

ASSESSING THE IMPACT OF GOLDSTEIN, FREUD, AND SOLNIT'S PROPOSALS: AN INTRODUCTORY OVERVIEW*

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The year 1973 saw the publication of a slim volume entitled *Beyond the Best Interests of the Child*.¹ The book, by Goldstein, Freud, and Solnit proposed a set of simple guidelines for judicial decision-making in dispositions involving children. In 1979 a second book appeared entitled *Before the Best Interests of the Child*,² in which these same authors further developed their views of the proper limits on state intervention in the family. Today, more than a decade after the appearance of the first book, it is evident that the authors have had an impact on the law governing child welfare decisions that would exceed any academician's wildest expectations. As one commentator observed, every subsequent proposal for reform of the child welfare system has drawn its vocabulary and central ideas from Goldstein, Freud, and Solnit's conceptual framework.³ On April 30, 1983, the Rutgers Law School, the Rutgers Institute for Research on Women, and the New Jersey Department of the Public Advocate convened a conference of scholars and practitioners in law, social work, psychology, history, anthropology, and related fields, in Newark, to examine critically the impact of the theoretical positions and proposals advanced by Goldstein, Freud, and Solnit on cases involving state intervention in parent-child relationships. The conference focused particularly on termination of parental rights.

Goldstein, Freud, and Solnit's approach rests both on a value judgment that the child's interests should be paramount and on a psychoanalytic theory of human development that shapes the determination of what course of action best serves the child's interests.⁴ The theory focuses on a child's primary attachment to her psychological parent, who may or may not be the child's biological parent. A psychological parent, according to Goldstein, Freud, and Solnit, is "one who, on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's

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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. Garrison, *Why Terminate Parental Rights?*, 35 *Stan. L. Rev.* 423, 446-47 (1983).

4. *Beyond the Best Interests*, supra note 1; *Before the Best Interests*, supra note 2.

psychological needs.”⁵ The essential premise is that a child’s developmental needs are best served by continuing the child’s relationship with her psychological parent,⁶ and that disruption of the bond between a child and her psychological parent affects the future pathology of the child. The theory thus militates against removing a child from the custody of her natural parents. When, however, the bond is broken because of an extended separation, for whatever reason, from the biological parents, the authors advocate permanent placement with the new psychological parents—persons who have had daily caretaking responsibility for the child during the period of separation but who may have no blood ties to her.

Goldstein, Freud, and Solnit thus argue for severely limiting the state’s authority to remove children from ongoing, functional families precisely because, in their view, disruption of the parent-child relationship is likely to harm the child. Their opposition to state intervention is reinforced by an explicit commitment to parental autonomy, a stance which is elaborated upon in their second book. As developed in *Before the Best Interests of the Child* and in Dr. Solnit’s presentation at the Rutgers Conference, there is in fact a link between the authors’ child development model and their commitment to parental autonomy. According to Goldstein, Freud, and Solnit, in order for the developmental process to function properly, the child needs to perceive the parent as totally omniscient and all-powerful, and to have continuity in the parent-child relationship. These needs are thwarted when family integrity is broken or weakened by state intrusion. The effect on the child’s developmental progress is invariably detrimental.⁷ Thus in the authors’ words, “[s]o long as the child is part of a viable family, his own interests are merged with those of the other members.”⁸ One of the most conspicuous consequences then, of the psychological parenting theory, is the legitimacy it confers on those opposing coercive removal of children from ongoing families.⁹

5. *Beyond the Best Interests*, supra note 1, at 98.

6. *Id.* at 99.

7. *Before the Best Interests*, supra note 2, at 9.

