Daniel Steinbock – Legal Framework affecting UAMs in Developing Countries

Noted 5 changes in this area

1. There is greater awareness of the issue in the world
2. Growth of body of law protecting Unaccompanied Alien Minors (UAM)
3. There is an increased globalization of the problem
4. More attention to Individualized Movement vs. earlier focus on large-scale events
5. Greater breakdown of the family has contributed to UAM issues

2 questions we must ask

1. Who is responsible (jurisdiction)?
2. What law applies?

A. Responsibility/Jurisdiction
   - The state acts according to its own laws, but influenced by international norms
   - International Organizations (IO) & NGOs
     - Only have such jurisdiction as the host state allows
     - Role could be significant where state is unwilling or unable to take full responsibility
     - IOs & NGOs are more likely to look directly to international norms when forming policy with reference to UAMs.
     - enhanced by guidelines created by international organizations, child welfare organizations

B. What law applies?
   - 2 separate bodies of domestic law (can be in tension)
     2. Immigration, Asylum & Refugee Law
   - International Law
     - Convention on Rights of Child
       “Best Interests of Child” Art. 3 of CRC — provides the central principle, but CRC does not answer some difficult questions such as the one presented in case study 6, an conflict between two values reflected in Art. 20 of CRC: continuity of upbringing vs. continuity of cultural background.

Child’s displaced status may stand in way of “best interests” determination

E.g., it may be in a child’s best interest to remain in a country where it is not possible for the child to get legal status, or for other family members to gain admission.

   • Options for placement are limited by resources. See case study 2
Conclusion: The law has evolved in this area, but it still does not answer certain questions. Human beings must wisely use discretion as we interpret the laws.

**Mary Crock - Framework affecting UAMs in Developed Countries**

2 general considerations

1. Developed countries drafted many of the laws in this area
2. Developed countries disproportionately influence the formation of international law by their actions

1. There’s a phenomenon in developed countries where UAMs arrive as “irregular” minors. They are placed into categories such as, trafficked persons, asylum seekers, etc.
2. Observation of the way we look at UAMs – there’s a tendency to pathologize UAMs, because traveling alone is seen as outside the norm. Sometimes this goes further, toward viewing UAMs as dangerous, not having morals or guidance, etc.

Central Problem – we tend to focus on the negative image of UAMs rather than on the child him/herself, placing the best interest principle at the center. This is manifest in international law and the dissonance between the international principles and the way nations implement these principles.

Conclusion: The problem is not the law, which is reasonably well-developed, but how we apply it. Prof. Crock suggests that there should be a UN body that deals solely with migrant children. She has provided a table summarizing 126 international instruments dating from the 1926 Slavery Convention, that relate to treatment of minors.

**Anny Mary Coburn – Overview of 2 Hague Conventions affecting UAMs**

1. 1993 Hague Convention on Inter-Country Adoption
   - Widely adopted. The U.S. is a party
   - Promotes the best interest principle
   - Guidelines clarify that the Convention does apply to UAMs
   - Emphasizes efforts to trace families first, before looking to adoption, but guidelines are meant to avoid the child’s languishing in temporary arrangements.
   - 2008 Guide to Good Practices
2. 1996 Child Protection Convention
   - 15 countries are parties to this convention (the U.S. is not one of them), but EU countries are expected to join soon.
   - Addresses issue of representation for children
   - Protection of child property
   - Determines jurisdiction for deciding best interests and for implementing determination
   - Provides for cooperation in locating children, communication with families, repatriating where appropriate.