

**MEDIATING, JUDGING AND MORALIZING: THE ROLE OF THE STATE, THE ORGANIZATIONAL GIFT AND THE ADOPTION PROCESS**

***INTERMEDIANDO, JULGANDO E MORALIZANDO: O PAPEL DO ESTADO, O DOM ORGANIZACIONAL E O PROCESSO DA ADOÇÃO***

***MEDIANDO, JUZGANDO Y MORALIZANDO: EL PAPEL DEL ESTADO, EL DON DE LA ORGANIZACIÓN Y EL PROCESO DE ADOPCIÓN***

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**ABSTRACT:** The article conducts dialogue between the adoption of children and adolescents with economic sociology, proposing a reflection on the existence of an organizational gift within these social practices. The Church and the State were at the forefront of the intermediation between those who "gave children" and those who "sought children". Currently, the State acts by mediating, judging and moralizing who can and cannot adopt, and destituting those who cannot "take care of the child". The research analyzed the perception of donators, understanding the current configuration and meaning of the adoption practices of children and adolescents in Brazil. Among the results, it was observed that adoption is established as an alternative to get the "gift" and is treated as an "unpaid market", rooted in relationships of compassion, altruism and friendship.

**KEYWORDS:** Adoption of child and adolescent. Family. Organizational gift.

**RESUMO:** O artigo realiza diálogo entre a adoção de crianças e adolescentes com a sociologia econômica, propondo uma reflexão sobre a existência de um dom organizacional dentro dessas práticas sociais. A Igreja e o Estado estiveram à frente da intermediação entre os que "davam as crianças" e os que "buscavam crianças". Atualmente, o Estado age intermediando, julgando e moralizando quem pode e quem não pode adotar, e destituindo quem não consegue "cuidar do filho". A pesquisa analisou a percepção dos donatários, compreendendo a vigente configuração e significação das práticas de adoção de crianças e adolescentes no Brasil. Dentre os resultados, observou-se que a adoção que se estabelece como uma alternativa para se conseguir o gift é tratada como um "mercado não pago", enraizado em relações de compaixão, altruísmo e amizade.

**PALAVRAS-CHAVE:** Adoção de criança e adolescente. Família. Dom organizacional.

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**RESUMEN:** El artículo establece un diálogo entre la adopción de niños y adolescentes y la sociología económica, proponiendo una reflexión sobre la existencia de un don organizativo dentro de estas prácticas sociales. La Iglesia y el Estado se encargaban de la intermediación entre los que "daban niños" y los que "buscaban niños". Actualmente, el Estado actúa mediando, juzgando y moralizando quién puede y quién no puede adoptar, y desechando a quienes no pueden "cuidar de su hijo". La investigación analizó la percepción de los beneficiarios, comprendiendo la configuración y el significado actual de las prácticas de adopción de niños y adolescentes en Brasil. Entre los resultados se observó que la adopción se establece como una alternativa para conseguir que el "gift" sea tratado como un "mercado no remunerado", arraigado en las relaciones de compasión, altruismo y amistad.

**PALABRAS CLAVE:** Adopción de niños y adolescentes. Familia. Don de organización.

## Introduction

When observing adoption practices, we realize that it is a phenomenon present throughout history and the conception of the act of adopting children and adolescents has always differed in different times and cultures. As stated by Marcilio (1998, p. 21, our translation), "What varies are: the time, the motivations, the circumstances, the causes, the intensities, the attitudes in the face of the fact that is widely practiced and accepted".

Initially, adoption was built as a mechanism to resolve the impossibility of natural procreation of infertile couples, allowing the maintenance of domestic worship by the non-biological method. However, with the passage of time, sterility did not remain the only reason why adoption was motivated. Other factors such as altruism, satisfying the desire to be a father/mother, filling loneliness, providing company to the only child, being able to choose sex, replacing a deceased natural child, among others, occurred.

When we reflect on the presence of organizations in the universe of adoption, at first, we identified that adoption practices occurred only between donors and grantees, but at certain times they began to be mediated by the Catholic Church and, later, by the State.

Among the roles played by the Catholic Church in adoption, we highlight the apology of charity in relation to the abandoned subject, encouraging the faithful to welcome them. In the 5th century, the Church determined that parents who abandoned their children lost their right over them after ten days of abandonment, generating guarantees to those who welcomed these children to possess them forever. The Catholic Church acted through philanthropic and charitable institutions through the wheel of the exposed (a system for capturing abandoned



babies). The exhibition wheel emerged in the twelfth century in the Middle Ages and spread throughout Europe and other continents (MARCILIO, 2016).

The State emerged in the adoption process as an intermediary in this exchange relationship, creating laws to generate guarantees and legitimation in adoption practices. However, it was not always so. Initially, the State acted in a supporting way, leaving the Catholic Church and society in general ahead of adoption practices, but, with the pressure of social problems, the State began to act more actively. Nowadays, the State has consolidated itself as a social device that organizes and manages the adoption, because, through it, either by a family or judicial consent. It acquires in the form of a “legal contract” the rights over the custody/guardianship of the child or adolescent, forwards them to an organism that welcomes the children, so that, based on selection rules, norms and ethics (principles of morality), manage to assure the children/adolescents that adoptive parents are “capable” and adequate to the function of the symbolic reference of the family.

In this work, we take as a foundation the contemporary aspects of economic sociology and the sociology of organizations, trying to understand how the markedly “non-economic” moral and cultural references influence the practice of adoption.