8. *Id.* at i. The authors go on to state, “[o]nly after the family fails in its function should the child’s interests become a matter for state intrusion.” *Id.*

9. See, e.g., Institute for Judicial Administration, American Bar Association, *Standards Relating to Abuse and Neglect* § 1.6 (final ed. 1981) (“When state intervention is necessary, the entire system of intervention should be designed to promote a child’s need for a continuous stable living environment. Thus, in light of this principle, we should be reluctant to remove children from homes where they have stable relationships.”) [hereinafter *ABA Standards*]. See also *Cooley v. St. Andre’s Child Placing Agency*, 415 A.2d 1084, 1086 (Me. 1980) (The trial court “appropriately considered whether petitioner would be able to maintain the ‘continuous, unconditional and permanent’ relationship needed by a child of Sarah’s age.” (citing *Beyond the Best Interests*, supra note 1, at 99)). *Reflow v. Reflow*, 24 Or. App. 365, 373, 545 P.2d 894, 899 (1976) (“We have previously indicated our belief in the principle that continuity in one unchanging family environment, especially for young children, is probably the most important single element necessary to a child’s wholesome development . . . Several times we have quoted from J. Goldstein, A. Freud & A. Solnit, *Beyond the Best Interests of the Child* . . .”).

Since, however, the psychological parent need not be a biological parent, a second important consequence of the psychological parenting theory is the legitimization of claims by caretakers lacking blood ties. Perhaps the most prominent example of this is found in *Smith v. Organization of Foster Families for Equality and Reform (OFFER)*,¹⁰ a Supreme Court case considering the due process rights of foster parents to trial-type hearings prior to the removal of a foster child from their custody. The majority opinion in *OFFER* indicated that the plaintiff foster parents explicitly relied on Goldstein, Freud, and Solnit to point out the importance of the foster parents' contribution to the psychological welfare of the child.¹¹ Similarly, custody disputes in the state courts have increasingly involved the claims of foster parents,¹² stepparents,¹³ and other nonbiological custodians.¹⁴

A third important consequence of the psychological parenting theory is the conceptual clarity it seems to have conferred on the child custody decision-making process. This apparent clarity flows directly from the theory's emphasis on continuity in parent-child relationships. Since continuity of the psychological parent-child relationship is the primary objective, the sole function of a court or agency¹⁵ charged with resolving competing

10. 431 U.S. 816 (1977). The case assumes without deciding, that foster parents have a "liberty interest" in their foster children and holds that the procedures available to safeguard those interests satisfy the requirements of the fourteenth amendment. Cf. *Rivera v. Marcus*, 696 F.2d 1016 (2d Cir. 1983) (holding that a biologically related foster parent is entitled to substantial due process protection when the state attempts to remove the children).

11. 431 U.S. at 839. The Court, however, declined to determine the validity of a theory it found controversial. It nevertheless found undisputed that "the emotional ties between foster parent and foster child are in many cases quite close, and undoubtedly in some as close as those existing in biological families." *Id.* at 844 n.52.

12. See 21 A.L.R. 4th 535 (1983), *Standing of Foster Parent to Seek Termination of Rights of Foster Child's Natural Parents* (discussing custody in the context of termination of parent-child relationship).

13. *Simpson v. Simpson*, 586 S.W.2d 33 (Ky. 1979) (claim by stepmother for custody of child after divorce from natural father); *Ewing v. Gordon*, 96 Idaho 424, 529 P.2d 1296 (1974) (writ of habeas corpus by natural father seeking custody of his children from stepfather); *Robertson v. Robertson*, 54 A.D.2d 1031, 388 N.Y.S.2d 576 (4th Dep't 1972) (custody dispute between stepmother and natural father after their divorce); *Clark v. Jelinek*, 90 Idaho 592, 414 P.2d 892 (1966) (habeas corpus proceedings by father to obtain custody of his two minor children from their stepfather); *Anderson v. Anderson*, 191 Kan. 76, 379 P.2d 348 (1963) (custody claim by stepmother against natural father from whom she divorced); *Root v. Allen*, 151 Colo. 311, 377 P.2d 117 (1962) (petition of habeas corpus to obtain custody of daughter from stepfather); *In re Hohmann*, 255 Minn. 165, 95 N.W.2d 643 (1959) (appeal of judgment for relator leaving two children with stepfather after the death of their mother).

