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Review of Children for Adoption, by Pearl Buck

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CHILDREN FOR ADOPTION. By *Pearl Buck*. New York: Random House. 1964. Pp. 243. \$4.95.

In 1964 an estimated forty thousand American children, seven thousand in New York City alone, were reported to be living without the benefit of a permanent family home and the warmth of a lasting parent-child relationship. Why, asks Pearl Buck, should this phenomenon exist? The answer is not simple, and the problems raised by the question form the basis for her book, *Children for Adoption*. In this review I shall focus on two major problems developed by Miss Buck: what gives rise to the unusually large number of unwanted children in the United States, and who should be authorized to decide custodial questions about these children, in what form, and using what criteria?¹

The social stigma that attaches to the illegitimate child, as well as his legal status, has undergone substantial changes since the early period of the common law, when his legal rights to financial support and inheritance were severely limited. Today we are less rigid in terms of an illegitimate child's legal status. Support responsibilities rest on the mother; after the establishment of paternity, the father must contribute. The illegitimate child has rights of inheritance, most notably through his mother.² Certain states have tried to hide illegitimate births through legislative devices. Arizona, for example, has declared all children legitimate and entitled to support, education, and inheritance from their natural parents;³ Oregon makes no distinction between legitimate and illegitimate births insofar as a child's legal status is concerned.⁴

But are these legal measures sufficient to justify the judicial statement that, insofar as the illegitimate child is concerned, we are witnessing a "compassionate sense of social justice"?⁵ Miss Buck would think not. Modern legislation may change the illegitimate child's status, but that alone is not enough. How can the illegitimate child's

1. The inquiry will be restricted to Miss Buck's discussions of problems of domestic adoptions. With regard to foreign adoptions, Miss Buck suggests that the United States Government liberalize its immigration regulations to allow a free movement of children born and abandoned abroad by an American parent. See pp. 29-30. Her recommendation opens up a number of questions. Perhaps the most important concerns regulation. For example, should the movement of children from foreign countries to the United States be a matter for private arrangement or for governmental involvement? If governmental involvement is desired, which governmental unit should regulate, the federal government, state government, or an international organization? Further, which agency within the governmental unit should be authorized to act? Once children arrive in this country, the same questions about custodial dispositions raised in this review would be relevant.

2. See Note, *The Rights of Illegitimates Under Federal Statutes*, 76 HARV. L. REV. 337-38 (1962).

3. ARIZ. REV. STAT. ANN. § 14-206 (1956).

4. ORE. REV. STAT. § 109.060 (1959).

5. *Zepeda v. Zepeda*, 41 Ill. App. 2d 240, 256, 190 N.E.2d 849, 856 (1963).

condition be improved? Miss Buck rejects what she calls the "Asiatic" practice of restricting contact between boys and girls so that sexual activities are prevented, thus limiting the opportunity for an illegitimate birth. Nor does she condone abortion. The Swedish solution of recognizing the unwed mother and her child as "respectable citizens," even allowing the mother to be called "Mrs.," is unacceptable, for it would be a return to a matriarchal society "where the man is not essential except as a stud animal."⁶ This approach, Miss Buck feels, is a threat to her conception of roles in our family unit.

The answer lies in education. It is through enlightenment by way of public education on the use of birth control measures and sex education generally that the likelihood of an unwanted pregnancy may be lessened. Education may also result in a greater degree of social tolerance for illegitimate children.

Miss Buck illustrates the manner in which the sexual revolution—our "casual attitude toward sex"⁷—may be contributing to the births of unwanted children. Miss Buck feels that the atmosphere in which we live is not conducive to what should be the ultimate goal of sexual activity: an expression of affection. Rather, it appears to be a neurotic expression of emotional conflict. The adolescent subculture is particularly caught in the revolution.⁸ Already struggling with psychosexual conflict,⁹ both adolescent boys and girls are forced by peer competition, parental pressures, and the mass media to assume the physical attributes of an adult through the use of cosmetics, fashions, and so on. They are encouraged to date early and perhaps engage in sexual activities for which they are intellectually and emotionally unprepared. This puts them inevitably under emotional strain, for our ambivalent culture also condemns the very activities it encourages.¹⁰

While the rate of reported out-of-wedlock pregnancies for adolescents is not high in relation to other age groups, it is nonetheless a matter of concern. In 1963, for example, the annual illegitimacy rate was about fifteen per thousand among teenagers and about forty per thousand among unmarried women of twenty to thirty years.¹¹

Miss Buck believes that the responsibility for helping the ille-

6. P. 215.

7. P. 24.

8. See generally GOODMAN, *GROWING UP ABSURD* (1960).

9. See JOSSELYN, *THE ADOLESCENT AND HIS WORLD* (1960).

10. See Slovenko, *A Panoramic View: Sexual Behavior and the Law*, in *SEXUAL BEHAVIOR AND THE LAW* 59-68 (Slovenko ed. 1965).

