

Setting Adoption as an 'Adjunct of the Care System in it's National & International Context

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ADOPTION

mother, foster, services, child, parents, legal, infant, placement, custody, agency, paperwork, home, rights, birth, courts, girl, open, natural, family, orphan, nurture, father, families, guardian, domestic, consent, parents, duties, foreign, planning, private, support, love, boy, certificate, judge, agency, paperwork, home, rights, placement, infant, custody, support, love, boy, agency, paperwork, home, rights

Paper building on

O'Brien, V. (2013) Children in care and permanency : A comparative perspective. Paper presented to IASW / SWIFC Conference '*The Irish Care System and Adoption*'. June 28th 2013

O'Brien, V;. & Palmer, A. (2015) 'Adoption and the Irish Care System: Context and Drivers for Change?' *Irish Journal of Family Law*, 18 (3): 52-59.

O'Brien, V; and Palmer A. (2016) 'Adoption as Part of the Irish Care System: A New Challenge for Social Workers?' in *Irish Social Worker*, 1, Spring : 52-58.

O'Brien, V; and Palmer A. (2016) 'Permanence and Long Term Foster Care : What are the pitons? ' in *Foster*, 2, Spring : 27-45.

O'Brien, V; & Palmer A. (2018) The Changing Landscape of Irish Adoption : an Analysis of Trends 1999-2016, *Child Care in Practice*,

Many papers available at · at [UCD Repository](#)

Thanks to Angela Palmer PhD candidate and to Andrew Carswell M Soc Sci who have contributed to the development of many of these ideas.

Setting the Context

- Location of 'Adoption out of the Care System –
 - From Private Consensual Law to Public State Termination of Parental Rights
- Welfare regimes as influence on policy making process and practice
 - USA, UK, Australia (NSW) : : NZ, Nordic Countries / Europe –
Lessons to be learnt?
- Conceptualization of Adoption in child welfare systems : An opportunity for Ireland to learn from others?

Practice Implications;- Equity Issues; Justice and Rights
Care Planning



What impact will a drive to increase and expedite adoption have on the child welfare and protection system?

Conflicting and competing rights and responsibilities

Birth Parents

Children

Extended Family /Kinship

Adoptive Parent/s

Adopted People

Foster Carers

Professionals

Role of **the State** in mediating these rights and responsibilities.....the **State** is not neutral
Striking the right balance is difficult

Change in Irish Adoption

- At the core of the proposal are the issues of **children's rights** and **parental consent.-**
CONTESTED
- The extent to which adoption becomes an **'adjunct of the Irish care system'** (change)
 - Best Interest of the Child
 - Proportionality

Proportionality

- European Convention on Human Rights (ECHR) (1998)
- Article 8 requires any intervention of the state between parents and child should be proportionate to the legitimate aim for the protection of family life.
- Key Benchmark
- balance the rights of all the participants involved /arrive at a result which is
 - *in the 'best interest of children 'while also proportionate to the '...legitimate aims of other parties engaged in the process'*
 - (O'Halloran, 2009 pp.123-124).