As an academic guideline, we used the works of Philippe Steiner (2015; 2010; 2004) and his publications focused on economic sociology, especially the sociology of organ transplantation. Steiner's (2004) studies on organ donation provide structures that illustrate ways of analyzing, thinking and reflecting on the theme “donation” and how the structures of the intermediary organ between the adopter and the adoptee are consolidated.

For Steiner (2004) there is a legitimate social device between the donor and receiver that mediates the adoption process, instituting the question of morality, rules and norms to be followed. Morality can be instituted culturally or legally. Altruism in adoption as a social construction is exalted in a different way, as the people who adopt are seen almost as “saints”, free from selfishness and open to love those who were not generated by themselves. However, for Steiner (2017) organizations are fundamental to the social constructionist view of altruism, as they are in charge of the adoption process.

The State consolidates itself as the intermediary, judging and moralizing who can and who cannot adopt, and dismissing those who cannot “take care of the child”. As well as having the legitimate power to be the arbiter between donors and receivers, acting in accordance with social laws instituted in order to protect order, justice and good relations.

Stenier (2004) highlights the existence of an organizational gift in donation practices and, when reflecting on this in the practices of adopting children and adolescents, we perceive



a space permeated by moralities, legitimations, prejudices and stereotypes, always in a changing dynamic.

### **Economic Sociology and Adoption Practices**

In this part of the text we will deal with the theoretical debates about adoption practices, using economic sociology as a basis. We seek to reflect on the role of the State in these practices, highlighting the way in which it is configured as an intermediary body legitimized in the organizational gift of adoption.

Steiner (2004) reports the existence of an organizational structure that is the result of a social construction that organizes the donation system, that is, there is a legitimate social device between the donor and the donee that mediates the donation process, which establishes the question of morality, rules and norms to follow: “Comte finds in the work of Dunoyer the idea according to which the government is a producing institution, in charge of the most important of the existing productions: the production of morality and civilization among individuals” (STEINER, 2017, p. 49, our translation).

The author argues that this morality can be culturally or legally instituted.

The State is essentially the guardian of peace, protector of order, creator and preserver of good relationships, trainer of the customs of justice, equity, and sociability that generate these relationships; and to create these good customs, it dictates, above all, the bad actions that will have to be prohibited, and takes care of the repression of prohibited actions (STEINER, 2017, p. 49, our translation).

The State is capable of interconnecting the reality of the donor with that of the grantee, having the power to decide the situation of several children and adolescents who wait in shelters for the crowning of their destinies. This intermediary role demonstrates its importance when it evidences the possibility of connecting individuals who could not help each other without it, but, at the same time, causes distance between them. As an example, a family from Rio Grande do Sul is able to adopt a child from Rio Grande do Norte. There is the spatial distance that the organization is responsible for achieving, however it does not allow donors and receivers to have direct or indirect contact, as the family from Rio Grande do Sul had no relationship with the family from Rio Grande do Norte, they do not know each other. This is due to the State seeking to protect the receiver from possible return pressure that the donor could perform.

Separation is no longer a factual fact, it is socially produced by the organization. Unlike Simmel's “divide and rule”, the sociological formula is



“separate to give”. This relational structure intervenes when the organization has good reason to believe that the existence of direct relationships between the donor and the receiver would make the donation, or social life after the donation, difficult (STEINER, 2017, p. 31, our translation).

Steiner (2004) makes us realize that, as in the case of organ donation, adoption cannot be on the sidelines of donation relationships within modern society, remaining only based on compassion, altruism, friendship and classified as “horizontal donation”. The author argues that we must abandon Marcel Mauss' perspective, the obligation to “give, receive and reciprocate”, as it becomes more of an obstacle than a solution. Vertical donation, as opposed to horizontal, brings into play the powerful symbolic dimensions of the man/world relationship, and is therefore classified by the author as primordial. Mauss, in the document “The Gift: An Essay” tells us that the gift is the opposite of the mercantile exchange, because the gift is based on the existence of personal ties and moral restriction between the donor and the receiver. Steiner (2017), based on the work of Alain Caillé from the group he formed in the *Revue du Mauss* circle, presents us with new notions about gifting.

[...] the first, that the gift is the empirical phenomenon that makes it possible to study the elementary fabrication of social solidarity, both in modern society and in all others; the second, that the modern gift takes place mainly in the space of primary sociability, which refers to the affective life, to the neighborhood, in which the obligations to give, receive and reciprocate are developed; the third, that the space of secondary sociability, governed by bureaucratic and mercantile norms of efficiency and utilitarianism, but supported by the practices of the gift of primary sociability, opens the political dimension of the gift, according to which solidarity is anchored in the world of associations and volunteering. The fourth, finally, is that, in modern society, a new gift is produced, the “gift to strangers”, which allows escaping from the closed circle of interpersonal relationships (STEINER, 2017, p.24, our translation).

Adoption seen as a gift moves between these four notions, but mainly the gift to strangers. Because the receiver receives the gift, however, he does not know who the donors are, and there is a desire to thank and reciprocate in some way those who granted him their grace. In the context of gifting to strangers in modern society, organizations appear linking these two parts that do not know each other.

Steiner (2010) brings us the concept of organizational gift, which configures the scenario of the three actors: donor, intermediary and receiver. The author reports that this type of organizational gift differs from Mauss' gift. The Mauss gift covers only people/individuals, while the organizational gift interferes between the donor and the receiver, considering the organizational aspects.