11. Adams & Gallagher, *Some Facts and Observations About Illegitimacy*, 10 *CHILDREN* 43, 44 (1963). These statistics do not account for the number of pregnancies that did not result in births. For a discussion of the number of abortions in adolescent pregnancies, see GEBHARD, POMEROY, MARTIN & CHRISTENSON, *PREGNANCY, BIRTH AND ABORTION* 58 (1958).

gitimate child and his unmarried parents lies in the local communities. Others have made the same suggestion and have spelled out detailed proposals.¹² For example, local communities have a role in preventing illegitimacy. While Miss Buck has not discussed a number of socio-cultural and socio-economic class factors associated with illegitimacy, certainly deprivations of wealth, education, health, morals, and respect may be worthy of community examination for purposes of establishing programs for prevention. Local communities also have a part in providing adequate services, generally in the form of casework, for unmarried parents, and for the illegitimate child, in the form of placement opportunities.

Miss Buck defines a "neglected child" as one that was unwanted, either at birth or later.¹³ Perhaps her description is an overgeneralization; parents who neglect their children in the manner described by Miss Buck may not have such clearly defined feelings, either positively or negatively.¹⁴ Furthermore, some married parents who abandon or voluntarily give up their children for adoption, people about whom Miss Buck seems to have strong negative feelings, may act, not out of hatred, but out of emotional instability and, in fact, may be performing a responsible act.¹⁵

There seems to be little question that a parent whose behavior results in his inability to maintain any kind of meaningful relationship with his child may be subject to a judicial determination of his fitness for parenthood. In this regard I agree with Miss Buck's approving comments about the New York provision for providing termination of parental rights.¹⁶ Under the state's "permanently neglected child" statute, the Children's Court is given jurisdiction to terminate parental rights in a proceeding brought by an agency having the child in its care. To be successful in its petition for termination, the agency must demonstrate that the child's parents have failed substantially and continuously for a year or more to maintain contact with the child "although physically and financially able to do so" and "notwithstanding the diligent efforts of such agency to encourage and strengthen the parental relationship."¹⁷ This provision was meant to provide child-welfare agencies with a mechanism for timely action. It was enacted to cover situations where a child in foster care, without benefit of a continuous relationship with his

12. See generally *Symposium on Unmarried Parents*, 10 CHILDREN 43 (1963).

13. P. 49.

14. See generally YOUNG, WEDNESDAY'S CHILDREN (1964); Katz, Book Review, 1965 DUKE L.J. 208, 212 n.15.

15. MacKay, *Today's Controversial Clients: Married Parents Who Place Legitimate Children for Adoption*, in READINGS IN ADOPTION 93 (Smith ed. 1963).

16. Pp. 50-51.

17. N.Y. FAMILY CT. ACT § 611 (1963).

biological parents, was provided an opportunity for early placement.¹⁸

Miss Buck's fear for the "permanently neglected child" is that unless his legal status is altered so that he is available for adoption, he might lose the opportunity for placement with a family and ultimately may be confined in an institution. Others share Miss Buck's view on institutionalization of infants: it should be avoided at almost any cost.¹⁹ In terms of early childhood development, for example, a recent Yale study illustrates that even in a modern institution an infant may be retarded in his physical and psychological development to a striking degree, as compared with an infant reared in a family environment.²⁰ At the end of the first year of life, the institutionalized infants who were studied at Yale and compared with infants in families showed impairment of relationships with adults, a retardation of speech and other forms of communication, an inability to relate to objects, a delay in some aspects of their motor behavior, a lack of some awareness of themselves as being distinct from others, and other disabilities.²¹

These effects of institutionalization become particularly relevant when a decision must be reached on the custodial disposition of a child. For instance, when a child-welfare agency petitions a court to terminate a parent's legal rights to and responsibilities for his child, it would seem that a court would consider that an alternative to the biological parent may be, among other placements, an institution. While courts may examine the effects of parental deprivations on the child in proceedings for the involuntary termination of parental rights, there is little evidence that they examine the full range of alternative placements. If termination proceedings and physical removal of the child from his biological parents are to be in the best interests of the child, it would seem that the place to which the child is removed must have a "better" impact on him than the place from which he is taken. Therefore a comparison between the two settings should be made. This raises, of course, the serious question of insufficiently articulated standards, mostly based on more or less unconscious value judgments.

Some authorities have argued that "factors relating to termination" are different from "factors relevant to adoption," and that to

18. Katz, *Community Decision-Makers and the Promotion of Values in the Adoption of Children*, 38 SOCIAL SERVICE REV. 26, 29 (1964).

