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Book Review: Beyond the Best Interests of the Child

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BOOK REVIEW

BEYOND THE BEST INTERESTS OF THE CHILD. By JOSEPH GOLDSTEIN, ANNA FREUD AND ALBERT J. SOLNIT. New York: The Free Press, a division of MacMillan Publishing Co., Inc. 1973. Pp. xiv. 161. \$7.95 (\$1.95 paper).

America has been described as a child-centered society, where children's whims are catered to, where the ideal school is one in which the child enjoys being, rather than one in which learning is paramount, where children select not only toys for themselves, but influence decisions on family diet and even the make of automobile purchased. Since children do have a special role in our society, we have long had special provisions for the handling of child-criminals and misfits. Some have felt these provisions have not actually been beneficial to children, but it is the intent to benefit which is the reason given for establishing a separate system.¹

For over seventy-five years the citizens of the United States have supported a dual system of law and social support, one system operating for adults, the other for children. The juvenile court system is one aspect. Detention homes and reform schools for children, in contrast to jail and prison for adults, is another aspect. The orphanage, foster home, and child welfare agency, as opposed to the old folks home, nursing home, and welfare agency, is still another. The rationale for this dual system has not been based on economics or efficiency, but rather it has been based very idealistically on "the best interests of the child."² Underlying every decision, every expenditure of money, every building for children has been this idea that what was being done was in the best interest of children.

Beyond the Best Interests of the Child by Goldstein, Freud and Solnit is a short book which questions whether it is possible to achieve "the best interest of the child." The authors would substitute "the least detrimental alternative" as the standard to be achieved (p. 53). Attempting to determine "the best interests of the child" often causes the completely opposite result. Long evaluations, protracted legal process, and weighing pros and cons of contending factions, all in the name of determining what is best, often merely creates years of uncertainty and sometimes complete disruption of a settled and not too destructive situation.

The authors offer two guidelines for determining "the least detrimental alternative." First, the child's needs are paramount, and this includes psychological needs as well as physical needs. Second, there is a need for privacy, which means a minimum of government intrusion (p. 7). Few of us would argue with these guidelines. In fact, most of us believe that

¹ See *In re Gault*, 367 U.S. 1 (1967).

² This phrase remains embedded in the law. See, e.g., TEX. FAM. CODE ANN. § 15.01 (1974) (petition for termination of parent-child relationship may be granted if it "is in the best interest of the child"); *id.* § 16.08(a) (adoption shall be granted if it "is in the best interest of the child").

present child care institutions and laws are aimed at achieving what is implied by these guidelines. The revolutionary ideas proposed by the authors are contained in their definition of "needs" and the results which flow from that definition.

Based on Miss Freud's work in England with children who were separated from their parents during World War II, the authors contend that continuity of relationship is more important than biological relationship (p. 31). Following this idea to its logical conclusion, the first placement of a child should be its final placement. When a parent, for whatever reason, places a child in foster care for more than a short time, that placement would become permanent and the original biological tie would be of little relevance.³ This idea does not seem too radical when applied only to "unfit" parents, but the authors would apply this rule universally. It is their contention that on divorce, custody should be given permanently to one parent. That parent should have the sole right to determine all the conditions concerning the raising of the child, and the other parent would have no legally enforceable right of visitation. Visitation would thus be at the discretion of the custodial parent (pp. 37-39). Aside from the emotional distress which this rule might cause the non-custodial parent, the practical problem of child-support and whether it will be paid seems really to be the issue which would result from this rule. Child support payments are at best difficult to collect; how many parents would be willing to make payments for ten to fifteen years to a child they can never see? Furthermore, the payment or non-payment of child support would appear to be a kind of relationship to the child and would cause in itself an impact on the psychological tie between the custodial parent and the child. It may be that the ideal single permanent psychological tie may not be achievable because of the child's physical need to eat.

The difference between a child's sense of time and that of an adult is another aspect of the child's needs which must be considered. Obviously, one year to a two-year-old is half a lifetime. If the state were to delay the final disposition of a twenty-year old's sentence for ten years there would be no question that the twenty-year-old had been denied due process, ten years representing half of the twenty-year-old's life. Yet, society thinks nothing of imposing a six-month to two-year delay on a ruling for disposition of an infant aged a year at the start. The authors would remedy this by requiring decisionmakers to act with "all deliberate speed" (p. 42).

That courts can make decisions and even consider appeals quickly when it is believed to be necessary because of an emergency is well-known.⁴ The

³ Jewish parents in Holland during World War II left their children with non-Jewish compatriots. Upon return of the parents, there were many problems. There is an implication that it might have been better to have left the children with their foster parents (pp. 107, 108).

⁴ A good example is the speed with which the problem of prior restraint in relation to the press was handled in connection with the publication of "History of Decision Making Process on Vietnam Policy," commonly known as the Ellsberg Papers. Summaries of this text were first published in the N.Y. Times on June 12, 1971. The United States attempted to prevent any further publication of this material and court action was instituted on June 14, 1971. The final court decision was rendered on

number of such cases is small, and this fact may be part of the definition of emergency. However, problems relating to children are voluminous, and the authors' suggestion that we model child placement procedures on film censorship actions (p. 44) is not persuasive. Yet the authors do point up the need for change in this area very emphatically, and consideration should be given to the idea that due process as to time may vary with age.

The book is very short and each idea is presented in only a few pages. One idea which should be considered especially carefully by attorneys is that when the child's placement becomes the subject of dispute, the child should be recognized as an indispensable party and have an advocate of his own (p. 66). The idea of representation for the child has gained wide acceptance, and some would include representation in undisputed placements.⁵ However, it is the description of the representative which is challenging. The advocate (attorney?) must be "knowledgeable about children and their development" (p. 67). Does this presage a new speciality, the child-psychiatrist-attorney?

This book should be read by everyone in the child-care field—judges, attorneys, legislators, and social workers. It should be approached with low expectations, however, since it is more a tract than a treatise. It is short, psychoanalytically oriented, and dogmatic. There are no emotional passages; it is crisp and objective. Answers, but not solutions to problems, are offered. The answers need to be viewed critically, but not with hostility. The viewpoint expressed is different from usual family law books, and this is what makes the book important. Texans with their new Family Code⁶ may become complacent. Reading Goldstein-Freud-Solnit would prevent that. Discussion of this book in relation to the new Family Code should keep attorneys and social workers thinking and arguing long after the new Code procedures have become commonplace.

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June 30, 1971, by the United States Supreme Court. *New York Times Co. v. United States*, 403 U.S. 713 (1971). The time required from the original publication through three courts until final disposition was only a little more than two weeks.

⁵ See, e.g., TEX. FAM. CODE ANN. § 11.10 (1974). Whenever a suit to terminate the parent-child relationship is brought, this section requires the appointment of a guardian *ad litem* to represent the interests of the child. This is true even when the parents have requested the termination.

⁶ The Texas Family Code was completed by the state legislature in 1973, and includes coverage of husband-wife relations (title 1), parent and child relationship (title 2), and delinquent children and children in need of supervision (title 3). TEX. FAM. CODE ANN. (1974).

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