This type of gift differs from that which occurs within organizations: organizational gifting is a gift through the organization, not a form of gift within the organization. It is about studying how the emergence of organizations alters the functioning of this social exchange, and not showing how the world of organizations is crossed by practices arising from primary sociability (STEINER, 2010, p. 26, our translation).

The State dominates the universe of donors, it is the one who determines a certain morality capable of judging the abilities of the family (mother/father/others) to fulfill their socially constructed roles, which are capable of providing the child with their healthy development. In order for the family to have a destitute child for adoption, it is necessary to undergo several assessments made by professionals working at the intermediate level. In situations of consented adoption, the voluntary delivery of the child occurs in a less bureaucratic way than the previous one, since there is no factor of analysis of the family in relation to its parental competence. In the Brazilian case, the State through the Brazilian Civil Code (article 395) (BRASIL, 2002) creates three hypotheses of judicial dismissal of the parental power, which are: immoderately punish the child; leave it in abandonment and practice acts contrary to morals and good customs. These practices legitimized as correct of a moral nature and good custom serve as parameters for the State to judge what a good mother and father would be.

On the other hand, the grantee needs to prove to the intermediary its ability to offer better living conditions and healthy development for the child. Therefore, adopting requires a series of protocols and permeated by bureaucracy. This “approval” phase takes place to have less risk of returning the child.

The field of adoption as an organizational gift, also known as an “unpaid” market, carries out exchanges that are not incorporated into the so-called “traditional” market. These exchanges are involved in social relationships, affection, moral and legal bonds.

Exchanges that are not incorporated into the market, on the other hand, comprise the huge spectrum of social relationships that involve material, affective, intellectual interactions and exchanges, but from which the previous elements are absent; in other words, in addition to not verifying the nomenclature and perfect predictability hypotheses, the relationships are not regulated by the price system and there are (possibly) affective contacts in them; an important case of non-commercial exchange is the gift (STEINER, 2012, p. 111, our translation).

Fonseca (2006) uses the term circulation of children to portray the exchange of responsibilities of a child from one adult to another:

[...] it is a practice with historical density, which evolved in certain circumstances, never outside, but in symbiosis with the forces of the State [...]



The circulation of children is an analytical concept that, although evident in the practical reason of many families, does not appear as a conscious value, not even as a recognized practice, by the vast majority of subjects involved (FONSECA, 2002, p. 63-64, our translation).

This organizational gift is controversial for the commercialization of disputed goods, with the moral challenge being managed by the intermediary, whether enabling, suspending or prohibiting market transactions. In this context, in the field of adoption, the State manages this non-commercial market, which does not generate “cost/buy” for those who get the gift, but the State needs to have resources to monitor the adoption processes, whether it is the payments of professionals, host institutions, legal expenses, among others). Steiner (2014) calls organizational cost the expenses that the intermediary institution in the donation process incurs to fulfill its function. The author argues that although the donation is free, it still has a cost.

[...] The adoption space has been organized as a non-market trade facilitating the international movement of children. In fact, the system that currently supervises and regulates inter-country adoption removes any possibility of setting a "child price" subject to market laws. Of course, money transfers accompany the children's movements, but they systematically take the form of indirect remuneration (payment for a membership service, help with an orphanage, legal fees etc.) which, like most "intimate transactions", seems definitively extract children from market logics (ROUX, 2015, p.60, our translation).

In the field of adoption, the social value prevents the adoption process from being seen “exchanges/circulation of children” by the market logic, as it would frame something inhuman, similar to the trafficking of children or commercial transactions in slaves, because the commodification of the human being human dignity has left haunting marks on society, incompatible with human dignity. In the field of adoption, children are seen as gifts, and those who receive them must treat them as consecrated and priceless children. And those who work with adoption must exercise their functions in a fair, moral and even altruistic way.

In a world whose altruistic gift must be protected and seen as something sacred, the State assumed this role, which previously belonged to the Catholic Church, socially legitimizing itself as the instance capable of judging and moralizing the adoption process.

[...] In a historical moment when the social value granted to children prevents them from being treated as commodities for money, exchanges are maintained thanks to the supervision work they need, adjusted to act on the applicants' subjectivity. Children, consecrated as priceless beings, are, therefore, the object of a trade built in opposition to the market, where the regulatory framework adjusts real practices to the ethical principles that govern them (ROUX, 2015, p. 61, our translation).

We understand that donation practices have become, in modern societies, something of great complexity, requiring organizations to regulate social relations between authors. The case of adoption of children/adolescents could be considered an organizational gift, as they are permeated by social, moral, religious and altruistic values. Therefore, when trying to treat them as something that can be commodified, there is a risk of being harassed.

For Steiner (2004), sociology must account for the phenomena of the donation chain functioning. To achieve this, the logic of social construction suggests examining alternative solutions to existing proposals, in order to compare them with the present situation. The author argues that a new format for donation is the result of a social construction, which depends on many factors to become, in turn, such a powerful behavior in society, so that it clarifies new ways of doing, modifying the traditional ways of thinking and feeling.

### **Organizational gift in adoption practices**

In the family, children are seen as fruits of love/blessings, arising either from the natural conception between man and woman or from adopting a child/adolescent for themselves. Calling adoption an organizational gift ends up sounding pejorative, as there is a social construction that the act of adopting is just a demonstration of love and kindness.

