of that divide.

As social work resources are further rationed, child welfare services are mainly targeted at the investigation of alleged child abuse, to the neglect of comprehensive services for all children. Apart from step- and relative adoptions, almost all recently adopted children have been cared for previously by local authorities (Dance et al, 1997). The findings by Bebbington and Miles (1989) that children in such care mostly come from poor families is confirmed by more recent evidence that the majority of social work clients are affected by poverty (Becker, 1997). The relationship between poverty and adoption is exacerbated in the absence of any long-term preventive services aimed at creating support for children to stay within their own kin networks. Adoption therefore becomes an attractive cheaper alternative to other forms of care as the costs involved are shifted to adoptive families.

The forces exerted by the competitiveness and individualism of the market in the context of adoption raise a host of ethical issues. It is possible for an individual’s resource level to shape the quality of adoption services they receive, rather than each person receiving equal respect. Increasingly, children are available for adoption at a price, with some, for example white babies, ‘costing’ more than others. Arguably families with resources are exploited through high fees. Perhaps trade and payment are an inevitable part of adoption, although Triseliotis (2000) has suggested it can be practised on the basis of a gift relationship and an act of altruism, without obvious returns. Principles of justice and equity indicate that birth families of children with special needs should receive as much help as families who adopt infants or children from abroad.

Adoption and assisted reproduction

In both adoption and the reproductive technologies, a key issue is ‘Who is the parent?’. In adoption, this is most apparent when birth parents contest an application for an adoption order. When a child results from a combination of egg donation and surrogacy, three women are the potential ‘mother’ in these situations: the genetic mother who provides the egg, the gestational mother who serves as the surrogate, and the rearing mother (Annas, 1999). The lack of clarity as to who is the ‘real’ mother in these situations is reflected in conflicting court decisions, some of which side with genetics, some with gestation and some with intent to parent. It is vital that the interests of the offspring guide the resolution of conflicts.

Autonomy – the ability to make personal decisions affecting one’s life – significantly affects whether an individual seeks to become a parent through
assisted reproduction or through adoption. In adoption, social workers tend to control outcomes, and in assisted reproduction doctors assume command. There is evidence in the United States that fertility clinics choose whom they will serve, largely based on ability to pay for the services and judgements about social worth. One view is that people who seek to become parents through assisted reproduction or adoption are different from biological parents and so should be carefully screened. An alternative view is that any prospective parent should be free to adopt or gain a child through assisted reproduction, provided that they have sufficient resources. The autonomy principle is here in tension with equity considerations.

Rights to knowledge have not been interpreted in the same way in adoption and assisted reproduction. Unlike adoption, there is generally no expectation that families created through donor assistance will disclose that fact to their children. Such disclosure is typically considered both unnecessary and undesirable. Although a growing body of literature recommends disclosure of this information, Benward (1999) concluded that little attention has been given to the implications, including the fact that such disclosure undermines the very secrecy on which assisted reproduction has been based.

Disclosure of health and other background information tends to be quite similar. As in adoption, recipients of sperm and egg donation receive certain health and other background information on donors. In assisted reproduction, identifying information has not been shared with recipients based on principles of donors’ confidentiality. Only in Victoria, Australia, are sperm and egg donors allowed to request identifying information on offspring and recipients (Benward, 1999). Some argue that the offspring have the same right to obtain identifying information and search, as in adoption. However, sperm donors could potentially be contacted by 20 or more searching offspring. This can be seen as making information sharing impracticable, though alternative policies to restrict the number of offspring attributable to a single donor may need to be re-examined.

In the UK, the Human Fertilisation and Embryology Act 1990, based on the deliberations of the Warnock Committee (Department of Health and Social Security, 1984), governs provisions for the exchange of information in third-party assisted conception. While being concerned about the damaging effects of secrecy in family relationships, the Committee was against a knowledge of the donor being passed to the child. It recommended that at the age of 18 access could be gained to limited information on the latter, such as ethnic origin and genetic health. Blyth (2000), in a review of this area, highlights that donor offspring are the only individuals whose inability to learn the identity of both their genetic parents is formally endorsed by statute. He additionally points to the inconsistencies in legislation that treats surrogacy differently from donor insemination as regards information. In the former, a commissioning couple can apply for a parental order, as an alternative to making an adoption order, thus giving the individual subject to such an order a legal right of access to her or his original birth entry.

The field of assisted reproduction is being challenged with many of the same ethical issues that confront adoption. Responses depend on how far the parallels with adoption are accepted or not. For instance, if recipients are seen as the equivalent of prospective adoptive parents then they are, therefore, entitled to information on donors in order to make an autonomous decision about an egg, sperm or embryo. When the cost of assisted reproduction is so prohibitive that only the affluent can avail themselves of the service, this runs counter to justice and equity. In a medically oriented environment, to whom is the professional primarily accountable? Are the recipients the primary ‘clients’ because they pay the fees or should the child’s interests be paramount as in other areas of policy and practice? Finally, now that children’s rights are recognised to have implications, not only during childhood but throughout their lives, the denial of
access to personal records should increasingly be regarded as an anachronism.

Conclusion
Many aspects of adoption raise ethical issues which touch on competing rights among the parties with regard to information, autonomy, respect, privacy and equity. There is a compelling need to understand better ethical considerations about openness, the role of race and culture in adoption planning and post-adoption services. There are powerful market forces that are affecting policy and practice in the adoption of children within both the United States and the UK, and internationally; and there are cross-cutting issues in assisted reproduction and adoption that challenge concepts of identity and autonomy. The identification of these issues provides a basis for shaping adoption policy, legislation and standards of practice in ethical ways. Discussion is required on how standards are to be developed, interpreted and applied. Ongoing dialogue and consensus-building among adoption professionals in both the United States and the UK are needed. It is the authors’ hope that this article will contribute to that process.

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