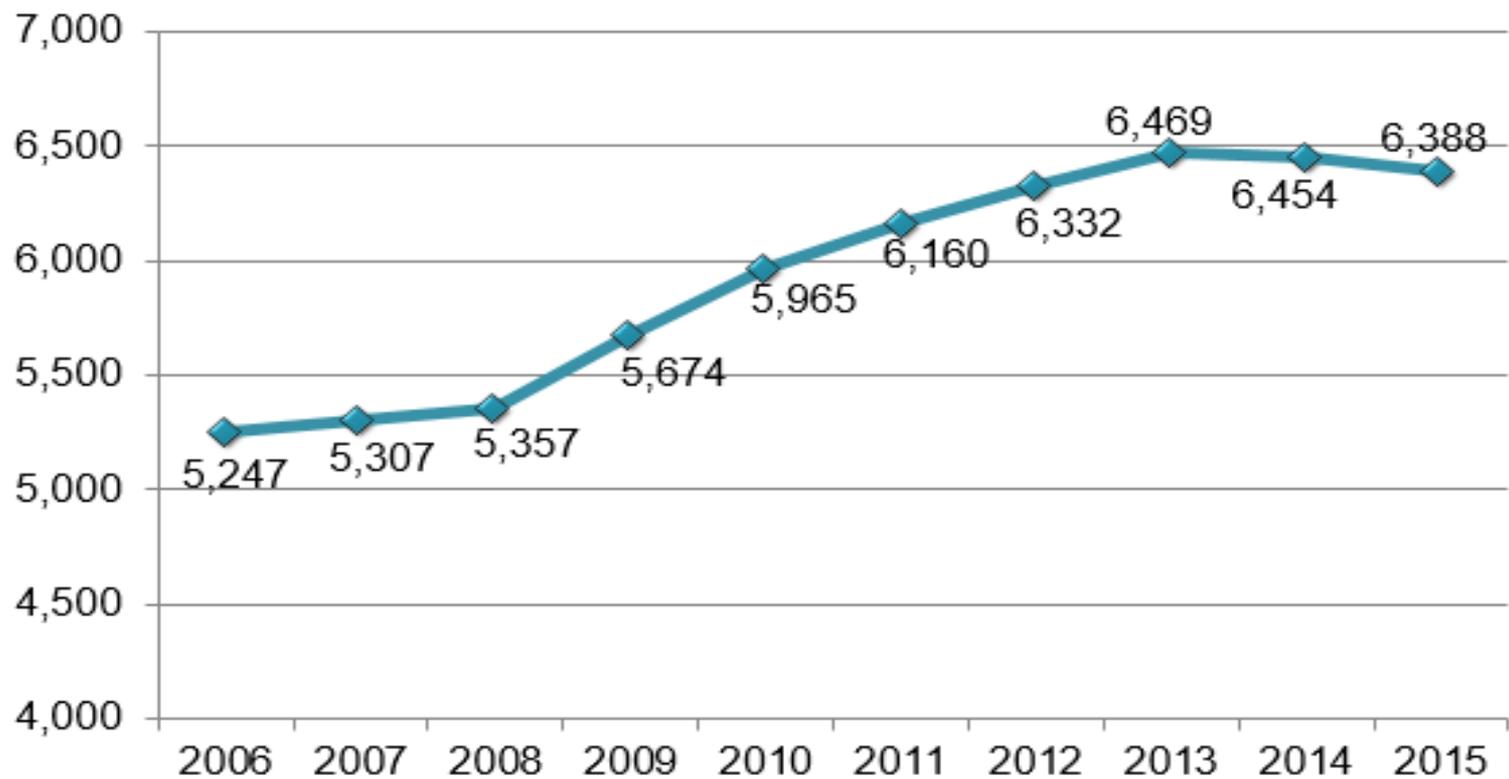
Adoption as Adjunct to Public Care System : Debates

- It is *predominantly a feature of the USA /UK /* : shift occurring? *NS Wales ;Aus / Ireland Drivers: [Link to Welfare system- Neo liberal context.](#)*
- If *better adoption outcomes* correlate with younger age, [how to balance](#) parents and children's' rights –
- [Contextual realities](#) –scarce resources; reasons for care; pendulum swing.
- Tensions and Safeguards