What we want in this part of the work is not to defend that adoption practices should be commodified or even children treated as “material” “objects”, on the contrary, because this is characterized as human trafficking and this is a subject for other debates. In fact, what we want to reflect when we talk about the organizational gift of adoption is that there is a chain of giving between those who provide, the intermediaries/regulators and the recipients. Within this context, “exchanges” take place that are not incorporated into the so-called “traditional” market, and these exchanges are involved in social relationships, emotional, moral and legal ties.

For this, we seek to understand how the presence of the State is evidenced as an intermediary institution in the organizational gift of adoption.

In this context, we carried out an analysis of the results of the research carried out on the perception of the receivers. The research was carried out on posts and comments from two secret adoption groups linked to a social network. The choice of these groups was based on the criteria of popularity and visibility. We understand that closed groups are useful environments, permeated with meanings. It is important to highlight that the present work fully respected the ethical standards, protecting the privacy, confidentiality and anonymity of the members of the groups.





The analysis of data from closed groups on the topic of adoption took place in the following ways.

Briefly, we analyze the profile of closed groups by group history, goals, moderators, number of members, topics and visibility. In the second stage, we quantitatively analyze (tables and graphs) the records made in the news feed of each group from October/2019 to September/2020 through the following categories: date, type/subject of publication, number of likes and number of comments. In order to determine the sample size, relevance and identify the most commented and discussed subjects. As a next step, we considered the comments that had the greatest impact and analyzed them according to their meanings, dynamic relationships, thoughts, feelings and interpretations. And finally, still using the data collected from the comments, we seek to know the experience lived by the adopters/pretenders with regard to the information requirements about the factors that favored and hindered the decision to adopt, the procedure, the adoption process and the existence of organizational gift in adoption practices. For this, we used the qualitative research method, applied with the content analysis technique of Moraes (1999). This technique “helps to reinterpret messages and reach an understanding of their meanings at a level that goes beyond a common reading” (MORAES, 1999, p. 7, our translation).

Children can be considered as gifts in the adoption system. As Steiner (2010) points out that the exchanges in this “unpaid” market are not regulated by prices, but by affective contacts, they are gifts. Willingness to adopt responsibly (adoption is serious business); love (adoption is love) and legality (legal adoption) are some aspects measured in adoption exchanges. In the analysis of the posts we found moral/legal aspects to be able to adopt:

**Message:** What is required for adoption?

Do you need to be rich to adopt? This is one of the most frequent questions among prospective adopters. So let's clear up a few things.

To adopt it is NOT necessary: to be rich, to work with a formal contract, to own a house, to be married, to have a higher education course, to have a car, to adopt only children of the same ethnicity as yours, to have a clean name at SPC SERASA (credit protection services), give up having biological children. So, to adopt, you MUST: have a good criminal record, prove income, an average report proving that you have good physical and mental health, prove permanent residence, have love, have a clear awareness that adoption is affiliation, it's love and it's for life and to be aware that they need to prepare emotionally and psychologically to receive a child who will not have your biological characteristics.

What is also possible in an adoption: being single, divorced, separated and widowed; already having biological children; being pregnant; wanting to have biological children more than once; adopt groups of siblings and special children/adolescents.



What is not possible is to adopt wanting to do charity or disregarding the child or adolescent of their condition as a child. People who seek to qualify with totally contradictory personal feelings and also contrary to the purpose of adoption, will have their request denied, as well as people who have mental characteristics that make them unable to adopt an adoption process. Many, during interviews with the staff, make it clear that they do not want to be parents, that they are not expecting a child, but that they are looking to fill an emotional gap, or they need to please their spouse, or they need to satisfy the family's desires, or even because they want a permanent employee without work commitments, and worse, they let it appear (which is shocking) that the intention is to guarantee a child for ulterior motives. Cases like these are always denied, for the sake of the children.

**Message:** Adoption is believing that love is stronger than blood ties... my life my loves

**Message:** my children are my inspirations to become better every day

**Message:** ADOPTION IS NOT CHARITY, ADOPTION IS RESPONSIBILITY, YOUR CHILD IS IN A SHELTER WAITING FOR YOU.

**Message:** adopt yes! But only for justice. (our translation).

This organizational gift is controversial for the commercialization of disputed goods, with the moral challenge being managed by the intermediary, whether enabling, suspending or prohibiting market transactions. In adoption, the State intermediates this extra-patrimonial legal transaction between donors and receivers, which legally determines the custody of those who know how to “watch over” the well-being of the child. In other words, in adoption, when the State identifies that there are no possibilities for the child/adolescent to continue in the natural family, it breaks this “legal contract” and transfers it to new individuals interested in obtaining custody of the child/adolescent. Diniz (2011, p. 546) emphasizes that adoption is a legal act that has formalities, obeys legal requirements and establishes a bond of filiation between people, regardless of blood ties and kinship “bringing a stranger to the family as children”. According to Orlando Gomes (2001, p. 369, our translation), “adoption is a legal act by which the bond of filiation is established, regardless of the natural fact of procreation. It is a legal fiction, which allows the constitution, between two people, of the kinship of the first degree in a straight line”. Adoption can also be conceptualized, in a more modern way, as a legal act that establishes a bond of affection between the adoptee and the adopter, providing the latter, who for some reason was deprived of his biological family, a healthy and balanced family environment that meets their needs and encourages their development.