19. For a review of studies on the effects of institutionalization, see Yarrow, *Separation From Parents During Early Childhood*, in 1 REVIEW OF CHILD DEVELOPMENT RESEARCH 89 (Hoffman & Hoffman eds. 1964). But institutionalization may provide the best solution for children with special kinds of emotional disturbances. See STONE & CHURCH, CHILDHOOD AND ADOLESCENCE 379 (1957).

20. PROVENCE & LIPTON, INFANTS IN INSTITUTIONS (1962).

21. *Id.* at 159-66.

avoid confusion there should be separate proceedings to "terminate" and to adopt.²² The comment to section 5 of the Uniform Adoption Act incorporates this view:

The issues to be tried in a controversy over the termination of parental rights, i.e., the degree of unfitness of a parent, are quite different than the inquiry properly before the adoption court. The two should not be mixed. The trial of controversial issues over parental rights should not cast an influence in the adoption proceedings where the sole inquiry should be the future best interest of the child.²³

By distinguishing between "termination" and adoption proceedings on the basis that the best interest of the child is the only goal in adoption proceedings, the comment suggests that the main inquiry in "termination" proceedings is not necessarily "the future best interests of the child." But this view is not the prevailing one. The best interest of the child is generally accepted as the goal of "termination" proceedings. For example, *The U.S. Children's Bureau Legislative Guide for the Termination of Parental Rights and Responsibilities* states that the goal of "termination" proceedings is not to punish parents, but rather to give the child the opportunity to develop in a stronger family setting than the one in which he was born.²⁴ According to the *Guide's* position, it would seem that "the future best interests of the child" would demand a comparison between claimants for custody, not a restricted investigation into the "degree of unfitness of a parent." Separate "termination" and adoption proceedings make this comparison unduly difficult.

To choose to remove a child from the custody of his biological parents as well as to terminate their legal rights and responsibilities as to the child without fully investigating the consequences of the act seems to be a serious flaw in the proceedings. An essential part of "termination" proceedings should be a comparison of alternative dispositions. Should the comparison not be made, it would be possible that a child could be removed from his biological parent only to be placed in a situation or a series of situations materially worse, insofar as the physical or psychological effect on the child is concerned, than his biological parents' home.

The controversy over who should be authorized to place children for adoption, private individuals or licensed child-welfare agencies, and what criteria should be used for such placement, is

22. Note, 13 Wyo. L.J. 185 (1959).

23. Cited in Merrill & Merrill, *Toward Uniformity in Adoption Law*, 40 IOWA L. REV. 299, 330-31 (1955).

24. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, LEGISLATIVE GUIDES FOR THE TERMINATION OF PARENTAL RIGHTS AND RESPONSIBILITIES AND THE ADOPTION OF CHILDREN 9 (1961).

presented by Miss Buck both fully and candidly. It is in these discussions that *Children for Adoption* reaches its highest level.

There is widespread agreement that some safeguards should be afforded children to prevent their being placed in a dysfunctional family. Some argue that private placements—those arranged independently of social service agency investigation—foster black-market adoptions and fail to provide maximum protection for the biological parent, the adoptive parent, and the child.²⁵ It has been said that there are too many “risks” in independent adoptions.

In behalf of preserving the right of individuals to arrange privately for the placement of their children for adoption, it has been suggested that exclusive agency control will result in unplaced children. Because of the large number of children available for adoption and the limited number of persons who can meet agency qualifications, children might be kept in temporary placements for extended periods awaiting qualified parents. One negative criticism Miss Buck voices of agency practices, besides being ritualistic—overly concerned with strict compliance with rules and regulations—is that social workers move too slowly in this area; the result is countless children remaining in orphanages and foster homes.

The question sometimes lost sight of in the controversy over the responsibility for child placement is: what effect will a placement have *on the child*? Will a child more likely be placed in a well-functioning family if an agency participates in the adoption or if the arrangement is made privately? To date there is no convincing evidence to answer this question. There are too many variables. The findings of a recent Florida study undertaken ten years after adoption decrees were entered for 477 independent adoptions are revealing in this regard.²⁶ Using data from a structured home interview with the mother, a review of the original record of the adoption investigation (conducted by the state welfare department by court authority upon or prior to the filing of an adoption petition), records of psychological, achievement, and IQ tests, detailed tests of the adopted child and of a control group of nonadopted children from the same grade and socio-economic level, and a teacher's estimate of the adopted child's adjustment, it was found that the placements of two-thirds of the children were considered reasonably satisfactory. Between one-fourth and one-fifth were considered unsatisfactory.²⁷

As sophisticated and informative as the Florida study is, one can still raise questions about the criteria used to determine a child's satisfactory adjustment in school and in his family and the standards

25. Comment, *Moppets on the Market: The Problem of Unregulated Adoption*, 59 YALE L.J. 715, 729-30 (1950).

26. WITMER, HERZOG, WEINSTEIN & SULLIVAN, INDEPENDENT ADOPTIONS—A FOLLOW-UP STUDY (1963).

27. *Id.* at 341.

used to determine ratings of the child's home.²⁸ Criteria and standards may be highly subjective and may be based on certain hidden value preferences and cultural predispositions.