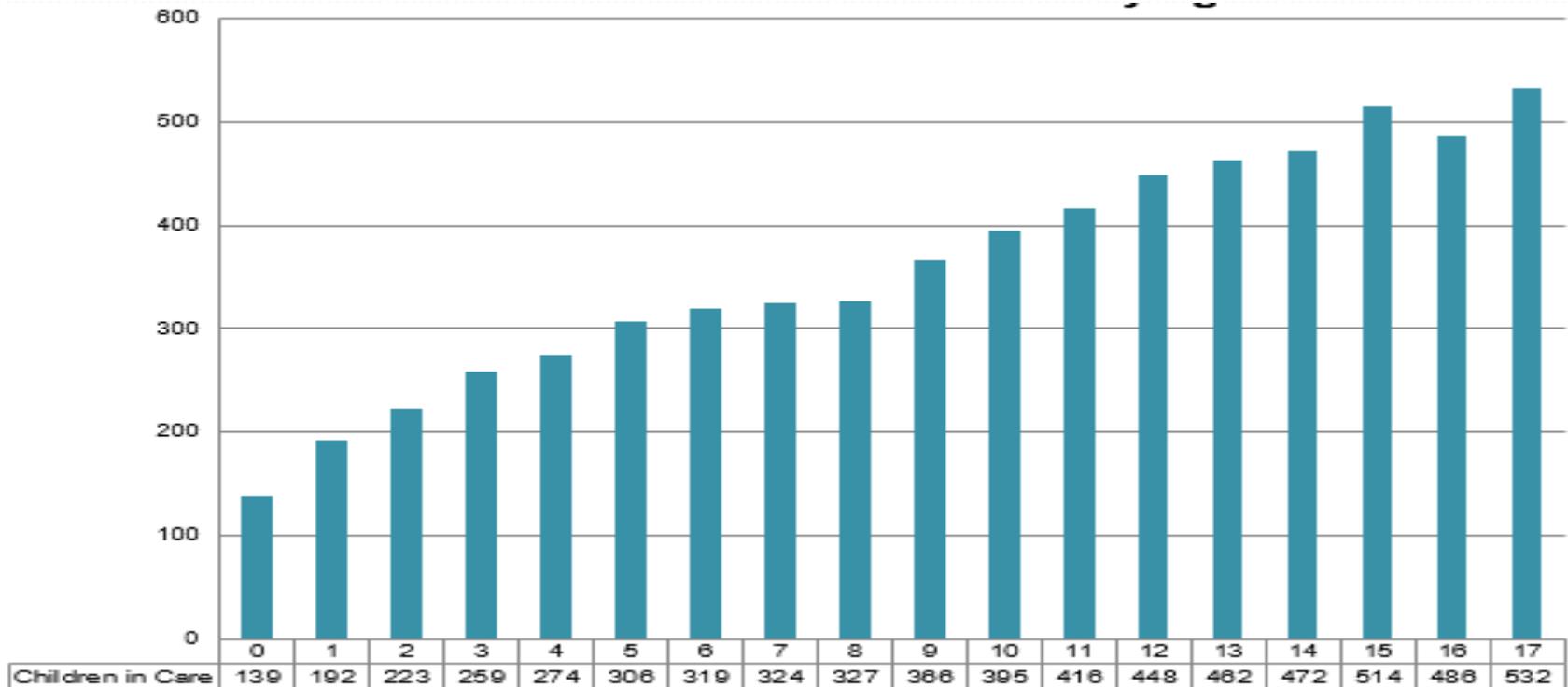
Tensions : In moving to non consensual adoption

- Shifting principles and balancing tensions
- Permanence : unforeseen consequences
- Paradox : Concurrent planning /Openness
- paradox
- Focus on the past – Shaping the future
- Supports : post adoption
- Other issues ?