Zelizer (2009; 1992; 1985) argues that modern adoption is transformed into a market relationship with the “purchase of intimacy”, since for the author the entire relationship between parents and children is permeated with intimacy. In adoption, individuals begin to share personal moments.



In order to obtain full custody, new parents must fulfill moral and legal aspects to obtain it, that is, they must demonstrate that they are able and capable of doing so. This proof takes place through the entire qualification process, it is the moment in which the prospective adopters undergo various technical assessments and training.

**Message:** We are in the process of qualifying, we took the course and underwent an interview and visit by the technical team, and at the beginning of the month the report went to the public prosecutor to be judged and the license was granted or not. We are anxiously waiting for the answer to come soon and so are our children.

**Message:** Call today from the psychologist for the first interview.

**Message:** Good night people! I'm at the end of the qualification process (I'm going for an interview) and I'm very anxious! (Profile: baby up to 6 months with T21). Sometimes when I close my eyes I imagine him clearly in my arms... I'm just love and gratitude!

**Message:** empowered by righteousness, now wait on God our son...

**Message:** After about a month authorized by the Judge, but waiting for the process to return to the Childhood Court, today I receive the most awaited news... We are registered in the CNA National Adoption Registry... Anyway. We got in the line 🥰 HAPPINESS and GRATITUDE to you define me, my Lord. Now we just have to wait for God to send our babies for the meeting of Souls to happen.

The proof of the capacity still exchanges in the phases of approach / stage of coexistence through evaluations made by the technicians from the first contact until the definitive handover of the guard.

**Message:** Today we received the news that the judge authorized the coexistence internship. We were all very excited! Now we just go get our girl

**Message:** The phone rang. Your child is coming. The approach phase begins, the visits to the shelter. In parallel, comes the rush: preparing the room, clothes, trousseau, essential items, toys. Warn family and friends, celebrate family growing up. Organize temporary leave from work on maternity leave. Start thinking about school. All this is important. But the fundamental thing, above all, when your child arrives, is to have an inner availability to love, receive, understand and learn all the time. (our translation)

Adoption is considered a "grace", and it is "free" for the prospective adopters, as both the adoption process (from qualification to adoption itself) are exempt from court costs, it is not necessary to hire lawyers and the individual himself can apply at the registry office of the Court of Justice. However, there are expenses that the applicants have at the "post" adoption moment: with travel (when the child lives in a place far from the applicant), layettes (clothes, furniture, personal hygiene products, others), medical expenses, among others.

**Message:** Guys, how much do you suggest amassing per month to prepare for the arrival of the baby / child?

**C1:** You need to make this calculation based on the value of the trousseau in your city, expenses with crib or bed with mattress, bedding, towels, diapers, clothes and shoes, and perhaps some expenses for exams to see if the child's health is all right, well, that's if you don't have health insurance. When our

baby arrived, we spent around 5,000 just in the first week buying the basics, and then came the routine expenses such as milk, diapers, wet wipes, consultations and exams, etc. As the days went by, I bought what I needed little by little.

**C2:** Very relative... Everything depends on your financial condition... Research how much each thing costs on average where you live, do the calculations, the list helps a lot and so you have more idea of how much you will want and be able to spend at the beginning.

**C3:** I spent 800 reais, with the basics of the basics... I don't know how it works with your family and friends... but if you buy a lot, it may be that when your child arrives you receive a lot of stuff... and lose the unused... We still today, almost 9 years later... we donate clothes and shoes with very little use... because children receive a lot of stuff, uncles, grandparents are always giving a treat...

**C4:** It will depend a lot, but save what you can for a month. Even if you have a lot of help, it is very important to have money to be calm with the first expenses and any demand that appears. Ex.: Some counties need a lawyer... If you choose all of Brazil, you may have spent a lot on travel, mainly because everything is on the notice... In some shelters everything is shared, so it may be that the child comes with nothing... in short, there are many unknowns and financial health is also super important in the adoption process.

**C5:** I believe that about 8 to 10 thousand you can buy everything of excellent quality and you will still need a good reserve for milk and diapers a medical insurance as it is a long process you can save a little a month, then if the phone rings, you don't get scared and run after things and glory to God, I'm not buying anything and reserving it because it takes time, then dust comes on things, these kinds of things, but it's good to save money. (our translation).

In this context, in the field of adoption, the State manages this non-commercial market, which does not generate a “cost/buy” for those who get the gift, but the State needs to have resources to monitor the adoption processes, whether it is the payments of professionals, host institutions, legal expenses, among others.

How much, therefore, does the set of institutions of the justice system cost Brazilian society? The short answer is: very expensive. Starting with the Judiciary itself, when we consider all the different “branches” of justice – i.e., state, federal, labor, military and electoral – and all their hierarchical levels – i.e., from the first instance to the Federal Supreme Court (STF), including the National Council of Justice (CNJ) – (DA ROS, 2015, p.2, our translation).

Practices to reduce the burden of the State have been discussed by several scholars who seek ways to simplify the processes that run in justice, as a way to avoid delays, as well as legal expenses.

Countless cases that are being processed in Brazilian justice could be resolved in a shorter time, at a lower cost, without causing hypertrophy of judicial attributions. Adoption of abandoned minors, requests for custody and guardianship, consensual divorces, inventories, execution of wills, permits etc., as long as there were no disputes between the interested parties, could be resolved in administrative instances. These actions characterize the daily life

of the judiciary in small towns. They are of little complexity and do not involve social conflicts worthy of appreciation by the Judiciary (DIDIER JUNIOR, 2002, p. 28, our translation).

