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Review of Readings in Adoption, edited by I. Evelyn Smith

Sanford N. Katz

Boston College Law School, katzs@bc.edu

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nonlegalistic members of my family, male and female, and there has resulted an ignoble scramble to see who would get it next. I recommend it.

W. BARTON LEACH *

READINGS IN ADOPTION. Edited by I. Evelyn Smith.¹ New York: Philosophical Library. 1963. Pp. xii, 532. \$7.50.

Today, adoption of children is clearly recognized as part of the social process — a continuing flow of interaction among people — in which a child becomes a member of another family. The complexities of the adoption process have increased and societal involvement has become profound. From a simple, informal agreement transferring custody of a child from his biological parents to others, adoption has become a highly structured procedure in which a number of community institutions and community decision makers assume critical roles.

Readings in Adoption, a collection of articles selected from professional journals and edited by Miss I. Evelyn Smith, gives some indication of the complexities of the adoption process. The editor has grouped the essays under the following headings: "General Concepts and Basic Philosophy of Adoption," "Adoption Services as Related to Natural Parents," "Adoption Services as Related to the Child," "Adoption Services as Related to Adoptive Families," and "Contribution of Other Professions." A number of the essays are outdated, an important fact if statistics and trends are to be considered. For example, in recent years there has been a decrease in the ratio of qualified families to children legally available for adoption. Until a few years ago there had been ten or more families making application to adopt for every child legally available for adoption.² Recent reports indicate a marked drop in adoption applications and an increase in "adoptable" children, those children who are easily placed.³ These changes have had an important effect on the adoption services discussed in the book and necessitate a reevaluation of the views of the last decade, when almost all of the essays in the collection were written. Interestingly, it is the editor's own material that is the most current and provocative. In this review, I shall focus on two major problems: removal of children from their biological parents and placement of children with adoptive parents.

Miss Smith and other writers urge the early availability of children for adoption. This is the generally accepted view. They suggest that the earlier a child is removed from his biological family and placed with an adoptive one, the more likely it is that the child will be fully integrated

* Story Professor of Law, Harvard University.

¹ Consultant on Foster Care, Children's Bureau, United States Department of Health, Education, and Welfare.

² See Brown, *Adoption*, in SOCIAL WORK YEAR BOOK 85 (Kurtz ed. 1960).

³ See Letter From John Natteford, Adoptions Supervisor, Department of Social Welfare, Ventura, Cal., to *Child Welfare*, in *Child Welfare*, Nov. 1961, p. 30; Letter From Thomas J. S. Waxter, Director of the Maryland Department of Public Welfare, to *Child Welfare*, in *Child Welfare*, Sept. 1961, p. 29; Letter From Katherine B. Wheeler, Supervisor of Adoption, Iowa Children's Home Society, to *Child Welfare*, in 41 CHILD WELFARE 270 (1962).

into his new family (p. 173). Most applicants for children want young babies. An infant has been found to make an easier adjustment to a new environment and family than an older child, with the result that favorable family relationships are more likely to develop (pp. 189, 435). Furthermore, it appears that if an unwed mother has received counseling before the birth of the child and has made a decision to give up the child, the immediate removal of the child after birth may minimize the emotional damage to the mother (pp. 189-95).

Termination of the strong natural ties between children and parents is probably rarely accomplished completely, particularly in children who have seen and known their parents. It has been shown that children in this category are conscious of the origin of their birth and think, speak, ask and often fantasize about the identity or whereabouts of their biological parents (pp. 135-43, 144-54, 480-81). Courts may sever the legal implications of the biological parent-child relationship, but they cannot break the psychological ties. For this reason, "termination," a term used in legislation and by judges and frequently used in the *Readings*, is not an accurate description of what is occurring in the "termination proceedings." When a child is taken from his biological parents and adopted by another set, his family has been "reorganized."⁴

A major problem in the field of adoption is establishing the criteria for "terminating" the legal implications of the parent-child relationship during the child's infancy, thus making the child available for adoption. Traditionally, the emphasis has been on parental "unfitness" which, according to present-day doctrine, manifests itself in various ways: abandonment of parental responsibilities, drunkenness, commitment to a mental institution, imprisonment under certain circumstances, immorality, being adjudicated the "guilty" party in a divorce suit, and causing children to be neglected.⁵

Each of these examples of "unfitness" raises serious questions regarding its detrimental effects on the child — presumably the test to be applied — and its clarity as a useful standard. Illustrative of the latter point is "neglect."