In Care Trends in Ireland : Source Docya



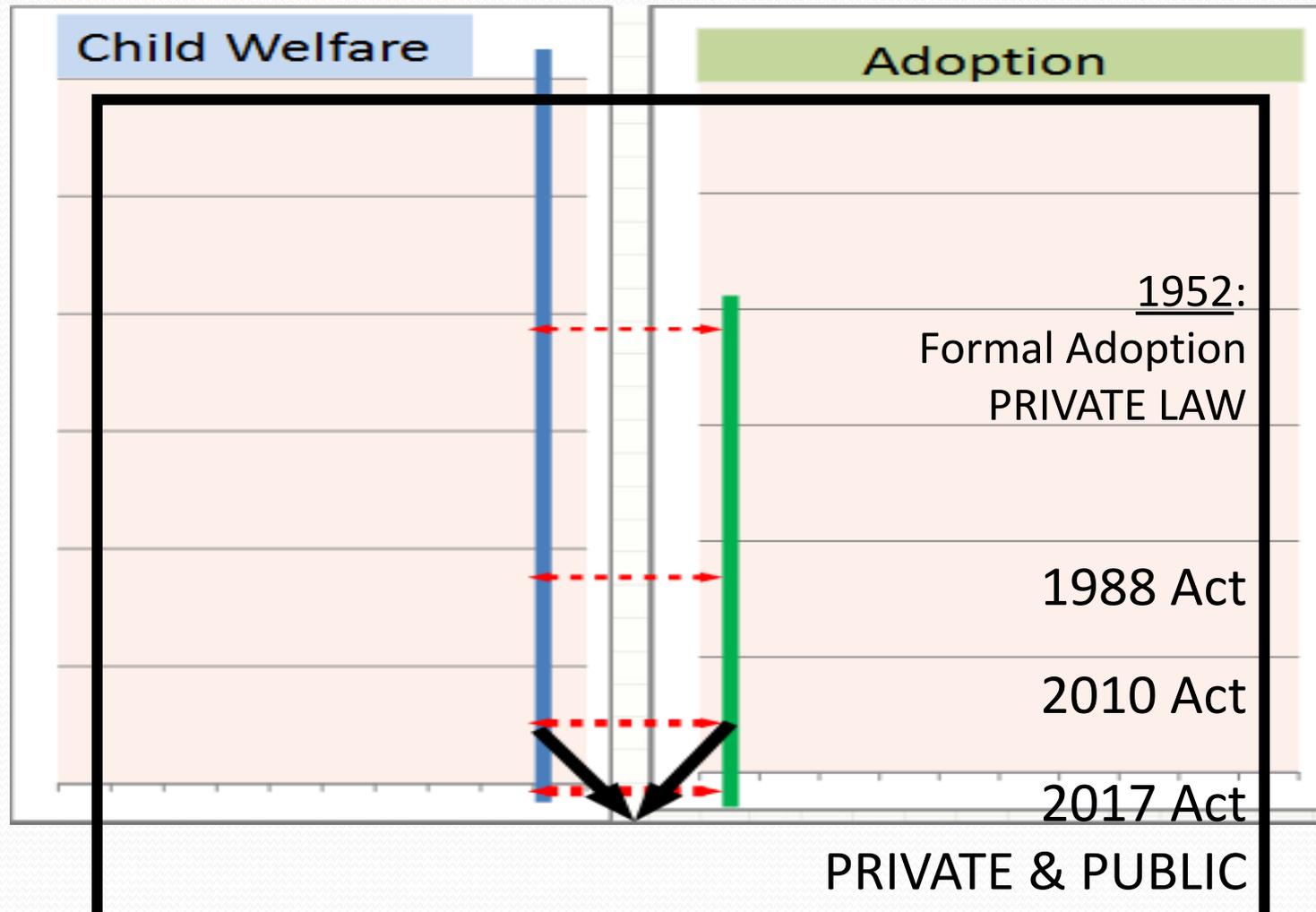
Age of Children in Care : Care Plan and Status Unknown. Source Docya



Trends across Western Child Welfare Systems

- Most children are placed in care for neglect or for reasons related to poverty
 - Physically or sexually abused children more likely to receive services in the home
- Vast majority of children on reaching 18 return to their parents or extended families -relationships
- People who leave care : overrepresented among the homeless, people addiction, crime system....

Child Welfare and Adoption Pathways in Ireland:



Ireland - Adoption History : Past Shapes Present : **Imagine the Future**

1900 - - - - - 1952

Informal ; Church dominated; Shame illegitimacy/ poverty;
Residential / boarding out / Sent out

● **1953 - - - - - 1991**

Formal 'Fit as if born; sent out....1970, It is an option ...change
'70, Professionalization 1970
Influence on Ireland joining EU -Secularisation

● **1992 - - - - - 2010**

Constitution, intercountry adoption (Foreign)
Openness 1990's.....not legal; Children's Rights

