

CULTURAL PERSPECTIVES ON CHILD WELFARE

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The 1970's saw the emergence of new research and new rhetoric concerning the family structures of people of color.¹ Alongside traditional dogma that the nuclear family is the preferred structure, the viability of the extended family among poor people became accepted doctrine. Research provided new perspectives on the resilience of kinship networks, giving credence to rhetoric which touted the strengths of families and to the argument that policies should support family independence, rather than render families ever more dependent on public programs. However, class and cultural issues remained muddled, new data on kinship networks and psychological parenthood within extended families created new dilemmas for practice, and child welfare advocates were torn between the best interests of children and the integrity of parenthood.²

There is a fundamental difference, however, between recognition of family structures and an understanding of family functions. It is far easier to pay rhetorical tribute to extended family groupings than to design policies which respect the functions of kinship networks. Few bureaucrats within the child welfare system understand the functions of kinship in a cultural context.

One cannot argue that current child welfare practice entirely fails to recognize kinship networks. However, it is safe to say that current practice more often than not fails to respect the integrity of the bonds of psychological parenthood that form between children and nonparent kin.³ As a result,

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1. See generally J. Aschenbrenner, *Lifelines: Black Families in Chicago* (1975); R. Hill, *The Strengths of Black Families* (1972); J. Ladner, *Tomorrow's Tomorrow: The Black Woman* (1971); E. Martin & J. Martin, *The Black Extended Family* (1978); *The Extended Family in Black Societies* (D. Shimkin, E. Shimkin & D. Frate eds. 1978); C. Stack, *All Our Kin* (1974); Nobles, *Toward an Empirical and Theoretical Framework for Defining Black Families*, 40 *J. Marriage & Fam.* 679 (1978); Sudarkasa, *African and Afro-American Family Structure: A Comparison*, *The Black Scholar*, Nov.-Dec. 1980, at 37; Sudarkasa, *Roots of the Black Family*, *Literature, Sci. & Arts*, Spring 1982, at 16 (*Alumni Magazine of the College of Literature, Science, and the Arts at the University of Michigan*) (on file at N.Y.U. Review of Law & Social Change).

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

3. R. Hill, *Informal Adoption Among Black Families* 35 (1977); B. Mandell, *Where Are the Children: A Class Analysis of Foster Care and Adoption* (1973).

the system takes children from their families when removal is unwarranted. The Adoption Assistance and Child Welfare Act of 1980 (Act) mandates "permanency planning," which makes it more difficult to remove children from their families and requires that a permanent plan be devised for each child in the system.⁴ Yet even under these guidelines, the kin group as a resource is often ignored or discounted. And when removal is warranted, the child welfare system does not often look to the kinship network for foster caretakers.⁵

Indeed, for lack of experience, it is difficult to apply psychological parenting theory, upon which permanency planning is based, in a cross-cultural context. Psychological parenting theory emerged out of a nuclear family model, and the concept of "parental autonomy" has not encompassed significant kin who become psychological parents in an extended family.⁶

Even in the context of a divorce in a middle-class nuclear family, identifying the best interests of children is not an easy task. Some argue that it is best to nourish the continuity of bonds between divorcing biological parents and their children while others place their hope in the custodial household of one parent.⁷ In 1973, Goldstein, Freud, and Solnit—a law professor, a psychiatrist, and a psychoanalyst—collaborated to write *Beyond the Best Interests of the Child* and then in 1979, *Before the Best Interests of the Child*.⁸ The goal of the first book was to provide content for the best interests standard; in the second book the authors asked when it is appropriate for the state to invade family privacy or violate parental autonomy. Their guidelines and theories of psychological parenting have been applied both to divorce and to child placement issues arising after state intervention.

4. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, § 101, 94 Stat. 500 (1980) (codified at 42 U.S.C. §§ 670-676 (Supp. V 1981)). The Act requires states to develop a written case plan for each child in foster care funded under Title IV-A of the Social Security Act, and to develop "a plan of services which will be provided in order to improve family conditions and facilitate returning the child to his home, or which will facilitate other permanent placement of a child, or which will serve the needs of a child in foster placement." H.R. Conf. Rep. No. 96-900, 96th Cong., 2d Sess. 46 (1980).

The Act also requires that in each case:

- reasonable efforts will be made prior to the placement of the child in foster care to prevent or eliminate the need for removal of the child from his home; and
- reasonable efforts will be made to make it possible for the child to return to his home.

Id.

5. See Stack, *Who Owns the Child? Divorce and Child Custody Decisions in Middle-Class Families*, 23 Soc. Probs. 505 (1976).

6. See J. Goldstein, A. Freud & A. Solnit, *Before the Best Interests of the Child* 39-57 (1979) [hereinafter *Before the Best Interests*].

7. See Stack, *supra* note 5, at 507.

8. *Beyond the Best Interests*, note 2 *supra*; *Before the Best Interests*, note 6 *supra*.

My argument is not with psychological parenting theory nor with the child welfare system per se, but with the unintended consequences of well-intended policies. Applying psychological theories to diverse cultural and family groupings is difficult, and it becomes impossible when practitioners are overloaded with cases or do not understand cultural variations in the way that families work. Highly complex issues emerge when we ask why a disproportionate number of minority children are placed by the child welfare system in foster homes and institutions, and why so few return to their parents, kin groups, or communities.

This paper attempts to provide a cultural perspective on parenthood and on state intervention in families. My goal is to show how misunderstood and misinterpreted cultural patterns have generated the placement in foster homes and institutions of many minority children who are not abused or neglected, and how the traditional reluctance of the social welfare system to reunify these children with biological parents or kin will remain a problem even under the Act's requirements.⁹ I hope to deepen professional wisdom regarding the best interests of children by clarifying the relationship between cultural patterns and child welfare policy.

Anthropologists have long been interested in cross-cultural differences in child socialization, attachments, and parenting.¹⁰ Children's lives are profoundly affected by their parents, and by other adults who share responsibilities toward them and rights in them. The study of how these rights distribute socially is central to cross-cultural study of families.

I use the phrase "rights in children" to include moral claims, privileges, responsibilities, and rites that grow from customs, rituals and practices. Although anthropologists have long recognized the distinction between biological and psychological parenthood, until recently many experts in child welfare have assumed that within families biological mothers and fathers are unique in their capacity for and commitment to child rearing.¹¹ This ethnocentric assumption overlooks cultural differences in the meaning that members of ethnic groups in the United States assign to the chain of parent-child, child-kin connections.¹² We need to examine these differences more closely, especially in light of the social implications of our child welfare decisions. In other words, we need to understand who, in addition to biological parents, can be expected to rear children in low-income, minority communities.

9. See note 4 supra.

10. See, e.g., V. Carroll, *Adoption in Eastern Oceania* (1970); W. Goodenough, *Description and Comparison in Cultural Anthropology* (1970); J. Goody, *Adoption in Cross-Cultural Perspective*, 11 *Comp. Studies of Soc'y & Hist.* 55-76 (1969); R. LeVine & B. LeVine, *Nyansongo: A Gusii Community in Kenya*, in *Six Cultures Series, Volume II* (B. Whiting ed. 1963).

11. See, e.g., *Before the Best Interests*, supra note 6, at 7-14.

12. C. Stack, supra note 1, at 46.

In order to understand cultural differences in child socialization, attachments, and the distribution of rights in children, we can examine various cultural patterns of informal fosterage, adoption, and child exchange. In many nonindustrial areas of the world, adopting parents and natural parents are known to one another. In eastern Oceania, for example, children adopted by kin usually maintain ties with their natural parents.¹³ In Tahiti, as in other parts of Polynesia, relationships between parents and children are more contingent on choice than on biology; parents have the right to give their children to foster parents and frequently do so.¹⁴ Many Polynesians actually strive to model relationships with their "natural" children after those between adoptive parents and children, rather than vice versa.

