

PSYCHOLOGICAL DIMENSIONS IN CHILD PLACEMENT CONFLICTS

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In order to set the stage, let me start with a quote from Sigmund Freud, since both *Beyond the Best Interests of the Child*¹ and *Before the Best Interests of the Child*² represent an effort to bring together the best of psychoanalytic thinking with the best of legal thinking. In his paper on anxiety, Freud states:

The biological factor is the long period of time during which the young of the human species is in a condition of helplessness and dependence. Its intra-uterine existence seems to be short in comparison with most animals and it is sent into the world in a less finished state. As a result, the influence of the real external world upon it is intensified and an early differentiation between the ego and the id is promoted. Moreover, the dangers of the external world have a greater importance for it, so that the value of the object which can alone protect it against them and take the place of its former intra-uterine life is enormously enhanced. The biological factor, then, establishes the earliest situations of danger and creates the need to be loved which will accompany the child through the rest of its life.³

The developing child's needs reflect the characteristics of her immaturity and forecast the next steps in her development. Conversely, in parenting, an adult taps her inner yearning for historic continuity and for closeness with the child. These yearnings lead to self-fulfillment and confidence as a parent if there is mutual satisfaction for child and parent as a result of the day-to-day, hour-to-hour care of the infant and young child. In this way adults become bonded to their children, who in turn develop firm primary attachments to their parents. These primary mutual relationships unfold as the parents' empathic responses become refined and adjust to the maturing, developing baby and as the baby becomes able to cling to and hold on to the

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1. J. Goldstein, A. Freud & A. Solnit, *Beyond the Best Interests of the Child* (1973) [hereinafter *Beyond the Best Interests*].

2. J. Goldstein, A. Freud & A. Solnit, *Before the Best Interests of the Child* (1979) [hereinafter *Before the Best Interests*].

3. S. Freud, *Inhibitions, Symptoms and Anxiety*, 80-81 (standard ed. 1926, A. Strachey trans. 1959).

parent, at first physically, and then psychologically. The baby moves from need-satisfying responses to the capacity for what we call object constancy, that is, the ability to keep a recollection of the parent or parent's psychological presence available even in the absence of that parent or during the time that the parent is being frustrating or in some way disappointing. Self-fulfillment and a sense of competence are achieved in parenthood through launching a child into progressive development, a development that enables the child to utilize parental nurture, protection and guidance.

Developmental needs of children can be illuminated in terms of the nurturing care children receive from their parents and in terms of what we refer to as the parents' advocacy functions. There is an overlap in these functions. By nurture I refer to the ways in which a parent provides physical and psychological care to meet the bodily and emotional needs of the child to be fed, held, stimulated, gratified, bathed, soothed, and all those functions that lead to intimate parent-child interaction. By advocacy I refer to the ways in which a parent protects the child from dangers and undesirable influences in her social environment, buffers her from demands and threats in that environment, and is the child's protector, representative, and guide in her family, neighborhood, and wider community. In that sense the parent becomes both the child's lawgiver and her protector or buffer from the law. This distinction is based on the assumption that the closeness of parent-child interaction is enhanced when it is accepted in custom and in law that, until disqualified, the parent should be supported in both the nurturing and advocacy functions, and that the parent should be protected by law from intrusions into those functions.

So basic is the human infant's need for a parent that without the care of a nurturing, protective adult the human infant would die. Born helpless, the newborn is able to survive, and to unfold her own unique potential only because adults provide physical and emotional nurture, protection, and guidance. Adults are free to decide whether they want the baby. They are presumed by law to be prepared to become parents and to have the right to be parents. This right is not matched by the infant's needs. The newborn does not necessarily need the blood tie adult as parent, but does need an adult who wants her on a continuing permanent basis, an adult who will safeguard her from her own helplessness and from the risks and dangers in her environment. In other words, the young child needs autonomous parents who are in charge of their family. I quote from *Before the Best Interests of the Child*: "So long as the child is a part of a viable family, his own interests are merged with those of the other members."⁴ For the baby, "the family is the meeting ground for biological and social necessity."⁵

4. *Before the Best Interests*, supra note 2, at i.

5. Sennett, *Exploding the Nuclear Family, A Review of The Policing of Families* by Jacques Donzelot (R. Hurley trans. 1980), N.Y. Times, Feb. 24, 1980, § 7 (Book Review), at 3.

As parents, adults also seek self-fulfillment in caring for the dependent baby, initially investing more of themselves in the baby than she can return. Adults are able to defer their need for gratification and can accept the frustrations of caring for the baby because they anticipate future satisfactions. In the bonding they can feel connected with their own origins in deeply stirring and ultimately satisfying ways. In that sense parenthood is a cognitive and emotional review of or visit to one's own past, and it becomes a validation of the adult's sense of herself as a worthwhile, unique person. In turn this validation fosters the parent's confidence in her own integrity. Thus, in nurturing and representing the dependent child, parents fulfill vital needs of the child and at the same time have the opportunity to continue the unfolding of their own adult development.⁶

The mutuality of the parent-child relationship arises not so much from what is originally associated with the blood tie, but more from the hour-to-hour, day-to-day care of the child by the parents and the response of the child to the parents. These interactions establish resonating bonds and affectionate, empathic attachments that constitute the primary psychological relationship between parents and their children. These primary parent-child psychological relationships are the essential ingredients of the family, which is the continuing social unit for transmitting from generation to generation certain cultural attitudes, values, and customs. In fact, the family has been repeatedly rediscovered and reaffirmed because it serves basic human needs at the same time as it expresses fundamental human motivations that surface in a variety of ways in different cultures throughout the ages. Thus, the family is our basic social unit, and it is inextricably associated with survival for children and with the satisfaction of the adult's yearning for closeness and affirmation. In the functioning family, regardless of structure, we can see the expression of a universal search for an extension beyond the boundaries of one person's limitations.