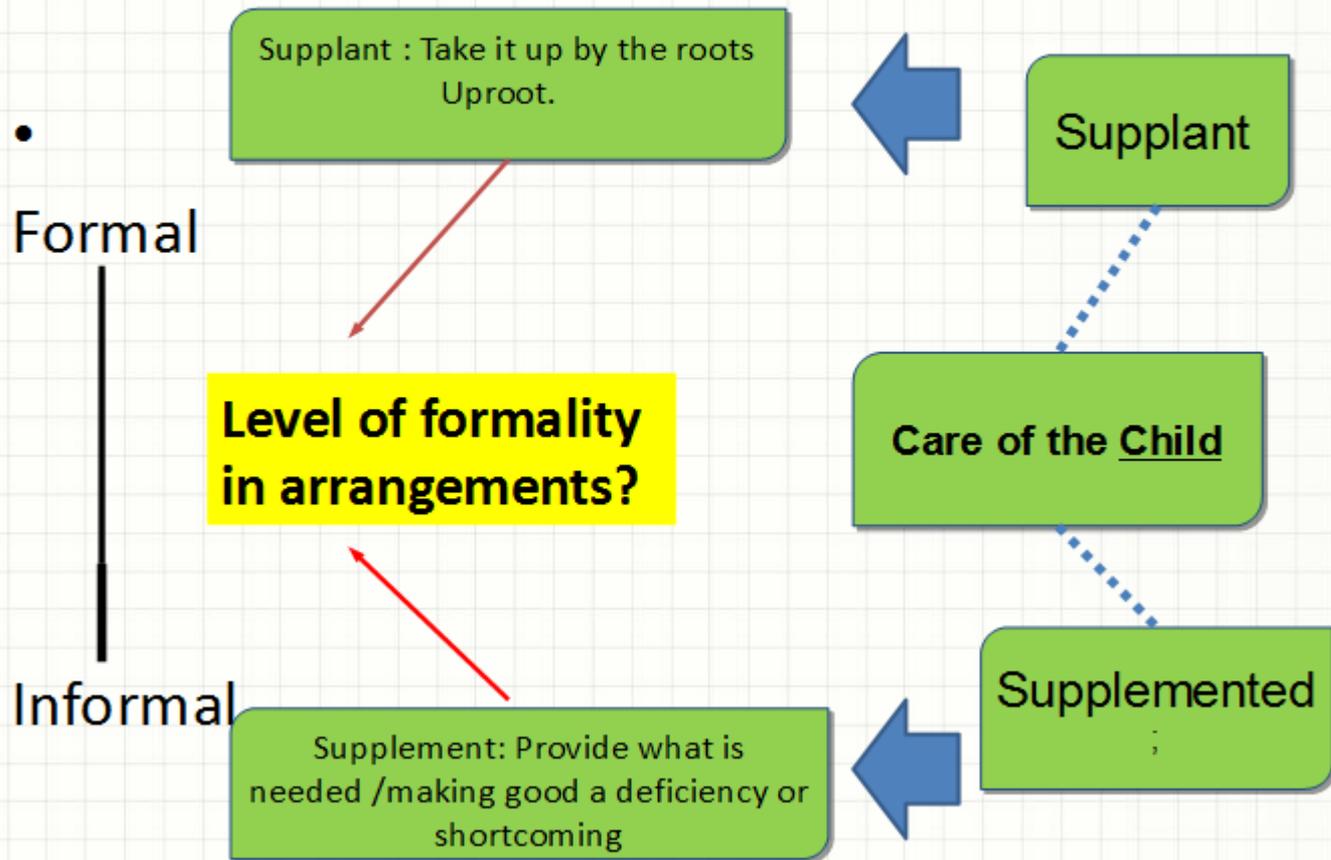
● **Now**

Hague Convention regulation - impact on adoption, Joining up
with child welfare, Permanence debate restarting,
economic retrenchment?



Conceptual Frameworks and Pathways

What to do with children in need of care?



Adoption Matrix : (Adapted Kearney, 2012)

	<u>SUPLANTED</u>	<u>SUPPLEMENTED</u>
<u>FORMAL</u>	Legal Formal Full adoption Traditional /closed	Long term foster care. Simple adoption
<u>INFORMAL</u>	De facto / common law	Extended family adoption /customary

CONNECTIONS?

Welfare Models : Shape structures and impact on State interventions

- **Residual** : Minimum state intervention
- **Institutional** : State intervenes to protect common good
- **Developmental** : State promotes & supports

Child Welfare Systems shaped in turn and differ according to time and place :

Laissez Faire, State Paternalism, Birth Family Defender; Children's Rights

Practices Across Different Countries

- USA
- UK
- Australia
- New Zealand
- EU

USA Adoption

- A key characteristic of adoption policy is minimum Federal regulatory constraints on the freedom of individuals which underpins the values of American society.