Instances in which children actually choose their homes abound in the ethnographic literature. Caribbean children, for example, may ask permission to come and live with close kin or friends.¹⁵ Natural parents are expected to agree to this change of residence, as well as to reciprocate at the request of other children.

In other cases, it is parents who make these requests. It is not unusual for mothers in the Caribbean, in Ghana, or in Black America to request or require kin to care for one of their children. Kinfolk create alliances among one another—alliances and obligations that may be called upon in the future.

In the West Indies, most transactions involving children take place outside of the legal system. Socialization of, and responsibility for, children on the island of St. Lucia are shared among relatives.¹⁶ Children are seldom confined to one household either for residence or in their interaction with adults; but, some particular adult is recognized as having primary responsibility for each child. This pattern is even more pronounced among emigrating parents, many of whom go to Great Britain and leave their dependent children on the island. While the rate of informal fosterage for the children of immigrants is higher than for the general population, they are absorbed by extended kin in much the same child-lending patterns that existed previous to migration.

Among the Gonja children of northern Ghana studied by Esther Goody, over one-half of all children over seven or eight years of age live

13. V. Carroll, *supra* note 10, at 13-15.

14. *Id.* at 71-88.

15. M. Sanford, *To be Treated as a Child of the Home: Black Carib Child-Lending in a British West Indian Society* 29-31 (undated manuscript) (on file at N.Y.U. Review of Law & Social Change).

16. D. Midgett, *Transactions in Parenthood: A West Indian Case* 3 (Nov. 1969) (unpublished manuscript presented at American Anthropological Association Annual Meeting) (on file at N.Y.U. Review of Law & Social Change).

with relatives other than their parents.¹⁷ Paternal and maternal kin share equally in caring for their nieces, nephews, and grandchildren. These aunts, uncles, and grandparents are felt to possess certain rights in children. In fact, the Gonja believe that parents may never refuse requests from their own siblings, parents, or lineage heads for the right to raise a child. In response to such requests, parents *must* delegate or share rights in their children. Such fosterage patterns are typical both in rural West Africa and among urban migrants, for whom kin ties and fictive kin relationships are important resources.

Similarly, children in Honduras may be "loaned" by their parents to close kin or to neighbors with whom they share an ongoing, affectionate relationship. The lending or giving of children teaches children patterns of reciprocity.¹⁸ They learn how to establish and maintain exchange relationships.

Returning to the United States, we find examples of multiple parenting in Kathryn Molohon's study of the Pueblo and Navajo, where children are circulated throughout kinship networks along the same lines of distribution as economic and other resources. Based on her observations of Navajos who have migrated to west coast cities, Molohon observed that urban Indians "regard themselves as emotional, financial, strategic, and geographical continuations of kin on home reservations."¹⁹ Indian children and adolescents move back and forth between the cities and home reservations, and develop strong emotional ties among their dispersed kin.

The black community in the United States also has longstanding cultural traditions of shared parenting responsibility among kin. These traditions enable parents and kin to cope with the difficulties of poverty.²⁰ My own research in the "Flats" provides examples of circumstances among urban black families requiring kin to take care of one another's children.²¹ In the Flats, maternal and paternal kin, not just mothers and fathers, often share responsibilities in caring for nieces, nephews, and grandchildren.

Many children growing up in the Flats move back and forth between the households of close female kin, including women who are close kin to

17. E. Goody, *Contexts of Kinship: An Essay in the Family of Sociology of the Gonja of Northern Ghana* (1973).

18. M. Sanford, *Disruption of the Mother-Child Relationship in Conjunction with Matrilocality: A Study of Child-Keeping among the Carib and Creole of British Honduras* (Ph.D. dissertation, The Catholic University of America 1971).

19. K. Molohon, *Child Fostering and Multiple Parenting among Urban Indians* 11 (paper delivered at the 38th Annual Meeting for the Society for Applied Anthropology, Philadelphia 1979) (on file at N.Y.U. Review of Law & Social Change).