For a long time, the relationship between donor and grantee occurred directly (without the participation of a regulatory organization), social values for exchange were based on the need to maintain domestic worship and the “kindness” of helping others (even when adopted, for the child/adolescent had to repay the “kindness” through work). With the presence of the Church as an intermediary, adoptions began to have a legitimate Catholic moral “imprint” aimed at charity and assistance, only with the involvement of the State, we have the practices of adoption regulated by legal measures.

We know that there are no “baby factories”, when we analyze the role of the donor in the donation chain, we realize that it occurs voluntarily (legal delivery) or by destitution of family power. Children arrive for adoption under different justifications, such as lack of family support, precarious socioeconomic conditions, violation of rights by the family of origin, pregnancy resulting from sexual abuse or an eventual relationship, among others.

Morally, it is very sad to get to the situation of a mother losing/delivering her child, comparing death, therefore, mourning. On the other hand, there are moral aspects that if the natural family cannot “take care” of the child, they must renounce so that another can assume its role, because what matters is the well-being of the child, it is morally seen as a noble attitude.

The receivers in the organizational gift are in the position of those who receive the gift. In adoption, when donors and receivers relate (negotiate) directly, without the State, we are talking about Brazilian-style adoption. This exchange relationship is seen as illegal and risky, as the State treats it as a crime expressed in articles 242 and 297 of the Penal Code. Only adoptions made by the Children and Youth Courts are seen as legal and legitimate. The practice of surrogacy is prohibited in Brazil, here it is only allowed on a voluntary basis, called “solidarity belly”, being allowed by people with an affective bond with the future parents.

**Message:** Good afternoon, I'm new to the group, my partner and I have a dream of adopting a girl, we don't have a color preference, just age, even from 0 to about 3 years old, because he already has a boy aged 1 year and 9 months from another wedding, I joined the group to ask questions. Before, I had seen about consensual adoption, but I saw that it is something very uncertain, so we decided to research how the adoption process works, or a surrogacy... the adoption process I have read here in the group how it works, now I want to know if surrogacy works and whether it is legal or illegal?

**C1:** As far as I know, in Brazil, surrogacy is only legalized without financial ties. In other words, it is not called surrogacy, but solidarity belly. So, for example, your mother, your sister, someone close to you can carry the baby

for you for the affective bond, not for the money. There is no system here like in the US, where you can legally pay a woman to carry the baby for you.

**C2:** Surrogacy in Brazil is only allowed for 1st degree relatives (mother and sister). And fertilization is quite expensive too. Outside the country, as in the US, you are allowed to hire a surrogate, but it is extremely expensive. You have to have a very high financial resource. So much to do in Brazil and abroad. Legal adoption takes a long time. But it's totally free. (our translation).

In the lists of receivers, we realize that there is a kind of competition: between suitors of the same profile; foreign applicants x Brazilian applicants; suitors who already have biological children vs. suitors without biological children.

Adopting a child from 0 to 3 years old in Brazil is a fierce dispute. According to CNJ data, the average is six suitors for a child. This is because 11.95% prefer children under 1 year of age; 17.23% only accept children aged 1 year; 19.46% prefer 2-year-old children; and 20% only accept 3-year-olds. The situation is more complicated when the child's skin color is chosen, as many candidates prefer white children (26.7%), followed by brown children (5.28%) and, finally, the black ones (1.7%).

**Message:** I'm going to die without understanding this weird competition for a spot in the queue when everyone knows that the queue isn't even linear. The focus, which should be on children, is lost. Then they complain that the process is slow and bureaucratic. Fortunately!

**Message:** The point is that what makes the queue gigantic is, most of the time, the profile we choose. Nobody wants children with limitations, nobody wants a child over 6 years old, nobody wants teenagers, almost nobody wants siblings... Is it really a question of giving love?

**Message:** The queue is very good for those who want to have real children, but it usually takes longer for those who idealize a perfect child and who would probably not exist even if they were generated by that person, then it is really difficult. The adoption system looks for suitable parents for children who exist and not suitable and unreal children for parents who are ultra-idealizing. (our translation).

The empowerment of Brazilian prospective adopters has grown a lot in recent years and this has had an impact on international adoption practices. It was identified in the analysis of the posts of the category "international adoption" the existence of competition between the candidates of national adoption with those of international adoption, especially when it comes to the most coveted profiles. Some comments suggested that foreign applicants should keep the children who are left over "[...] **C5:** I think that for foreigners it is only older children (like active search), in this profile that you only search for Brazilians who live here" "It is a very competitive profile, and foreigners are left with the 'left over'". (our translation).

We also identified the dispute between applicants who have already had biological children and who wish to adopt (especially in situations of babies/small children profiles) with

those applicants who do not have children. Criticism is based on the fact that women who have already had biological children were able to have the chance to take care of their babies, that is, going through the entire experience with the newborn and baby.

**Message:** I believe the girl in the other post meant that women who have had biological children have already had the experience of having a baby. Those who cannot generate cannot have this experience. They would just step in front of those who want a baby and are already biological mothers. Perhaps her opinion was unclear. (our translation).