14. *In re Lisa T.*, 7 Fam. L. Rep. (BNA) 2495 (Cal. Ct. App. Apr. 29, 1981) (friend of mother's sister who was child's custodian for two years given custody over mother whom court deemed unstable); *In re Hatzopoulos*, 4 Fam. L. Rep. (BNA) 2075 (Colo. Juv. Ct. July 8, 1977) (custody awarded to deceased mother's lesbian lover).

15. At least twenty states, including Arizona, Illinois, Kentucky, Maine, Massachusetts, New Jersey, Pennsylvania, South Carolina, and Vermont, now have adopted systems whereby there is periodic administrative review of placement decisions. *M. Hardin, Foster Children in the Courts* 113, 126 (1983). For example, in New Jersey, there is mandatory review every six months by the Child and Placement Review Board.

custody claims is to determine the person with whom the child has formed that special psychological relationship. Thus even though all those interested in the child's placement can present their views to the court,¹⁶ the child's developmental needs are accepted as the paramount interest.¹⁷ The theory provides an apparently simple prescription for furthering that interest. A recent New Jersey decision illustrates the process. The case terminated the parental rights of two mentally retarded parents. After finding that "psychological bonding ha[d] been established [with the foster parents]," that "it would be psychologically detrimental to remove the child from an existing secure environment," and that "her learning potential and achievement levels would be impaired if she were removed and returned to her parents,"¹⁸ the trial court concluded that "[s]ince the foster parents have provided a stable and secure environment for the child, it would be prejudicial to her mental development if she were removed from that environment."¹⁹ The court thus held that the child's best interests required termination of parental rights.

The transformation of child welfare decision-making into a single-minded search for the psychological parent(s) is apparent in decisions applying psychological parenting theory in custody disputes arising out of divorce proceedings.²⁰ It is also found increasingly in decisions resolving custody disputes between parents and third parties. Such disputes may arise after parents voluntarily entrust their children to others or after state-initiated intervention and placement.²¹ Decisions to terminate parental rights also turn increasingly on the courts' desire to continue existing psychological parent-child bonds.²²

16. Before the Best Interests, *supra* note 2, at 22-23.

17. This is a departure from traditional doctrine which focuses on parents' fundamental rights to raise children. H. Clark, Jr., *The Law of Domestic Relations in the United States* §§ 17.2, 18.5 (1968).

18. *In re Guardianship of D.N.*, 190 N.J. Super. 648, 653-54, 464 A.2d 1221, 1223-24 (Juv. & Dom. Rel. Ct. 1983).

19. 190 N.J. Super. at 654, 464 A.2d at 1224.

20. See, e.g., *Seymour v. Seymour*, 180 Conn. 705, 433 A.2d 1005 (1980); *In re Marriage of Dunkley*, 89 Wash. 2d 777, 575 P.2d 1071 (1978); *In re Marriage of Ellenwood*, 20 Or. App. 486, 532 P.2d 259 (1975).

21. See, e.g., J. Areen, *Cases and Materials on Family Law* 1064-73 (1978). See also *In re J.R. Guardianship*, 174 N.J. Super. 211, 224-25, 416 A.2d 62, 68 (App. Div.), cert. denied, 85 N.J. 102, 425 A.2d 266 (1980) ("We experience no doubt concerning the conclusion . . . that J.R. would suffer greatly if wrenched from his home and from those with whom he lives as parents We see nothing in our statutory scheme which requires the attempted creation of a new psychological relationship with the natural mother at the cost of the child's present well-being in a well-established home in which the child is happy and flourishing."); *Hoy v. Willis*, 165 N.J. Super. 265, 272, 398 A.2d 109, 112 (App. Div. 1978) ("That there can be a psychological parent-child relationship between a child and someone other than the child's biological parent is well recognized in the literature on the subject.').

22. *Sorentino v. Family & Children's Soc'y of Elizabeth*, 74 N.J. 313, 320, 378 A.2d 18, 21 (1977), *aff'd*, 77 N.J. 483, 391 A.2d 497 (1978); *In re B.G.*, 11 Cal. 3d 679, 697-98, 523 P.2d 244, 256-57, 114 Cal. Rptr. 444, 456-57 (1974); *In re J.R. Guardianship*, 174 N.J. Super. 211, 223, 416 A.2d 62, 67 (App. Div. 1980).