20. E. Martin & J. Martin, note 1 *supra*.

21. C. Stack, note 1 *supra*. The "Flats" is an urban, midwestern black community. Its exact location is not revealed in my book due to the highly personal and sensitive nature of the data I gathered there.

children's fathers. A statistical study of 1000 children in the Flats revealed that on the average, children lived with their father's kin at least one-third of the time. The woman who temporarily assumes the kinship obligation to care for a child acquires the major cluster of rights and duties traditionally associated with motherhood.

Although the role need not be filled by a single actor, the responsibility of caring for children in the Flats is a kin obligation. Rights in children are delegated to kin who participate in domestic networks of cooperation. Within a network of cooperative kin there may be three or more adult women with whom, by turns, a child resides. Although younger children usually sleep in the same household as their mother, the size of the dwelling, employment, and many other factors determine where older siblings sleep. Patterns of eating, visiting, and child care may bring mothers and their children together for most of the day, but the adult immediately responsible for a child may change with a child's residence.

From the viewpoint of children, there may be a number of women who act as "mothers" towards them, some just slightly older than the children themselves. Likewise, these women regard their own children and their informally adopted children with equal love and concern. A woman who intermittently raises a sister's or niece's or cousin's child regards that child's offspring to be as much her grandchildren as children born to her own sons and daughters. Children may retain ties with their parents and siblings and at the same time establish deep relationships with other kin.

People in the Flats view child-keeping as a part of the flux and elasticity of residence. The constant expansion and contraction of households, and the successive recombinations of kinsmen residing together, require women to care for children residing in their households. (While men, young and old, also participate actively in child care and baby sitting, the primary responsibility for parenting remains with women.) As households shift, rights and responsibilities in children also shift.

Uncontrollable economic and legal pressures from outside the community also affect domestic groups. Unemployment, migration, welfare requirements, housing shortages, high rents, or eviction all may necessitate residence changes, as may disasters or calamities such as death, murder, accident, or fire. Such occurrences are commonly related to the need for child care arrangements. A mother may request or require kin to "keep" one of her children, with a variety of implications. It may be that the mother has come upon hard times and desperately wants her close kin temporarily to assume responsibility for her children. Kin rarely refuse such requests. Kin and friends in domestic networks establish mutual ties of obligation; they bestow rights and responsibilities upon one another. As these responsibilities are satisfactorily fulfilled, the depth of the involvement between kin or between friends increases. Females simultaneously acquire reciprocal obligations toward one another's children and rights in them. As responsi-

bilities for specific children evolve, women are ultimately allowed to occupy parental roles which are recognized both by the adults and the children involved.

In many low-income black communities, when one woman begins to take on all of the responsibilities toward a child that are culturally specific to motherhood, members of her kin group assume that she has activated her parental rights towards that child. The undertaking of major responsibilities towards a child—providing love, care, food, clothing, and shelter—constitute criteria by which kin become eligible to assume parental roles. Like professionals in child welfare, members of kin groups in black communities discourage the creation of strong emotional bonds between children and merely transient caretakers. It is only when people fulfill the criteria by which kin are eligible to assume parental roles in the eyes of the community that the role of an informal foster parent becomes that of a psychological parent.

That children in black communities become deeply attached to non-parent kin caretakers is well understood and articulated by community members. However, these patterns are often invisible to the child welfare system, with the result that children are removed from the kin network against their best interests.²²

The cultural patterns outlined here that create informal adoptions and psychological parenthood in black communities are described in greater depth and detail in Robert Hill's *Informal Adoption Among Black Families*²³ and in *All Our Kin*.²⁴ These patterns are complex and sometimes baffling to "street-level bureaucrats"—teachers, social workers, lawyers, judges, and physicians—who work directly with clients and who have tremendous power and discretion in implementing policy.²⁵ Professionals, and outsiders in general, often perceive only chaos in ethnic families, but their own biases affect what they see and how they interpret it. At times, these professionals cannot find children in the "right" household or in the "right" beds, and they may react angrily when they find the "wrong" people in the "right" households. Thus cultural differences elicit punitive state action.

