Adoption: Abandoning Principles of Life in Law

Public Family Law in England is, arguably, home to some of Europe's most complex pieces of legislation, but for all their potential, they remain largely unused and out of touch with the problems faced in the family courts. The law was always intended to act as an invisible shield offering protection from harm, but today it is a rusting resource with more than just a couple of dents in its ego.

At the beginning of the twentieth century, three types of adoption were widely used and these became the motivating factors in addressing the concept of adoption; the first related to children who were taken into a household and brought up as the child of the adopter; the second was known as Poor Law Adoption, where guardians would assume parental rights and responsibilities and arrange for the child to be adopted and last but by no means least, there were simulated adoptions where unmarried pregnant women delivered their babies in private lying-in houses and the owner would then get paid to take the babies away to farming houses where the newborns would be neglected and left to die.

The law is often slow to react to change, but with the diverse ways in which adoption was being used and the increase in demand from childless families to adopt and an obvious surge in illegitimate children being given up, there was pressure on the government to recognise this aspect of family life. In 1926, the Adoption of Children Act created the concept of legal adoption in England but it was not until 1949 that the Adoption Act came into force and with it came the acceptance of the principle that an adopted child was legally a child of the adoptive parents. In reality, early legislation did little to change the face of adoption and illustrates well how law and real life often miss each other. Yet, the law was clearly beginning to understand that adoption was in itself, a very sophisticated state of affairs.

Perhaps the most radical shift which would affect how adoption was to be handled in the future can be traced as far back as 1948 when the Children Act, for the first time, gave local authorities extensive duties not only to care for children but also to assume parental rights over children in care. It was at this time that adoption began to be viewed as a major solution to removing children from the care system. The intention was clear; to give children in care a long term and loving environment to grow up in. The outcome was very different and even in 2008, the poignant stories of Victoria Climbie and most recently Baby P are stark reminders of how law can get lost in translation.

The good intentions of the policy makers and the legal drafters amount to nothing if the organisations intended for those procedures do not use them. As contraception became readily available in the last quarter of the twentieth century, the number of 'healthy' babies that could be adopted began to fall dramatically. Demand for such babies was high and although England looked overseas to satisfy the large pool of adoption requests, by the end of the twentieth century, almost half of all adoptions were of children in the care system. Today, in its haste to encourage adoption, the government has once again fallen prey to the pitfalls of knee-jerk responses; the incentivisation of adoption, which saw the government offer local authorities large sums of money to meet adoption targets was tasteless at best and immoral at worst. The end result was observed by a nation in disbelief; local authorities being less than fastidious in order to meet the business-like proposals, running their departments like mini

corporations and pushing children into homes which had not been properly vetted or approved. On the 3rd July of this year, a committee for the Children and Young Persons Bill gathered to address this point and thankfully logic prevailed and the incentivisation scheme was scrapped; a great example of how the law can protect, if backed up with a morally sound ethos and a deft political hand.

To the casual observer, the concept of financial reward for the placement of a child seems unthinkable. Yet, in a world where the law and real life have little to do with each other anymore, fact is more shocking than fiction as what starts out as a rationalised policy decision finds itself faltering in light of the pragmatic realities that get missed in the small print that comes with the family unit and with the legacy of a life. The end result is an outcome that looks very much like the product of foul play.

It is very easy to believe that these decisions are based on some kind of insidious conspiracy theory but what really seems to be happening is perhaps less sensationalist: the creation of policy is being left to those with little experience and even less common sense.
With more and more issues arising out of adoption, the government's answer in the 1950's was to get the local authorities more involved with a view to protecting children in the adoption process from being mistreated. The mishandling of the notion of informed consent began to play out in the adoption process and the 1926 Act found itself at odds with adoption agencies (which were the private adoption agencies as opposed to the local authorities) who wanted the identity of adoptive parents to be kept a secret. The House of Lords at the time saw no need to keep these identities hidden and through the Adoption Rules allowed for the name and address of adoptive parents to be placed on the form for parental consent. The effect of this was that many adopters ignored the procedures in the 1926 Act leaving their identity hidden within the adoption agency. People bypassed The Act constantly and many even advertised the 'supply' and 'demand' for adoption in the newspapers, a practice that echoes the callous contractual feel of the more recent incentivisation policies used in England over the last eight years.

It was not until the Hurst Report in 1954 that the welfare of the child rather than the reasonableness of the parent, became a focus in adoption proceedings but at this point, the local authorities were to be given a truly diverse range of roles to cope with as the rate of children in care soared. The local authorities would now be responsible for emotional and psychological assessments, medical care, providing advice for parents and even putting together workshops. The Committee also had another much larger issue to address; there was severe discrimination against unhealthy children and some agencies were even refusing to place such children. The courts also refused to sanction adoption for children who were not healthy in every way. Much to its credit, the Committee went against the prevailing view of the day and established formally that all children were to have the opportunity to be placed in homes that would love and care for them.

More complications were to follow as problems inherent with biological parents and long term foster parents surfaced. In July of 1969 the Home Secretary James Callaghan set up another committee which was to create the Houghton Report with the main consideration being the position of the long term foster carer who wanted, against the will of the parents, to keep the child permanently. This is a difficulty that is still very much a part of the adoption process in 2008; the government's latest solution? Dehumanise the process, of course! It is now considered bad practice for foster parents to call themselves parents, they are merely carers, homes are no longer homes but placements and children are no longer children, they

are “Young Persons with Bionic Hearts and Tectonic Heads” (Okay, that last bit isn’t quite true, but it’s not far off).

The Houghton Report was by and large a positive effort in that it actively promoted the welfare of children in a broad and rational sense and was powerful in that it emphasised that adopted children should have the same rights as natural born children. It was also wary of incentives for adoption and believed that adoption was not the only solution but one of many. Its balanced views mixed with its radical but flexible approach proved to be a progressive combination and the Houghton Report’s spirit is perhaps what is needed today.

In 2008, Coram, an adoption agency, was given the awesome responsibility of working with CAFCASS, which oversees the interests of children in the family courts. Yes, an adoption agency. The conflict of interest is glaringly obvious, even after the post-work glass of wine. Drafting policy for Family Law is an unenviable task but begs the question: after all the mistakes that have been made and all the mistakes that continue to be made, what is it going to take to protect the Young Persons with Bionic Heads and Tectonic Hearts?

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