There has been a great deal of concern lately whether legal definitions of neglect are broad enough to include both the physical and emotional aspects of the concept. Presumably the distinction is valuable in determining the proper disposition of a "neglected" child. For example, Miss Smith states that "in the past emphasis was on physical neglect in deciding that children needed to be removed from their families" (p. 5). However, she says that the current practice is to keep the physically neglected child in his home but to remove the emotionally neglected. The theory is that by giving the parents sufficient supportive help, "they can maintain their home without having their children suffer in their physical development. This enables the parents to continue providing

⁴ This analysis and terminology is developed in KATZ & GOLDSTEIN *THE FAMILY AND THE LAW* (presently at press).

⁵ See Katz, *Judicial and Statutory Trends in the Law of Adoption* · GEO. L.J. 64, 77-87 (1962); Comment 24 ROCKY MT. L. REV. 359, 362-63 (1952)

for their children's emotional needs so essential to the child's total well-being" (pp. 5-6).

There is a question whether this approach is not itself an over-reaction. Physical and emotional neglect are *not* mutually exclusive: they are intimately connected. Recent studies on child neglect point up the fact that a whole range of deprivations can flow from a single parental act.⁶ Young lists a series of cruel and abusive acts parents, in different social settings and with different behavior patterns, perform and shows how the effects of these acts are manifested by pathology in the child: clearly defined emotional problems, delinquency, and so forth. Riese's study perhaps more clearly illustrates the full impact of severe parental deprivations on a child's emotional, intellectual and moral development. It is much too general to write of "neglect" as Miss Smith does. The effects of any one kind are multiple; the abuses range in degree and kind; the settings in which the neglecting conduct occurs and the personalities of the erring parents vary. All these factors are important in determining the appropriate disposition of the child.

All the writers treat adoption as if it were a singularly unique disposition and thus inordinately restrict problems of child placement. No mention is made of the relevancy of their material to custody decrees in divorce and separation proceedings. The authors, like the courts, either assume or hope that the traditional categories of "adoption," "foster care," "institutionalization," and "protective services"⁷ are distinct. In fact they are not. They are all intended to make permanent structural changes in the child's original family. They all provide the child with a *new* family unit. Perhaps this is less obvious in protective services. However, if the services are successful, a change in parental behavior might provide the child and his parents with different attitudes toward each other. In this way it is likely that even though the persons are the same, their relationship is different.

Characteristics of the categories overlap. Similarities are more frequent than differences. Save for protective services, the dispositions mentioned above all involve the physical removal of a child from his biological parents and his placement with others. Even if not so designed (as in foster care or institutionalization), any of the placements may be permanent. In all of the dispositions, except institutionalization, it is not uncommon for the custodian (whether biological, foster or adoptive parent) or child to receive social or psychiatric services (pp. 59, 87, 95, 104, 155, 323, 332). In any of the dispositions a child might have some association with his biological parents or relatives. The relationship is obvious while a child is in the custody of his biological parents; it is

⁶ RIESE, *HEAL THE HURT CHILD* (1962); YOUNG, *WEDNESDAY'S CHILDREN* (1964).

⁷ Protective services are utilized when it is thought that the parents can be rehabilitated without removing their children from their custody. Social workers, under state authority, go directly to the homes of the neglecting parents in an effort to change attitudes and behavior "so that warmer, happier and more secure bonds are formed between the parents as individuals and their children, so that improvement is brought about in the physical and environmental side of their home life." De Francis, *Child Protective Services in the United States* 11 (1956).

encouraged when he is in foster care⁸ or institutionalized.⁹ The association may result in adoption because of the legal implications flowing from the adoptive status (*e.g.*, rights of inheritance available in some states), or perhaps because the identity of the biological parents is well known (*e.g.*, in relative adoptions). Finally, in each of the dispositions, whether imposed by law or contract, the custodian has a duty to feed, shelter, educate, supervise and provide medical care for his child. The traditional categories thus are not useful for purposes of determining custodial dispositions.

