INTERCOUNTRY ADOPTION

An "Exceptional" Form of Immigration?

ABSTRACT

Intercountry adoption falls under the requirements of family class immigration in Canada, yet is rarely considered as a form of immigration. We begin to explore its "exceptional" characteristics as a form of immigration through three lenses: proposed legislation addressing citizenship for children adopted from abroad; the case of relative adoption; and the cultural practices of transnational, transracial adoptive families. Our focus is on how immigration policies and conceptions of family and citizenship interact, especially around the "best interests of the child."

SARA DOROW AND TERRY LEPATSKY

Sara Dorow is Assistant Professor of Sociology at the University of Alberta. She is author of the forthcoming (2006) book *Transnational Adoption: A Cultural Economy of Race, Gender, and Kinship*. Terry Lepatsky graduated with a BA in Sociology from the University of Alberta. She enjoys social research, and currently works on program, policy and initiative evaluation.

Federal policy would tell us that intercountry adoption is decidedly a form of family class immigration, subject to the same set of regulations that apply to Canadian citizens and permanent residents seeking to sponsor parents or nieces or other approved family members for immigration to Canada. Yet intercountry adoption often does not register as an immigration issue in social discourse, let alone in the research literature (Lovelock 2000 is one exception). In fact, adoptive families and practitioners themselves often do not conceive of adoption as immigration, except in the narrow sense of having to fill out visa applications for the sponsorship of children to be adopted. Why might it be that intercountry adoption is legally a form of family class immigration, yet is in a number of ways an exception to it? And how might this "exceptionalism" shed light on immigration policies in relation to practices of kinship formation, social and legal citizenship, and multiculturalism?

We form preliminary and exploratory responses to these questions by first suggesting several ways in which intercountry adoption is an exceptional form of immigration. We then briefly analyze three aspects of intercountry adoption in which this exceptionalism comes to the fore: proposed citizenship legislation that would have automatically granted citizenship to children adopted abroad by Canadian citizens; the somewhat guarded policy context for "relative adoption," whereby residents or citizens of Canada adopt a child or youth related to them and then apply to sponsor the adoptee for immigration; and approaches to the cultural identity of transnationally adopted children among adoption professionals and adoptive families, especially as they have bearing on the ideals of multiculturalism. In this short space, we focus more on the implications of these issues than on the details of their history and practice.

Background to Intercountry Adoption in Canada

As a form of immigration and kinship status, intercountry adoption has long been of interest to the Canadian government and other stakeholders (Bagnell 2001). Intercountry adoption does indeed have a long history, from the European orphans arriving in the late 19th century (sometimes for "temporary" care) to the Chinese adoptees that now make up half of intercountry adoptions and about one-fourth of all adoptions in Canada. The late 20th century, beginning in the 1970s, saw a steady increase in the quantity and diversity of intercountry adoptions. In the last decade, approximately 2000 children have been adopted by Canadian families each year; top sending countries include China, Russia, Haiti, Vietnam, and the United States. The stories of these children, including how they came to enter the adoption system, vary by both country and individual circumstances; a ten-year retrospective report issued by CIC in 2003 shows that three-fourths of children are young (0-4 years old) and most are girls, although the growth of the China program has skewed statistics in these directions. Canadian parents who adopt internationally overwhelmingly reside in Ontario, Quebec, and to a somewhat lesser extent, British Columbia ("The Monitor," Fall 2003; see www.cic.gc.ca/english/monitor/issue03/06-feature.html).

From a policy perspective, intercountry adoption has become both more and less complicated. On the one hand, the increasing number of intercountry adoption options means there has been a diverse and changeable host of regulations and procedures; in other words, the general rule that all intercountry adoptees require an immigrant visa is complicated by the specifics of different provincial regulations, national laws (including violations that may cause a "suspension," as occurred in

Vietnam in 2002), and type of adoption. On the other hand, many adoption programs have regulated and standardized procedures; the China program is known for its relative speed and predictability (recent allegations of child trafficking notwithstanding), and Vietnam recently re-opened with a newly overhauled bi-lateral agreement with Canada. The implementation of the Hague Convention on Intercountry Adoptions, to which there are some 68 signatory states (www.hcch.e-vision.nl), further solidifies international standards, although practitioners and experts debate the extent to which the content of this new international agreement is a positive development.