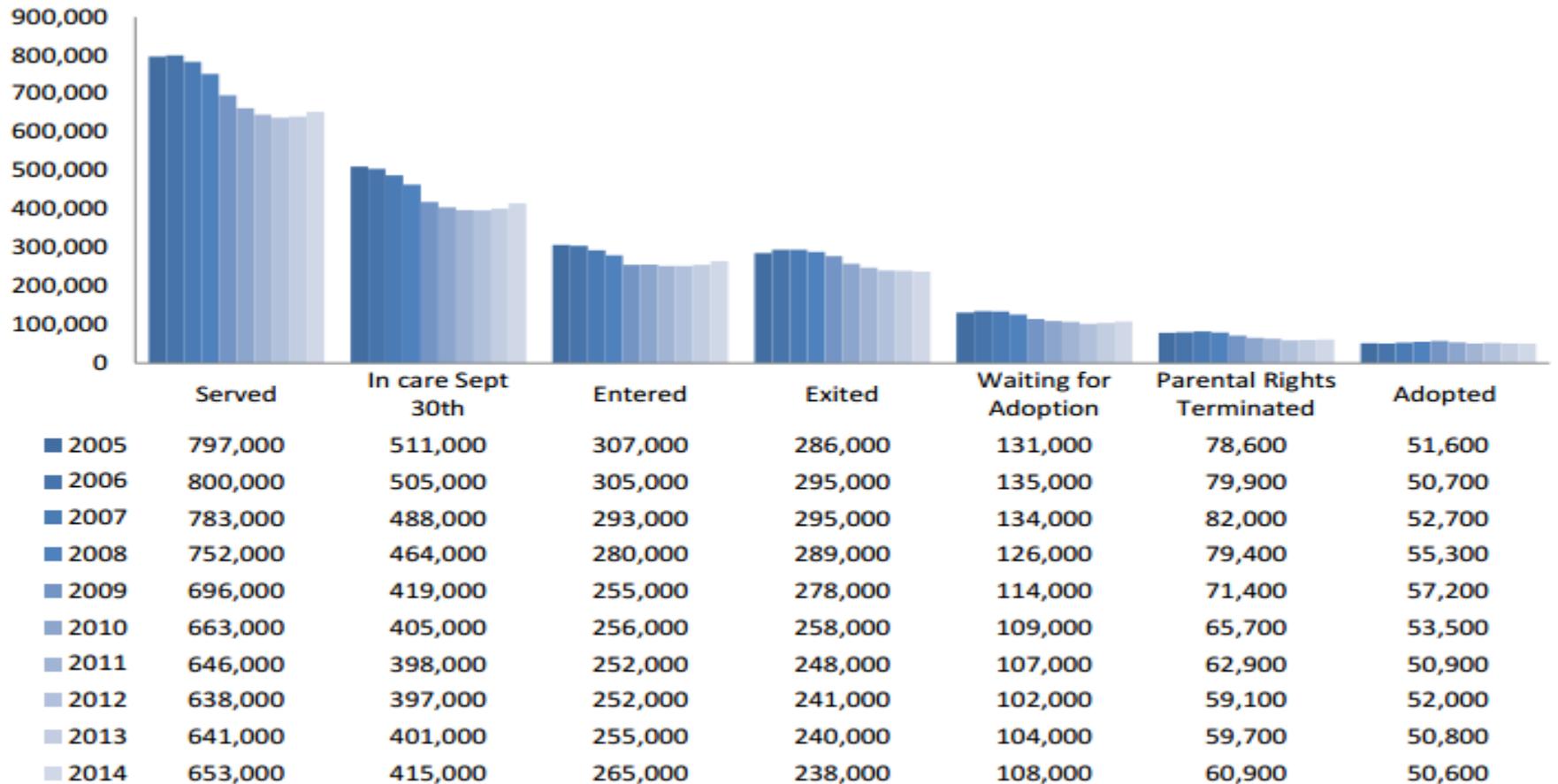
Major Drivers of USA System

- American states are empowered by US Federal Law in order to ‘...**terminate parents’ rights without their consent** so that permanency can be achieved for maltreated children through adoption or guardianship’ (Ward and Smeeton, 2016 p.4).
- *The Adoption and Safe Families Act (ASFA) (1997)* key
- *Adoption 2002* key policy doc to double rates

Trends in USA Adoption Field

- *More adoption* than any other country
- Variation in *individual 'State Law'*
- Huge *influence internationally*, esp. UK : trend setter
- *Who is in care and who is left behind?*
 - Adoption central to Public care system
 - ICA, falling numbers, increase regulation
 - Private / Independent sector accounts up to 50%
- Advocacy in relation to *sealed record /identity*.
- *Advances Reproductive technology / surrogacy.*