In adoption, as they say, “not everything is flowers” and that romanticized view of the adopted child comes to the fore in the phases of approximation/cohabitation stage. The return of children in adoption practices is seen with great disapproval and revolt by many prospective adopters, as it is morally legitimate that the child is not an object that, if it does not meet expectations, can be returned to the store. The child is a gift, gifts are not returned, but you are grateful for receiving them.

**Message:** Has anyone here ever thought about giving up or gave up in the approach phase?

**C1:** Why give up? It is very important to be aware that it will be another abandonment for the child/adolescent.

**C2:** My dear, this feeling is normal. It even happens when we have biological children. I'm not generalizing, but in my case, even when my children were born, there was a time when I thought: “Where did I tied my goat”!!! This is a defense of your psychological. There are many emotions.

**C3:** What nonsense, seriously, chemistry? Do adopters have any idea what goes on in a child's or teenager's head? What have you been through? So please don't expect chemistry, don't expect overwhelming love in the first moments!!! Study a lot on the subject, and if you're not prepared, don't qualify, but in no way go ahead and then blame the children, it's too cruel, and it's not return, it's abandonment, another one that this child will have to deal with...

**C4:** It's really a touchy subject. My son came with 4 days and it was a blessing. I never doubted that decision and we gave him lots of love and a great upbringing. But there is, in the case of older children, the fact that they have not had an adequate education and lack of affection. They can also be of a not very good nature. Fortunately, the cases reported here are generally very positive and the families are very satisfied and happy. It's life... nothing is completely perfect... (our translation).

The State applies punishments to those who return children, especially in the post-adoption period, such as: compensation, exclusion from the register, among others.

[...] a desistência do pretendente em relação à guarda para fins de adoção ou a devolução da criança ou adolescente depois do trânsito em julgado da sentença de adoção importará na sua exclusão dos cadastros de adoção e na vedação de renovação da habilitação, salvo decisão judicial fundamentada,

sem prejuízo das demais sanções previstas na legislação vigente (BRASIL, 1990, p.114, our translation).

In the return, as well as in the dismissal of the biological family, there is a loss of family power, that is, of the rights and duties towards the child/adolescent. The child returns to the institutional environment or to the foster family and is awaiting a new adoption.

What we can absorb from this organizational gift is that it is structured on the principle of the best interests of the child, in the arena of disputes between the right to remain in the family of origin (even if it is not “perfect”) and its sustainable development in an adoptive family. The State intervenes directly in adoption practices, acting through laws and public policies, aiming at the same time to accelerate adoption practices and prevent families from losing the family power of their children.

This organizational gift has the moral challenge managed by the intermediary (State), measured not by “material value”, but by social values “how much resilience, patience, love, affection, responsibility, altruism, reciprocity, others” one has to provide. The principle of donation/adoption places individuals in a social relationship, in this circuit of exchanges individuals act/share moved by different meanings.

### **Final considerations**

The organizational gift of adoption allows us to think of these practices as a process of social construction, permeated by moralities, legitimations, prejudices and stereotypes, always in a changing dynamic. Culturally and morally, love is not sold and not bought, in fact, it is conquered and we obtain it by merit. These references influence the dynamics of adoption and confront aspects of commodification and deromanticization of adoption. For Zelizer (2011) there are no opposing worlds between economic rationality and the world of values, because in fact there are economic circuits that combine as the actors articulate.

Adoption as well contested is present in the actions of the State from the moment there is a need to expand its marketability, that is, it is necessary to activate in people the desire to adopt, especially black children/adolescents who fit the late adoption profile. This inflammation of the desire to adopt must guarantee support and social legitimacy, in order to be able to face traditional institutions.

In this organizational gift, adoption practices must be motivated by generosity, solidarity and altruism, converting the vision of an abandoned child (sad) to a happy child (expects/with the family), so that this social action is valued and camouflaged the “non-appearance” of the





child's past. A fact noted in the research is that the receivers have always shown care when expressing the child's/adolescent's acquisitive desire, always seeking to romanticize the adoption.

The State, in the field of adoption, has the legitimate power to be the arbiter between donors and receivers, acting through social laws instituted in order to protect order, justice and good relations. In this context, there are several clashes over legal adoption and Brazilian-style adoption (adoption without the presence of the State), if on the one hand we have the positive point of being protected and protected by the State when we make the legal adoption and the negative is the delay and bureaucracy, on the other hand, Brazilian-style adoption is seen as something vulnerable, but less bureaucratic and even faster. The footprint of adoption is having children at any cost, "whether legal or illegal I want my children". In this context, we find individuals who are subject to taking the long way (legal) and those who seek a shortcut (illegal).

Anyway, we understand that the reality is that these children/adolescents are the biggest victims of society, the phrase seems cliché, but it is true. They are taken/delivered by their biological families to the State, as it has the power to judge and moralize those who cannot "take care of their children", as well as those who can or cannot adopt. In addition, the veiled prejudice makes the predilection for younger and white-skinned children have greater opportunities to be adopted. While black and "older" children are in the edge of the validity of cuteness (when they turn 18), many end up no longer being served by the Childhood and Youth Court, becoming the responsibility of the Criminal Court, since almost 70% of the prison population in Brazil is black, with weakened or non-existent family ties.

The State, through the judiciary, decides the situations of child abandonment through moral principles in the best interest of the child, as well as for everyone involved. However, to what extent would the decisions made, based on adoption laws, be fair and useful to all involved? Adoption was constituted as a state bureaucratic violence (FONSECA, 2002), in which social suffering and social inequality are weighed, as not everyone is always in the same position on the scale.