Under Goldstein, Freud, and Solnit's influence, the quest for the psychological parent has replaced the application of a variety of legal standards. This development is particularly evident in the case of the "best interests" standard. This standard is used uniformly in interspousal custody disputes.²³ Many jurisdictions also use the standard to resolve third-party custody disputes,²⁴ and a limited number of jurisdictions use the standard in parental rights cases.²⁵ The vagueness of the "best interests" standard and its explicit subordination of parental claims to children's interests may well explain its transformation into a search for the psychological parent. But more precise legal formulations that purport to focus on parental claims have also developed occasionally into inquiries into psychological bonds. For example, some jurisdictions require the court to find that an award of custody to a parent would be detrimental or even substantially detrimental to the child before custody may be awarded to a nonparent. Some courts now find that this requirement is met whenever return to the parent will disrupt psychological bonds between the child and nonparent custodian, reasoning that there is, as Goldstein, Freud, and Solnit assert, the potential of serious psychological harm to the child.²⁶ Even the showing of parental unfitness often required to terminate parental rights may be satisfied in some jurisdictions by proof that a natural parent has, for whatever reason, permitted a bond to form between a child and foster parent.²⁷

A fourth important consequence of psychological parenting theory is the impetus it has given to legal and social work reformers to set time periods after which it is appropriate to terminate parental rights if the child is still out of the home. These time periods reflect Goldstein, Freud, and Solnit's emphasis on the need to consider the child's sense of time. Since a brief period of time may seem endless to a child,²⁸ even a very short separation between parent and child may have traumatic impact on the child. In their first book, Goldstein, Freud, and Solnit indicate generally that perception of time varies with the age of a child and that cut-off periods in legal rules should reflect these variations. Given the child's sense of time and the importance of a permanent parent-child relationship to a child's development, even separations perceived brief by adults are sufficient bases

23. H. Clark, *supra* note 17, at §§ 17.1, 17.4.

24. *Id.* at §§ 17.5-17.6.

25. *Id.* at § 18.5 n.1.

26. See, e.g., *Hoy v. Willis*, 165 N.J. Super. 265, 272, 398 A.2d 109, 112 (App. Div. 1978); *Bennett v. Jeffreys*, 40 N.Y.2d 543, 551-52, 356 N.E.2d 277, 285, 387 N.Y.S.2d 821, 828 (1976), *aff'd sub nom. Bennett v. Morrow*, 59 A.D.2d 492, 399 N.Y.S.2d 697 (2d Dep't 1977); *In re B.G.*, 11 Cal. 3d at 697, 523 P.2d at 256-57, 114 Cal. Rptr. at 456-57.

27. See, e.g., *In re J.R. Guardianship*, 174 N.J. Super. at 220-25, 416 A.2d at 66-68; *In re B.G.*, 11 Cal. 3d at 698-99, 523 P.2d at 257-58, 114 Cal. Rptr. at 457.

28. *Beyond the Best Interests*, *supra* note 1, at 40-42; *Before the Best Interests*, *supra* note 2, at 40-41.

in themselves to terminate parental rights.²⁹ Goldstein, Freud, and Solnit's second book actually proposes that once a child under the age of three has been in the direct and continuous care of the same adult(s) for one year (two years for a child three to five years old), it is unreasonable to presume that a child's ties with her absent parents are more significant than are those that have developed between the child and her long-time caretakers.³⁰ Since the publication of *Beyond the Best Interests of the Child*, nine of the ten model statutes have proposed authorizing termination of parental rights if the child has been out of the home six months or one year, with the length of time varying in five of the statutes depending on the child's age.³¹ Interestingly, these statutes fail to agree even on the age at which a year's separation will terminate parental rights. The statutes are, however, more flexible than the Goldstein, Freud, and Solnit guidelines. For example, unlike the guidelines, the statutes permit parents to rebut the presumption in favor of termination by showing that the parent-child tie remains sufficiently close irrespective of

29. In *Before the Best Interests of the Child*, Goldstein, Freud, and Solnit consider the time a child is in placement and not the length of separation to be the critical factor in determining both the long time caretakers and the child's entitlement to stay with them. Their focus is on the continuity of conduct with the new psychological parents.