The same criticism may be raised about agencies' standards and criteria for choosing adoptive parents. In Miss Buck's interviews with representatives of Catholic, Jewish, and Protestant agencies, some of these standards and criteria were articulated. Agency practices included, among others: matching religion of the child with that of both adoptive parents, requiring that a couple be married for three or five years before applying for a child, limiting the number of children a couple could adopt, preferring not to place a child in a home where there was a natural child, requiring a wife to be under forty or the husband under forty-five, and matching physical characteristics of the child with mixed ethnic background to those of the adoptive parents.

It is clear that something more is involved in child placement than what was stated by an agency representative as a goal: "finding a family for a child."²⁹ When an agency places a child with a family or a court makes a custodial disposition, certain values are promoted. Elsewhere I have pointed out that what seems desirable in this field is a clarification of goals.³⁰ Once attained, relevant procedures to implement these goals may be worked out.

To Miss Buck the goal of adoption is the protection of children through placement in well-functioning families. She believes that children forced to live in institutions may be permanently damaged and even lost to society. Unless children are able to participate in a family, they may lose generational ties. Miss Buck feels that "the family, natural or adoptive, is the living link between those past and future,"³¹ and that "the family is the continuity of mankind."³²

Miss Buck writes of "love" as the basic ingredient of parenthood, and as essential to our national life and culture. Anna Freud has made a similar suggestion—that a child must find love, trust, and confidence in adults to develop a healthy personality.³³ In addition, a child needs parental stimulation and the security of a continuous relationship with an adult.³⁴

28. E.g., "While a few of the homes studied showed extreme examples of characteristics that *almost everyone would view as likely to harm a child*, for the most part the range from poor to excellent begins well above the very lowest level of homes for children." *Id.* at 339. (Emphasis added.) This statement seems to presuppose a hidden standard as to what kind of homes are poor, good, or excellent.

29. P. 107.

30. Katz, Book Review, 78 HARV. L. REV. 498, 501-02 (1964).

31. P. 132.

32. P. 133.

33. See the interviews with Dr. Anna Freud in Comment, *Alternatives to "Parental Right" in Child Custody Disputes Involving Third Parties*, 73 YALE L.J. 151 (1963).

34. Freud, *Comment on Cindy Case*, in GOLDSTEIN & KATZ, *THE FAMILY AND THE LAW* 1051, 1053 (1965).

Whatever the goals of child placement, a parent's ability to give and receive love is crucial. We say that we expect children to be physically and emotionally secure; to become responsible citizens in their community and to become economically independent; to acquire an education and develop skills; to respect people of different races, religions, and national, social, and economic backgrounds; to become socially responsible and honorable, and to have a sense of family loyalty. There is evidence that parental affection influences this development.³⁵ In sum, our notion of a placement "in the future best interests of the child" should result in a constellation of social values, the sharing of which is desirable for a child's adjustment in society and essential to a well-functioning family.

Throughout *Children for Adoption*, one gets the impression that Miss Buck is incensed at what is happening to children who are helpless and voiceless in planning for their own future. Essentially, she asks us to think about the idea that perhaps their lives are being manipulated by those with power to arrange placements and decide custody. Miss Buck has provided us with a guide to making these decisions. To her the question from *II Kings*, "Is it well with the child?" should be answered with another, "Is there love for the child?" Yet we do face a formidable task indeed—balancing the demands for love and affection with the detachment that is probably inevitable if orderly proceedings involving child custody are to be maintained.

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PSYCHIATRIC JUSTICE. By *Thomas Szasz, M.D.* Syracuse, New York: Macmillan Co. 1965. Pp. 283. \$6.95.

The dust jacket describes this publication as "the definitive indictment by the celebrated author of 'Law, Liberty and Psychiatry' " of an extraordinary and characteristic abuse of our time—the psychiatric denial of the right to trial. In the introduction, Dr. Szasz indicates that he is addressing himself to the issue of the ability to stand trial, a technical legal issue. Dr. Szasz does not discuss this topic meaningfully from either a legal or a psychiatric viewpoint. Instead, he addresses himself to basic philosophical questions concerning the right of experts to participate in the judicial determina-

35. See generally BERKOWITZ, *THE DEVELOPMENT OF MOTIVES AND VALUES IN THE CHILD* (1964).