We understand that organizational gift permeates from adoption for work to adoption for love. We reflect that Brazil's social history comes from contexts based on the exploitation of slavery and the abandonment of children who provided labor, favoring the emergence of a children's market as discussed by Zelizer (1985). Individuals used religious justification, based on charity, to make this social practice legitimate. With the greater participation of the State in adoption practices and with the advancement of social legislation, this type of practice started



to be contested and seen as inappropriate (child exploitation). What we perceive is that, currently, there is an adoption market based on exchanges that are measured by altruistic attitudes, in which children are gifts, being practices of priceless goods. In this market, the State has become the legitimate body that has the role of intermediating social exchange relations between donors and receivers. Finally, it is up to us to think to what extent the State treats adoption practices as a family problem (without children) or a child problem (without families)?

## REFERECES

BRASIL. **Estatuto da Criança e do Adolescente**. Lei 8.069/90, de 13 de julho de 1990. Atualizado em 2017 pela Lei 13.509/2017.

CONSELHO NACIONAL DE JUSTIÇA - CNJ. **Diagnostico sobre o sistema nacional de adoção e acolhimento 2020**. Available: [https://www.cnj.jus.br/wp-content/uploads/2020/05/relat\\_diagnosticoSNA2020\\_25052020.pdf](https://www.cnj.jus.br/wp-content/uploads/2020/05/relat_diagnosticoSNA2020_25052020.pdf). Access: 20 Jan. 2021.

DA ROS, L. O custo da Justiça no Brasil: uma análise comparativa exploratória. Newsletter. **Observatório de elites políticas e sociais do Brasil**. NUSP/UFPR. v. 2, p. 1-15, 2015.

DIDIER JUNIOR, F. Notas sobre a garantia constitucional do acesso à justiça: o princípio do direito de ação ou da inafastabilidade do Poder Judiciário. **Revista de Processo**. Ano 27. n.108, 2002.

DINIZ, M. H. **Curso de Direito Civil: Direito de Família**. 26º edição. São Paulo: Saraiva, 2011.

FONSECA, C. Mãe é uma só? Reflexões em torno de alguns casos brasileiros. **Psicologia USP**, São Paulo, v. 13, n.2, p. 49-68, 2002.

FONSECA, C. **Caminhos da adoção**. 3º Ed. São Paulo: Cortez, 2006.

GOMES, O. **Direito de Família**. 14. ed. Rio de Janeiro: Forense, 2001.

MARCILIO, M. L. **História Social da Criança Abandonada**. São Paulo: Hucitec, 1998.

MARCILIO, M. L. A roda dos expostos e a criança abandonada na história do Brasil: 1726-1950. *In*: FREITAS, Marcos Cesar (Org.). **História Social da infância no Brasil**. 9 ed. São Paulo: Cortez, 2016.

MORAES, R. Análise de conteúdo. **Revista Educação**, Porto Alegre, v. 22, n. 37, p. 7-32, 1999.

ROUX, S. La circulation internationale des enfants. *In*: STEINER, P.; TRESPEUCH, M.(dir.). **Marchés contestés**. Quand le marché rencontre la morale. Presses universitaires du Midi, Toulouse, p. 344, 2015.



STEINER, P. A doação de órgãos: a lei, o mercado e as famílias. **Tempo Social**, vol. 16, n. 2, p. 101-128, 2004. Available: <https://www.revistas.usp.br/ts/issue/view/991>. Access: 27 July 2022.

STEINER, P. **La transplantation d'organes**: un commerce nouveau entre les êtres humains. Paris, Gallimard, 2010.

STEINER, P. Mercado, transação e laços sociais: a abordagem da Sociologia Econômica. **Revista de Sociologia e Política** [enlinea]. 20(42), 111-120. 2012. ISSN: 0104-4478. Available: <https://www.redalyc.org/articulo.oa?id=23823143009>

STEINER, P. **The Organizational Gift and Sociological Approaches to Exchange**. Oxford Scholarship Online, 2014. Available: <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198748465.001.0001/acprof-9780198748465-chapter-12>. Access: 27 July 2022.

STEINER, P. Les organes humaines: du bannissement do marché au don contesté. *In*: STEINER, P.; TRESPEUCH, M. (dir.). **Marchés contestés**: quand le marché reencontre la morale. Toulouse: Presses universitaires du Mirail, 2015.

STEINER, P. A dádiva organizacional: Dádiva à distância e circuitos de troca. **Tempo Social**, vol. 29, n. 1, p. 23-43, 2017. Available: <https://www.revistas.usp.br/ts/issue/view/8328>. Access: 27 July 2022.

ZELIZER, V. **Pricing the priceless child**: the changing social value of children. New York: Basic Books, 1985.

ZELIZER, V. Repenser le marché. **Actes de la recherche em sciences sociales**, Paris, n. 94, p. 3- 26, 1992.

ZELIZER, V. Las relaciones de cuidados. *In*: ZELIZER, Viviana. **La negociación de la intimidad**. Buenos Aires: Fondo de Cultura Económica, p.179-230, 2009.

ZELIZER, V. **A negociação da intimidade**. Trad. Daniela Barbosa Henriques. Petrópolis, RJ: Vozes, 2011. (Coleção Sociologia).



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