30. *Before the Best Interests*, supra note 2, at 46.

31. See ABA Standards, supra note 9, §8.3 commentary at 167 (termination after two years, if the child is under three, and after three years if the child is over three); Regional Research Institute for Human Services, *Guidelines for Involuntary Termination of Parental Rights* (Portland State University 1980) (termination after six months if the child is under three, and after one year if the child is over three); Institute for Judicial Administration, American Bar Association, *Standards Relating to Abuse and Neglect* § 8.3 (tent. draft 1977) (termination after six months when the child is under three at placement, and after one year when the child is over three at placement); Arun, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases*, 63 *Geo. L.J.* 887, 937 (1975) (termination after six months if child is under two, and after one year if child is over two); Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 *Stan. L. Rev.* 623, 695-96 (1976) (termination after six months if the child is under three, and after one year if the child is over three); U.S. Department of Health, Education and Welfare, *Model State Adoption Act*, 45 *Fed. Reg.* 10,622 (1980) (termination after one year); National Advisory Commission for Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice* (1980) (termination after six months); *Model Act to Free Children for Permanent Placement with Commentary* (1978), reprinted in Katz, *Freeing Children for Permanent Placement through a Model Act*, 12 *Fam. L.Q.* 203, 216-20 (1978) (termination after one year); Regional Research Institute for Human Services, *Model Dissolution of Parent-Child Relationship Act* (Portland State University 1976) (termination after one year); National Council of Juvenile and Family Court Judges, *Termination of Parental Right Statute* (1976), reprinted in *National Book of Juvenile Courts* 119-23 (L.G. Arthur ed. 1978) (no year limits).

Professor Wald indicates that he advocates a maximum period in foster care to limit multiple placements and to increase the possibility of adoption. See Wald, supra, at 689-90. However, since these problems are probably addressed by measures designed to control agency conduct directly, Professor Wald may actually be more taken with the Goldstein, Freud, and Solnit approach than he recognizes.

the child's age.³² Recommendations of highly publicized and prestigious social work pilot projects on permanency planning also incorporate set time periods after which action to terminate parental rights is advised.³³

A fifth major consequence of Goldstein, Freud, and Solnit's view of child development flows from their concern for exclusivity in parental relations. They, of course, argue that a child's health and development depend upon positive relationships with parent figures who are available on an uninterrupted day-to-day basis. A "visited" or "visiting" parent is not, in their view, available to serve as a "true object for love, trust and identification" and thus contributes little to the child's development.³⁴ Goldstein, Freud, and Solnit also view relationships with parent figures who are not in contact with one another as detrimental to the child's development since loyalty conflicts can destroy the child's relationship to both sets of parents or parent figures. Thus, both in cases of divorce or separation and in cases of foster placement, Goldstein, Freud, and Solnit would give custodial parents total control over all access to the child by noncustodial parents and deny all visitation by right.³⁵

It is difficult to gauge the extent to which the notion of exclusivity has permeated child welfare decisions involving the state and third parties. Traditional legal arrangements have merged questions of stability in the child's placement with questions of exclusivity of parental access to the child. When parental rights were terminated and a child adopted, the law assured a child a placement both as stable and as exclusive as the natural family. On the other hand, foster care arrangements short of adoption were neither stable nor exclusive since they generally permitted changes in placement such as return to the biological family. Legal forms such as open adoption³⁶ and permanent guardianship³⁷ have been proposed only recently. These forms permit stable custody arrangements with new caretakers but, at the same time, allow parental contacts to continue. The rapidity with which these new forms become established³⁸ may shed some light on the extent to

32. Garrison, *Parental Rights*, supra note 3, at 451. For example, the ABA Standards, supra note 9, § 8.4 commentary at 74 indicates that termination should not be ordered "if it is clear by convincing evidence that . . . because of the closeness of the parent-child relationship, it would be detrimental to the child to terminate parents' rights." Goldstein, Freud, and Solnit would permit rebuttal for certain children over age five.