When faced with the problem of judicial disposition of a neglected child, the questions should *not* be: should the child be removed from his biological parents? should protective services be invoked? should the child be placed in foster care, institutionalized, or put up for adoption? The striking similarity in characteristics of the categories noted above illustrates the limitations of this line of questioning. The question should be: which, among given alternatives, is the best family unit (*regardless of the label attached*) for the child?

All the authors agree that adoption placements should be in "the best interests of the child." They labor under a variety of indices of what is and what is not "in the child's best interests." For example, one writer states that relevant factors for good adoptive placement include "the capacity of adoptive parents for giving love and receiving love, for exercising parental responsibility" (p. 29), but he excludes wealth and status. Another enumerates minimum standards for determining a custodian: "physical fitness, absence of gross mental disease, some measure of economic security, and an adequate social and community adjustment" (p. 78). She excludes as "grossly improper motives" those "connected with the inheritance of property or the fulfilling of the conditions of a will . . . [or] to patch up a crumbling marriage" (*ibid.*).

The question that must be asked is how do these indices relate to the best interests of the child. Why, for example, is giving love and receiving love relevant to the best interests of the child and wealth and status not, or why is the fact that the custodian has made "an adequate social and community adjustment" relevant and desire to have an heir not? It seems that the authors sidestep the crucial problem: defining "the best interests of the child." Unless the concept is sufficiently clarified, the indices have no point of reference.

One way of defining "the best interests of the child" is to approach it in two steps: (1) to spell out a comprehensive scheme, perhaps in terms of certain value categories (*e.g.*, well-being, affection, enlightenment, wealth, skill, respect, and power);¹⁰ (2) to indicate precisely how the goals in each value category can be implemented. For example, suppose under the value category "well-being" (defined as events concerning physical and emotional safety, health, and comfort), the goal is to pro-

⁸ See WEINSTEIN, *THE SELF-IMAGE OF THE FOSTER CHILD* 13, 14 (1960).

⁹ See FREUD & BURLINGHAM, *INFANTS WITHOUT FAMILIES* (1944).

¹⁰ See Lasswell & McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203, 236 (1943).

mote the healthy maturity of a child. Once that is articulated, the second step would be to determine what factors are relevant in reaching that goal. One might be, as suggested by Clothier, the importance of placement with two parental figures, male and female, rather than with a single custodian, so that the child will "attain . . . psychosexual maturity" (p. 79). Others might be the need for the custodian to provide stimulation and affection, or for maintaining a continuous relationship with an adult (p. 172), or, when in issue, for placing siblings together (p. 176). With this two-step analysis, it would be possible to descend from the glib abstraction of "the best interests of the child" to a more meaningful and workable concept. This analysis would better serve to aid predictability in child disposition cases than the almost *ad hoc* approach presently taken. My major criticism of Miss Smith's collection is that it does not reflect the broad conceptual analysis that seems needed.

Even discussions about the contribution of other professions seem limited. Surely the lawyer's role in the adoption process is broader than the formalistic conception social workers have of it (p. 393) — a conception that seems to have influenced the lawyer's own views. The lawyer's role must not be restricted to counseling clients about the legal aspects of adoption, encouraging them to utilize licensed child-placement agencies and "bring[ing] about hopefully an adoption decree which will withstand attack" (p. 467). This rigid view of the lawyer's function hopelessly cripples at the outset any attempt to view adoption problems contextually. The lawyer has a role to play for each of the many participants in the adoption process (*e.g.*, he may be counsel for the biological parents, child, adoptive couple, agency, or foster parents) and in various stages of that process.¹¹

It was Miss Smith's hope that her collection would be "helpful in providing a groundwork of knowledge on which to base future planning and policies" (p. xi). I think many of the selections fall short of this goal, particularly because they lack the comprehensive analysis basic to a broad conceptual framework. Miss Smith realizes that "it is impossible for any collection of articles at a given time to represent completely all the latest ideas on adoption" (p. xi). This, of course, is true. However, until the problems discussed in these essays are properly structured, we cannot expect any significant breakthrough in solving the problems in the judicial disposition of children.

SANFORD N. KATZ *

¹¹ See Katz, *Community Decision-Makers and the Promotion of Values in the Adoption of Children*, 38 *THE SOCIAL SERVICE REV.* 26, 30-35 (1964).

* Associate Professor of Law, The University of Florida.