Intercountry Adoption as a form of Family Class Immigration

In 2002, 65,277 family class visas were issued in Canada, mostly for spouses, parents, and grandparents. Of these, 1,925 were issued to children adopted abroad by Canadian citizens, or in some cases, to be adopted in Canada (www.cic.gc.ca). While intercountry adoptions comprise just a small proportion of family class immigration, this form of immigration has several particularities which, when considered together, make it an "exceptional" form of immigration. First, while the bulk of all family class sponsorship applications are for people already considered relatives (parents, grandparents, spouses), the prospective parent applies for immigrant sponsorship in anticipation of kinship with a person they will often meet just a few days or weeks before the visa is issued. And even then, the chances of the immigrant being denied a visa are relatively slim. Second, probably the most salient criterion for issuing such a visa is that the immigrant (the adopted child) can no longer have legal ties to his or her biological parents. This is what a number of scholars have called the "clean break" rule (Duncan 1993; Ouellette and Belleau 2001). Third, in most cases the immigrant does not choose to move to Canada, but rather, is being "chosen" for immigration (older children may be interviewed to assess their interests in emigrating). And fourth, the families sponsoring children for immigration are not usually immigrants themselves but natural-born citizens; and they are most often not of the same ethnic background of the children they sponsor. (Some intercountry adoptions—for example, when a Chinese Canadian parent adopts a Chinese child, or a white Canadian adopts a Russian child—are less "visible" than others). We would also add that in some respects, adoptive parents must meet some of the same requirements for "citizenship in good standing" as other family class sponsorship applicants, such as not being in bankruptcy or having a record of a serious criminal offense. However, unlike most other applicants they must complete a home study that assesses their ability "to parent an adopted child" (www.cic.gc.ca/english/sponsor.adopt4.html); and because prospective intercountry adopters usually have higher than average incomes (especially given the costs of adoption on top of immigration application fees), their economic ability to support the sponsored immigrant will rarely undergo much scrutiny.

Intercountry adoption touches on a host of policy issues in Canada, from international development aid to effects on health resources. But many of these questions hinge on what is meant by the "best interests of children," and just as importantly, how these intersect with the interests of the Canadian citizens and permanent residents who adopt them (and less often the rights of foreign birth families). More than in most other forms of immigration, intercountry adoption is legally bound to take into account the rights of the immigrant as much as the rights of the sponsoring family. Policies and practice in intercountry adoption thus step in as proxies for the interests of the children who are not themselves choosing to immigrate, let alone become part of a new family. As years of scholarly research tell us, claims to the "best interests of children" are fraught with significant challenges. Brysk (2004) notes that it is children's combined dependency and mobility to which legal citizenship and rights regimes are quite often ill- equipped to respond. Intercountry adoption, as a form of both immigration and family formation, is a useful case for examining how these two sets of "interests"—of parents, and of children—both diverge and converge. Recent proposed changes to citizenship legislation, the practices of relative adoption, and the question of cultural identity all provide different but related perspectives on this question.

More than in most other forms of immigration, intercountry adoption is legally bound to take into account the rights of the immigrant as much as the rights of the sponsoring family.

Citizenship Legislation

On October 31, 2002, then Minister of Citizenship and Immigration, Denis Coderre, announced the tabling of a new Act respecting Canadian citizenship (Bill C-18), one that, in his words, would "recognize and protect the value of citizenship" and "ensure that our citizenship rules more clearly reflect the fundamental values of Canadian society." A section of the proposed Act addressed, in some detail, the citizenship of children born outside Canada. As Coderre put it, "[C]hildren adopted outside Canada by Canadian citizens would be eligible for citizenship before entering Canada, without first having to get permanent resident status…The new *Citizenship of Canada Act* would thus eliminate one source of discrimination that has been identified by the courts" (www.cic.gc.english/press/speech/cit%2Dbill.html). This was a landmark proposition, one that followed on the heels of similar legislation passed in the United States under the *Child Citizenship Act* of 2000. When the 2004 federal election was called, Bill C-18 died on the order paper, and amendments to the existing *Citizenship Act* were introduced in the House of Commons on November 17, 2005. These amendments

(Bill C-76) were aimed at reducing distinctions between adopted foreign children and children born to Canadian parents. This Bill also died on the order paper with the calling of the last federal election. Legislation pertaining to citizenship for children adopted from abroad will thus need to be re-introduced by the new government, which committed to doing so in their election platform. Adoptive families and adoption practitioners have followed these developments with great interest, as many see amendments to the existing legislation as fulfilling the rightful claims of adoptive kinship formation.