33. See U.S. Department of Health and Human Services, *A Handbook for Social Workers Permanent Planning for Children in Foster Care* (1977). See also Governor's Advocacy Council on Children and Youth, *Acting on Behalf of Endangered Children* (North Carolina 1983).

34. *Beyond the Best Interests*, supra note 1, at 38.

35. *Id.*

36. See, e.g., M. Hardin, supra note 15, at 6 (§ H951); Amadio & Deutsch, *Open Adoption: Allowing Adopted Children to "Stay in Touch" with Blood Relatives*, 22 *J. Family L.* 59 (1984).

37. See Garrison, supra note 3.

38. See, e.g., *In re Dep't of Pub. Welfare to Dispense with Consent to Adoption*, 419 N.E.2d 285 (Mass.), rev'd and remanded, 421 N.E.2d 28 (1981) (natural parents do not

which Goldstein, Freud, and Solnit's concern for complete termination of contacts with previous parental figures is shared by decision-makers in the foster care context.

In contrast to the blurred picture in the foster care area, courts have generally disagreed with Goldstein, Freud, and Solnit's principle of exclusivity in the area of divorce.³⁹ Not only is it routine for noncustodial parents, usually fathers, to be awarded visitation rights, but increasingly grandparents, stepparents, and other significant figures in the children's lives have been permitted to visit.⁴⁰ Of course, the recent movement towards joint custody is totally contrary to the Goldstein, Freud, and Solnit position.⁴¹

Albert Solnit opened the Rutgers Conference with an exposition of some of the theoretical and ethical premises on which Goldstein, Freud, and Solnit's proposals rest. Subsequent speakers examined the implications of Goldstein, Freud, and Solnit's work from the perspectives of a variety of disciplines and experiences. Everett Waters is a developmental psychologist, David Fanshel a social work expert, Linda Gordon a historian, Carol Stack an anthropologist, Martin Guggenheim a lawyer and law teacher, and Peggy Davis, then a judge, now a law teacher. Despite their different perspectives, certain common questions emerged from their remarks. Although not a participant at Rutgers, Joseph Goldstein responds in this issue to a number of these questions.

One theme implicit in almost all the commentary was the fear that Goldstein, Freud, and Solnit's proposals would result too often in the termination of the rights of natural parents. As a theoretical matter, adoption of the Goldstein, Freud, and Solnit proposals need not lead to an increase in parental rights terminations since Goldstein, Freud, and Solnit seek to reduce initial state intrusion into the family. Data from jurisdictions attempting to follow the Goldstein, Freud, and Solnit guidelines should help evaluate this fear. It is very difficult to interpret the information now available. It appears that in Connecticut and New Jersey, for example, the number of children in foster care has in fact decreased, but we do not yet know whether this is as a result of fewer children going into foster care, more children being returned to their biological parents, or more children

oppose proposed adoption by foster parents but urge an open adoption plan). *In re Adoption of Anthony*, 113 Misc. 2d 26, 448 N.Y.S.2d 377 (Fam. Ct., Bronx County 1982) (in best interest of adoptive child, adoption ordered with visitation rights to birth siblings). *In re Erik Vaughn D.*, 70 A.D.2d 800, 417 N.Y.S.2d 863 (1st Dep't 1979) (open adoption not permitted where adopted child had been neglected by natural mother).

39. *Carter v. Brodrick*, 644 P.2d 850, 855 (Alaska 1982) (child's best interests dictate post-divorce visitation rights to stepfather); *Wills v. Wills*, 399 So.2d 1130 (Fla. Dist. Ct. App. 1981) (awarding visitation rights to stepmother); *Hawkins v. Hawkins*, 102 Ill. App. 3d 1037, 430 N.E.2d 652 (1981) (recognized grandparents visitation rights); *Simpson v. Simpson*, 586 S.W.2d 33, 35-36 (Ky. 1979) (court should award visitation rights to stepmother if in child's best interest).