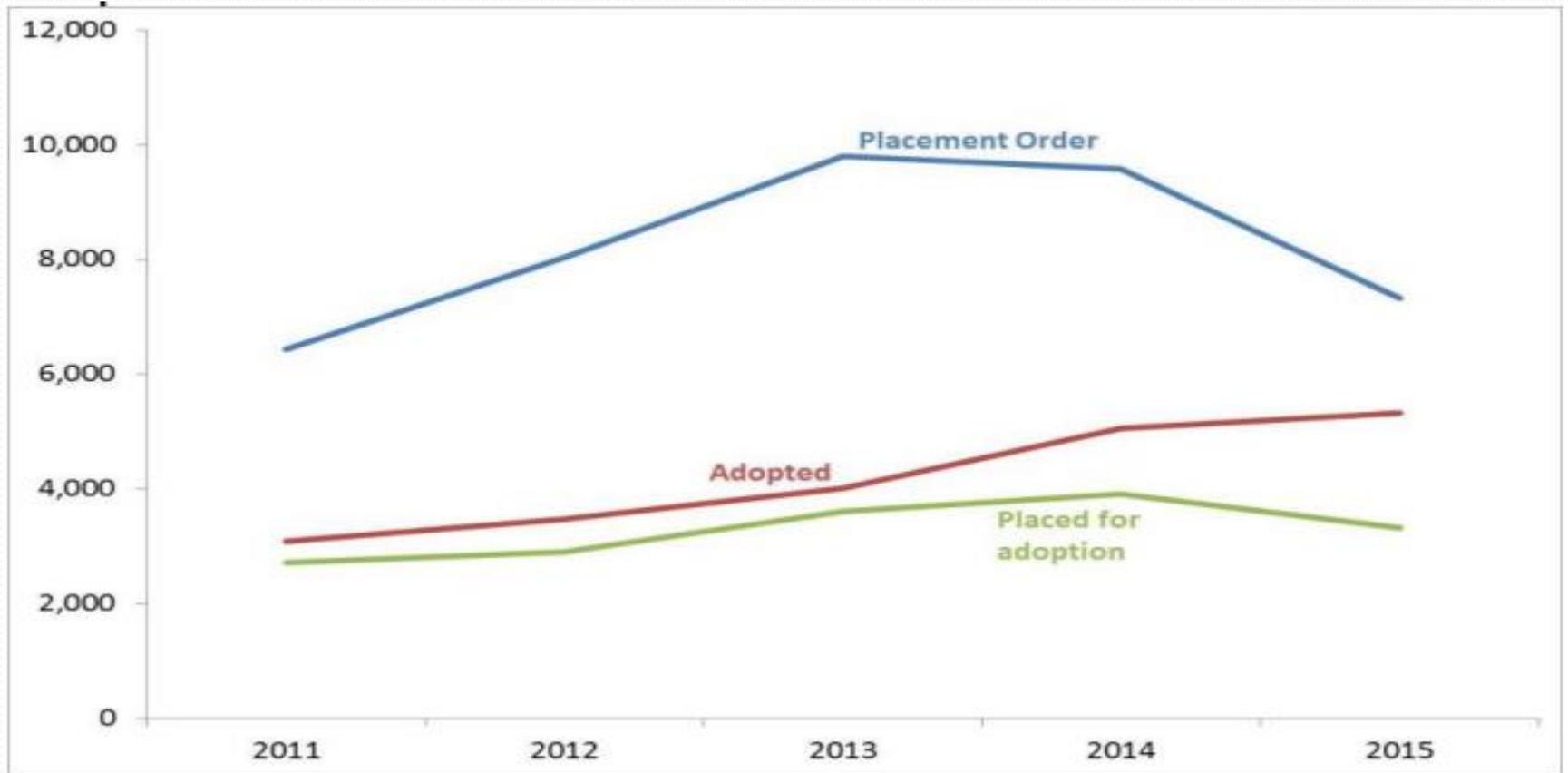
Trends in USA 2005 -2014



Trends in the UK

- *Children Act (1989)* ('1989 Act'), which made a child's welfare the 'paramount consideration' in all decisions concerning them.
 - The making of a child's best interests the paramount consideration in any decision ('welfare principle')
 - The no delay principle, recognising that delay in decision-making can be detrimental to the child's welfare
 - The philosophy of non-intervention of the state in family life
- *Adoption and Children Act 2002*

Numbers of Children Adopted UK



Trends in Australia

- Historical -a highly interventionist approach -in Australia's treatment of Aboriginal children and families – **The Stolen Generation**
- Has implemented a permanency framework -early intervention and family support and LTFC
- **New South Wales (NSW)** adoption from the care system *Child Protection Legislation Amendment Act* (NSW, 2014), -***Contested in Australia***
- Driven by moral conservatives as part of a politicisation and revision of 'family values' in Australian public life (Murphy et al. 2009).