Importantly, the proposed easing of citizenship for adoptees simultaneously distinguishes adoption from immigration and likens it to birth. In the clause-by-clause analysis of Bill C-18, it was noted:

> The proposed Act eliminates many of the distinctions that the current Act makes between biological children and adopted children born outside Canada. It safeguards, however, the integrity of citizenship by requiring that the adoption has created a genuine parent/child relationship and has not been arranged for the purpose of getting around Canadian immigration and citizenship law. It also ensures that the adoption was made in the best interests of the child. (See www.cic.gc.ca/english/policy/c18/c18%2Dclause%2D2.html)

This confluence of themes merits some attention, especially as it relies on particular intersections of family and immigration, and the interests of children and parents. The treatment of the adoptee "as if born to" (Modell 2002) adoptive parents—a longstanding legal practice—relies on a certain conflation of "real" kinship and the right to national citizenship. And furthermore, right kinship is constructed through the figure of wrong immigration. The "best interests of children" thus become inseparable from the interests of adoptive parents and nation. This complex relationship is brought more clearly into view when we consider what it means for the rights of birth families; as CIC notes on its website, the severing of legal ties means that "…the child cannot later sponsor these relatives for entry into Canada" (www.cic.gc.ca/english/sponsor/adopt-4.html). Relative adoption thus cannot legally include the sponsorship of the birth family members of a child already adopted into Canada.

Intercountry adoption is a unique form of family immigration to Canada because it most often creates intimate family relations between white non-immigrant parents and non-white immigrant children that come with a "birth culture" different from that of their adoptive parents.

Relative Adoption

Little research exists on relative adoption, yet one thing is clear from the warnings that appear in government and adoption agency literature: it is more risky and complicated than non-relative adoption. Once again, the problem might be seen as one of the relationship between definitions of kinship and immigration. The Canadian Embassy in Beijing says of relative adoptions:

> The main concern in these adoption cases is whether in fact the adoption has created a parent-child relationship with the adoptive parents. In the local [Chinese] context, it is considered normal for family members to take care of their nephews, nieces or grandchildren. This type of situation does not sever the relationship between the child and his/her biological parents…The visa officer must be satisfied that the adoption is not one of convenience (that is, solely for the purpose of facilitating the entry of the child or that of his or her relatives into Canada). The application for permanent residence may be refused if the visa officer concludes that the real purpose of the adoption is for the child to gain admission to Canada as a permanent resident and not to give a family to the child. (www.beijing.gc.ca/beijing/en/navmain/visa/adoption/index.htm)

Relative adoption thus tends to be viewed with more suspicion than non-relative adoption. John Sutherland (2003/2004) writes of his painstaking journey to getting a visa for his 18-year-old niece, whom he adopted as his daughter in Jamaica, and with whom he had a close relationship. The visa officer seemed to think that the adoption was, as Section 4.1 of the *Immigration and Refugee Protection Act and Regulations* states, "not genuine or was entered into primarily for the purpose of acquiring any status or privilege under the Act" (such as receiving an education). As Sutherland points out, the problem is that this genuine parent-child relationship is not clearly defined; yet it is clear that this definition must somehow remain separate from and primary to "convenient" reasons for immigration.

Foregrounded here is that the social definition of family has real outcomes for people's lives, both immigrant and non-immigrant, yet its contradictions remain inherent to laws and policies. The Canadian Embassy in Beijing acknowledges that relative adoption is customary practice in China, but this conception of family, which does not sever ties to biological parents, is untenable under immigration policy. In effect, family is (re-)defined in and through the practices by which visa officers decide that an adoption is marked by "genuine" kinship. No

doubt individual officers try to make these decisions in the best interests of the child. Yet even if birth relatives and adoptive relatives and the child herself agree that going to Canada for access to education and health care systems is in the child's best interest, certain conceptions of the bound nuclear "as if born to" family (and of national citizenship rights) may step in to over-ride those interests. Consider that many adoptive parents who sponsor *non*-relative children for immigration cite the desire to give the child a better life as an important motivating factor (Dorow 2006), yet because the child is legally severed from ties to birth family, such motivations do not come into play. We might thereby see "family" as one key locus through which the state manages the "right" reasons for immigration.