40. Garrison, *supra* note 3, at 453-54.

41. *Id.*; see also Joint Custody Legislation Passed in 23 States, *Fam. L. Rep. (BNA)* 2506 (1982).

being adopted.⁴² Nor do we know the rate of failed adoptions.⁴³ Moreover, as the different presentations make clear, statistics will not resolve the dispute since disagreements will always remain over the proper outcome in individual cases.

A second common concern of the conference participants was whether Goldstein, Freud, and Solnit's proposals rest on an adequate understanding of children's needs. Here Waters emphasized deficiencies in the data on which Goldstein, Freud, and Solnit rely, as well as data tending to support other theories. Fanshel asked whether children's need to maintain a connection with their past is at least as important as their need for continuity in day-to-day care. He suggested that the notion of psychological parenthood premised on the presence of a sole primary caretaker may be an anachronism in a time when parenting tasks are being shared not only between parents, but also among grandparents, aunts, and uncles. Stack likewise argued that Goldstein, Freud, and Solnit's notion of psychological parenting does not adequately reflect the full diversity of cultural patterns found in the United States. For Davis, doubts raised by the scientific literature were confirmed by her judicial experiences, which suggest that many children have an enduring need to maintain ties with their biological parents and that they are able to integrate multiple parent figures into their lives. Both Gordon and Guggenheim underscored the historical contingency of theories of this sort.

Given these doubts, it was natural for a number of the speakers to question the necessity for subordinating parental interests to children's interests in the fashion suggested by Goldstein, Freud, and Solnit. Fanshel, Stack, and Guggenheim all expressed concern that particularly powerless parents—the poor, the mentally ill, the members of racial or ethnic minorities—would be hardest hit. As Guggenheim explains, those who lack the resources to weather temporary adversity on their own are far more likely to become involved with governmental authorities. They are thus more likely to have their parenting judged, and they are more likely to relinquish custody to state agencies in crisis situations. This is a problem for the poor in general, and the mentally ill in particular. Once such parents lose custody, they become vulnerable under the psychological parenting theory to the loss of all rights in their children. Further, as Guggenheim and Stack point out, the discretion accorded to child welfare workers permits cultural and class bias to permeate judicial and agency evaluations of parental performance and children's interests. Gordon's historical materials confirm these points but also suggest that nineteenth century client families did, to a certain

42. Association for Children of New Jersey, *An Examination of Citizen Review in New Jersey: Monitoring Children in Placement* 122-36 (1982).

43. Telephone communication with Dr. Leroy H. Pelton, Social Psychologist, Special Consultant to the Association for Children of New Jersey (Nov. 17, 1983).

degree, seek agency assistance in enforcing their own cultural norms regarding family life.

Family autonomy was also a recurring theme, but the speakers varied in their perspectives on the issue. For Solnit, the argument for family autonomy is intimately related to a particular view of human development, a view questioned by others. Guggenheim saw family autonomy as a value rooted in our constitutional history. He argued that protecting this value not only requires extremely limited interventions into ongoing families but also calls for the return of removed children in almost all instances. In contrast, Gordon questioned whether families can ever be considered independent of the state and suggested instead that the myth of family autonomy has functioned historically to mask the oppression of women and children.

Some presentations proposed alternatives to the Goldstein, Freud, and Solnit approach; others hinted at them. Guggenheim advocated a substitute legal standard that permits state intervention only to prevent death or disfigurement of children and that mandates return of removed children even after the passage of extended time periods. Fanshel's concern for continued connections between biological parents and children suggests the importance of separating questions of custody from questions of visitation so that permanency in placement need not mean exclusivity of contacts.⁴⁴ Stack's description of caretaking arrangements in black communities suggests that it is even possible for custody to be shared by biological parents, foster parents, and other honorary relatives.

The contributions of Goldstein, Freud, and Solnit are important for their insight, for their impact, and for the debate they have prompted. The following presentations are part of that debate.

44. Garrison, *supra* note 3, at 455-72.