Street-level bureaucrats form their own stereotypes about client behavior, which are incorporated into policy decisions. For example, in 1982 I was an expert witness in a child welfare case in the Southeast. The case became a debate between two value systems, between the social worker's notion of proper psychological parenting and that of the kin group. When the social

22. See R. Hill, *supra* note 3, at 13-14.

23. *Id.*

24. C. Stack, note 1 *supra*.

25. See M. Lipsky, *Street-Level Bureaucracy: The Dilemmas of the Individual in Public Services* (1980).

worker could no longer contend with constant household changes, in which one young child and an older sibling moved back and forth between their mother's and aunt's household, she recommended removal.

The system grants broad discretion to all of the bureaucrats involved, and the poorer the clients, the more power these outsiders have over them.²⁶ In addition, federal funds until very recently have been targeted primarily for foster parents and foster homes, not for preventive services or to help biological kin. Sometimes, funds are available for a child only within the context of removal; an approach indicative of the way in which we discount the responsibility and abilities of low-income families.

To date, psychological parenting theory has not been broadly utilized by the child welfare system to protect the attachment of the children to members of the kin group. In fact, many social workers find it difficult to identify the psychological parent even if the family and child do not. Although cross-cultural data show that children are capable of forming multiple attachments to psychological parents who are members of their kin groups,²⁷ attachments of this kind are characteristically ignored by the child welfare system.

Children drift into the foster care system for a variety of reasons.²⁸ Some are placed voluntarily by parents who need respite care. Others are removed, as reported in a recent North Carolina study, simply because the parents are too poor.²⁹ Poor children with family problems are more likely than are middle-class children to be brought to the attention of authorities by physicians, schools, and teachers. Many states have been willing to pay a premium well above welfare stipends to keep a child in foster care, rather than in the child's own home or with close kin.

The Adoption Assistance and Child Welfare Act of 1980 mandated periodic review, a permanent plan for placement, and speedy adoption of children in foster care.³⁰ My concern is that this relatively enlightened legislation may fail to avoid the pitfalls of custom and tradition inherent in the child welfare system. It is imperative that child welfare workers understand how rights in minority children are distributed within kin groups; that they are able to distinguish well-functioning from poorly functioning kin networks; that preference is not given to placement in the homes of strangers over placement in the homes of members of the kin group; that social workers know how to utilize kinship networks as resources for children; and that informal "adoptive" parents not be forced to pursue legal adoption and terminate the legal rights of biological parents in violation of cultural

26. *Id.* at 13-14, 54-56.

27. Stack, *supra* note 5, at 506.

28. R. Hubbell, *Foster Care and Families: Conflicting Values and Policy* (1981).

29. Governor's Advocacy Council on Children and Youth, *Why Can't I Have a Home: A Report on Foster Care and Adoption in North Carolina* (1978).

30. See note 4 *supra*.

traditions. Adoption of these principles will help assure that permanency planning is not used as an unwarranted interference with the rights of kin.

When the rights of children and parents come into conflict, our society has traditionally protected the rights of parents if those parents are affluent or middle class. We respect the privacy and autonomy of middle-class families. In contrast, we have accepted intervention and intrusion in low-income families, and we have discounted the cultural backgrounds and solid parenting skills of low-income parents. To protect poor children, we have created a legal structure that disregards the rights of their parents and the cooperative values of many minority families.

Termination of a biological mother's parental rights is not only a violation of her individual rights as a parent. It may also violate the rights of members of her kin group. There are instances in which the protection of the legal rights of the individual child or parent may be in direct conflict with the cooperative and communal values of minority communities. This cultural oversight has led to a failure to protect the natural rights of children, parents, and the other members of the kin group.