The "Culture Question"

Intercountry adoption is a unique form of family immigration to Canada because it most often creates intimate family relations between white non-immigrant parents and non-white immigrant children that come with a "birth culture" different from that of their adoptive parents—a heritage to which each child has a right, according to the UN Convention on the Rights of the Child and the Hague Convention. Adoptive families thus deal with what Volkman (2003) calls the "culture question": to what degree, and with what kinds of practices and objects, do parents expose their children to the culture from which they have been adopted? This question is of particular interest in a context where increasingly diverse immigration to Canada is alternately celebrated for its production of multiculturalism and scrutinized for continued barriers to truly equitable citizenship; in the face of such barriers, family class immigration is often held up as an ameliorating practice. Given their almost automatic citizenship, and the socioeconomic status of their adoptive families, adoptees may not face some of these barriers. This leaves the question of how adoptive families might respond to the potential barriers to their children's cultural identities.

Compared to a few decades ago, there is relatively strong emphasis on the importance of the transracially, transnationally adopted child's "heritage." Yet Dorow (2006) has found in her research in the United States, and in preliminary studies in Canada, that practices in adoptive families vary widely. Some parents work hard to immerse their child in the culture(s) of his or birth county, others see little need for such emphasis, and most strive for some kind of balance. (Dorow has suggested that ideas about the meaning of racial identity have some impact on this range.) But what is intriguing, and under-studied, is the extent to which this situation might create new relationships between adoptive families (mostly headed by parents of European descent) and local communities that share the adoptee's cultural/national heritage (mostly non-European). One agency in Ontario, for example is developing a program that matches Chinese grandmothers from the local Chinese community with Chinese adoptees. These new kinds of kinship created through and beyond adoption are also evident in the relationships adoptive families develop with orphanages, foster families, and/or birth families in their children's countries of origin, including through charitable contributions (which might be seen as related to the "remittances" of immigrants).

Conclusion

When the "exceptionalism" of intercountry adoption is considered in concert with other forms of family class immigration, new questions are raised about the ways in which immigration policies, ideas about family, and the interests of children and parents interact. In the brief space of this article, we have tried to highlight some of those questions. In the years to come, immigration and intercountry adoption policies will benefit from further research in a number of these areas. The practices and outcomes of relative adoption constitute one such area; the interactions of transnational, transracial adoptive families with local diasporic communities constitute another. Finally, we would urge research that considers intercountry and domestic adoption policies and practices in concert, especially as the "best interests of children" are cross-cut by the differential rights of birth families, the varying desires and resources of adoptive families, and contextually shifting definitions of kinship and citizenship.

References

Bagnell, Kenneth (2001) *The Little Immigrants: The Orphans Who Came to Canada*. Toronto: Dundurn Press.

Brysk, Alison (2004) "Children Across Borders: Patrimony, Property, or Persons?" *In People Out of Place: Globalization, Human Rights, and the Citizenship Gap*, edited by A. Brsyk and G. Shafir. New York: Routledge.

Dorow, Sara (forthcoming, 2006) *Transnational Adoption: A Cultural Economy of Race, Gender, and Kinship*. New York: New York University Press.

Duncan, William (1993) "Regulating Intercountry Adoption: An International Perspective." *In Frontiers of Family Law*, edited by A. Bainham and D. S. Pearl. London: John Wiley & Sons.

Lovelock, Kirsten (2000) "Intercountry Adoption as a Migratory Practice: A Comparative Analysis of Intercountry Adoption and Immigration Policy and Practice in the United States, Canada and New Zealand in the Post W.W. II Period." *International Migration Review*. 34(3): 907-949.

Modell, Judith S (2002) *A Sealed and Secret Kinship: The Culture of Policies and Practices in American Adoption*. New York: Berghahn Books.

Ouellette, Françoise-Romaine and Hélène Belleau, with the collaboration of Caroline Patenaude (2001) *Family and Social Integration of Children Adopted Internationally: A Review of the Literature*. Montreal: INRS-Urbanisation, Culture et Société.

Sutherland, John (2003/2004) "Adopted, But No Visa." *Law Now* 28 (3)

Volkman, Toby Alice (2003) "Embodying Chinese Culture: Transnational Adoption in North America." *Social Text* 21(1): 29-55.