As we pointed out in *Beyond the Best Interests of the Child*, judges and other representatives of the state "often fail to see . . . that the intricate and delicate character of the parent-child relationship places it beyond their constructive (though not beyond their destructive) reach."⁷ Also, as we indicated in *Before the Best Interests of the Child*, "the law does not have the capacity to supervise the fragile, complex interpersonal bonds between child and parent."⁸ The Commissioner of the Department of Children and Youth Services in Connecticut is legal guardian for more than 3,000 children and as generous and warmhearted a man as he is, he cannot possibly

6. This is not to say that one's adult development will be stymied or held up if one does not have a child; I am not suggesting that everyone has to have a child in order to become fully mature or to realize her potential.

7. *Beyond the Best Interests*, supra note 1, at 114.

8. *Before the Best Interests*, supra note 2, at 11-12.

supervise the care of each child. He can delegate his responsibilities, but the further away one gets from the original parent or the person who wants the child, the more difficult it is to supervise the care of the child. The social workers who represent the Commissioner may each have more than 25 children in foster care. The social worker is responsible for seeing that the children are well cared for by returning them to their original parents or by finding them an alternate permanent placement. This is a difficult, if not impossible, task:

As parens patriae, the state is too crude an instrument to become an adequate substitute for flesh and blood parents. The legal system has neither the resources nor the sensitivity to respond to a growing child's ever-changing needs and demands. It does not have the capacity to deal on an individual basis with the consequences of its decisions or to act with the deliberate speed that is required by the child's sense of time. Similarly, the child lacks the capacity to respond to the rulings of an impersonal court or social service agencies as he responds to the demands of personal parental figures.⁹

Without explicitly defining family, the law assumes that the family is an essential component of a good society and that, like the law, the family is one of the basic processes for the control of human behavior—part of what Heinz Hartmann termed, “each person's average expectable environment.”¹⁰ As Justice Harlan pointed out in the dissent to *Poe v. Ullman*¹¹ and later in *Griswold v. Connecticut*,¹² the family and its integrity have been understood by the courts to have constitutional protection. In a work session, Anna Freud observed that

it is a privilege of childhood to be sheltered from direct contact with the law and to have society and the state's demands and prohibitions filtered by way of the parents' personalities. The parents thus not only represent the law to the child but are also his representatives before the law.¹³

Indeed, a crucial index of the success or failure of parents in fulfilling their tasks, and in finding satisfaction in their own competence is reflected in how children, in internalizing the nurturing care and advocacy of their parents, develop self-control mechanisms “sufficient for each of the off-spring, on becoming an adult, to be a law unto himself, but not above the law.”¹⁴ This

9. *Id.* at 12.

10. H. Hartmann, *Ego Psychology and the Problem of Adaptation* 23 (1958).

11. 367 U.S. 497, 549-55 (1961).

12. 381 U.S. 479, 499-502 (1965).

13. A. Freud, *Personal Communication*.

14. Goldstein, *On Being Adult and Being an Adult in Secular Law*, 105 *Daedalus* 69-97 (1976).

concept again gives recognition to what has been a value preference as well as an application of psychoanalytic theory: that children have the best opportunity to realize their potential as members of a family in which the integrity and intimacy of the family is assured by parents functioning as relatively autonomous adults in charge of their own family. "[A]n integral part of the autonomy of parents is their authority and presumed capacity to determine whether and how to meet the legal care needs of their child—just as they do with regard to his medical care needs."¹⁵ This is based on the acknowledgement that parents or those they select are the exclusive representatives of their children before the law, even though the needs of the individual family members differ.

There are two clear value preferences implicit in these formulations. One is that the privacy of the family should be protected as much as possible, and intruded upon as little as possible. The other is that when parents are no longer able to serve, when the family is no longer functioning adequately, then the child's rights should be paramount. The best interests of the child should then prevail. As long as the family is functioning adequately there is no reason to invoke this doctrine. "So long as a child is a member of a functioning family, his paramount interest lies in the preservation of his family."¹⁶ There are three guiding principles in these formulations: the child's need for continuity; the child's sense of time as compared to an adult's sense of time; and, the limits of our knowledge and of our capacity to make long-term predictions. These principles logically lead to the necessity for understanding that in child placement conflicts, the best interests of the child are best understood as the least detrimental alternative. When a child has had her world shattered by the breakup of a family—where there is a divorce, where there is a problem of severe neglect, abuse, or abandonment, or where the child is simply not wanted—that child's best interests, given the need for continuity, the child's sense of time, and the limits of our ability to make long-term predictions, are more realistically expressed as the least harmful or least detrimental alternative.

Adults have a strong tendency in child placement cases to keep the child waiting for the ideal or best placement. Unwittingly, in this way they let time corrode and wear down the child's development as they try to do what they understand better, that is, to determine what is fair between warring adults. It is easier to sympathize with and identify with the adults who are in conflict. The child's interests are deferred until the dispute between the adults is resolved. In this way the passage of time damages the child's development to the child's greater, not lesser detriment. Then the child's best interests are considered not paramount but secondary to the adults' best interests.

15. Before the Best Interests, *supra* note 2, at 112.

16. Beyond the Best Interests, *supra* note 1, at 5.