Drivers in the system

- Child protection policy in Australia is the *National Framework for Protecting Australia's Children 2009-2020* (Council of Australian Governments (COAG), 2009), grounded in the principles of the UNCRC (1989) and the 'paramount principle'.

Gay (2015 p.149) argues how

- *Adoption was not created to respond to child protection and is perhaps aptly described as '...an awkward fit' within the range of options available for children needing long-term care options*

Numbers of children adopted Australia

Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Australia
2000–01	53	10	13	48	4	5	7	—	140
2001–02	82	14	6	37	5	2	11	3	160
2002–03	39	3	15	46	1	3	9	—	116
2003–04	25	11	2	12	1	3	5	—	59
2004–05	42	13	6	16	1	3	5	—	86
2005–06	33	10	13	17	3	7	9	3	95
2006–07	40	14	16	17	1	12	3	1	104
2007–08	37	5	22	21	3	5	6	1	100
2008–09	42	5	23	22	—	5	6	1	104
2009–10	66	9	20	20	3	1	8	2	129
2010–11	81	7	4	25	2	2	3	—	124
2011–12	91	8	6	18	1	—	4	1	129
2012–13	108	4	10	26	—	3	2	3	156
2013–14	102	6	10	27	—	3	6	3	157
2014–15	108	5	9	19	1	3	7	1	153

Trends in New Zealand

- Shares legacy of high rates of removal of First nation children
- Child protection system in NZ is overwhelmingly focused on parent empowerment, family participation and child welfare (Connolly and Smith, 2010).
- Kinship Care
- 2010 *Home for Life* (HfL) Policy & *Child Youth and Family* (CYF) (2016) policy is designed to allow permanency without severing the birth rights of the child or the guardianship rights of birth parents

Homes for Life Policy

- The design of the HfL policy envisaged that it would have a twofold effect:
- To specifically decrease the length of time children spent in state care
- To decrease the overall number of children in care by 1,200 over a 4–5-year period

- According to Jackson and Gibbs (2016, p.1), since the scheme was implemented approximately 420 children per annum have gained a HfL.

Homes for Life : State removing itself

- Thus, the 2004 act “... allows the transfer of state parental responsibility to alternative caregivers”, while also allowing for shared guardianship with birth parents (Jackson and Gibbs, 2016, p.3).
- Parenting Orders’ (PO) can be made in favour of caregivers, as well as Additional Guardianship Orders (AGU’s).

EU and Adoption

- Borzova (2015), in her Council of Europe report, *Social Services in Europe: Legislation and practice of the removal of children from their families in Council of Europe member States*, highlights **the insufficient data and narrative analysis** in member States in regards to children in care and adoption statistics.
- She examined adoption practice across twenty-nine member States and focused on the legislation and the practice of the removal of children from their families

Adoption in EU States

Fenton-Glynn (2015)

- Three different mechanisms
- Where parental consent is not necessary because of abandonment
- Where consent is not necessary because of parental misconduct or deprivation of parental rights
- Where consent is dispensed with because the parents have refused consent unjustifiably, or because it is in the child's best interests
- European Court of Human Rights AR 8 has traditionally approached the rights of children in care and adoption in a cautious manner,

Situating Ireland in Adoption as part of CP & W System

Permanency

Removal of Parental Rights

**Permanency :
Family Preservation &
Reunification**

USA

UK

NSW

New
Zealand

Nordic



IRELAND?



Central Issues - Future of Child Welfare

- Permanence : broadening out of legislative provision - One size cannot fit all
 - Can there be a roll back from USA view of permanence?
- Can adoption in Ireland become really open : legislative challenges?
- Business and corporate world influence : what happens when 'means' loses sight of the end?
- Are there other ways : Termination – is it 'draconian / punitive influence in service provision : another way?
- Making visible the 'invisible processes'

Conclusion

- Adoption has generational implications not single event for a single child
- What does 'best interest of child mean'? Accepted by all as a 'good thing'. Lack of def.
- Will Proportionality be enough to safeguard?
- Implications for Professional practices – Best Practice; Procedure and legislation