

ABOVE AND BEYOND THE BEST INTERESTS OF THE CHILD: AN INQUIRY INTO THE RELATIONSHIP BETWEEN SOCIAL SCIENCE AND SOCIAL ACTION

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The publication of an inter-disciplinary effort on child welfare law, co-authored by three such luminary figures as Joseph Goldstein (Walton Hale Hamilton Professor of Law, Science and Social Policy at Yale University Law School), Anna Freud (perhaps the foremost living authority on the emotional lives of children), and Albert Solnit (Director of the Yale University Child Study Center), is an intellectual event. The talents of these authors are such that their book, *Beyond the Best Interests of the Child* (1973), ought to have significance beyond its reconceptualization of the law of child custody; it ought also to be a landmark in the history of cooperation between social scientists and lawyers. Despite impressive achievements, however, the book's greatest utility may be as an example of the wrong way to employ social science to solve problems of social policy.

This is not a review of the Goldstein, Freud, Solnit book; it is an essay about the responsibilities of those who would influence social policy with knowledge derived from the social sciences. *Beyond the Best Interests of the Child* will be used as a case study to demonstrate that policy developed with disregard for these responsibilities may be unwise or even harmful. A short review of the book's major suggestions is included to provide a background for the reader unfamiliar with them. We shall discuss, in turn, the responsibilities: (1) to develop a thorough data base which draws on the total body of relevant knowledge, and which proceeds from a profound awareness of the limitations on such data; (2) to develop an optimal plan —

that is, one which is not only workable, but which offers greater benefits and/or less costs than other possible solutions to the problem posed; and (3) to anticipate possible unintended consequences which may alter existing political and/or social arrangements.¹ The relationship between these responsibilities and successful policy formulation will be demonstrated by reference to some of the weaknesses of *Beyond the Best Interests of the Child*. The concluding section of this article attempts to answer questions, derived from the sociology of knowledge, about why these specific responsibilities may have gone unfulfilled.

Background: A Review of the Book's Major Proposals

The book may be seen as having two major thrusts: one relates to the objectives that courts ought to pursue in child custody cases; the other relates to psychoanalytic propositions which, it is argued, ought to be built into the law.

The first thrust of the book gives rise to its title; courts deciding child custody cases are traditionally concerned with "What is best for the interest of the child?" (*Finlay v. Finlay*, 1925). While agreeing "that the law must make the child's needs paramount," Goldstein, Freud, and Solnit (1973: 6) are concerned that limitations on existing knowledge make it impossible to ever know with certainty what is "best." Thus, they suggest a new standard: "the least detrimental alternative."

The least detrimental alternative . . . is that specific placement and procedure for the placement which maximizes, in accord with the child's sense of time and on the basis of short term predictions, given the limitations of knowledge, his or her opportunity for being wanted and for maintaining on a continuous basis a relationship with at least one adult who is or will become his psychological parent. (Goldstein, *et al.*, 1973: 53).

The idea that courts do not have the competence to supervise a child's development in order to secure its best interests is revolutionary. The suggestion that courts ought therefore to be concerned with minimizing the harm a child might suffer in a custody case and then ought to withdraw from the child's life is refreshing. Since, however, Goldstein, Freud, and Solnit conceptualize their proposed alternative in psychoanalytic terms, we may wonder whether determining what is least detrimental to a child's psychological well-being will actually prove manageable for courts.

The authors' concern with psychological concepts gives rise to the other major thrust of the book; they advocate that the traditional biological standards that have dominated child cus-

tody law be replaced with psychological standards. In custody cases natural (biological) parents generally enjoy a significant advantage. Parents who have placed their offspring in foster homes or in other temporary living arrangements rarely have difficulty in re-asserting their right to custody. Even in adoption cases there is usually a waiting period in which the natural parent will be permitted to experience a change of mind (or heart) about retaining custody.² This preference for consanguinity generally obtains even in the face of evidence that the competing parties might actually be better parents. In divorce cases the interests of each biological parent are protected by the assignment of visitation privileges, and sometimes by a division of custodial rights (*e.g.*, the child lives with one parent during the school year and with the other during vacations).

The problem with all this, according to Goldstein, Freud and Solnit, is that it fails to recognize the importance of continuous, stable, and gratifying psychological relationships. Psychological parents are those who, regardless of biological relationship, provide children with stability and who meet their physical and emotional needs. The psychological parent provides the stimulation for social and intellectual development, and the basis for inter-personal trust which is essential to the success of all future relationships. If the law's concern is the best interests of children, these authors maintain, it must protect the child's relationship with psychological parents even at the expense of the rights of natural parents. Thus, a radical child placement statute is proposed. It provides, first, for the abolition of waiting periods in adoption cases on the grounds that the uncertainty generated by the lack of finality hampers the development of psychological parenthood in the new setting. Second, it tends to favor foster parents who wish to adopt or otherwise retain custody of children over the natural parents of those children on the grounds that every change in custody undermines the stability that is essential to healthy child development. In addition, the model statute provides that children whose divorced parents cannot agree on custody and visitation terms are to be assigned by the courts to the exclusive care of one parent, because children caught in the middle of parental conflict may have difficulty establishing sound relationships with either. The act also provides that children involved in such contests shall have a right to separate and independent representation by counsel (Goldstein *et al.*, 1973: 97-101).

All of these innovative proposals are clearly and succinctly stated in the book; they are tightly connected to relevant psychoanalytic literature. The supporting rationale is developed with lucidity, humanity and wit. It must surely be concluded that the book is an important contribution to the literature. It is less certain, however, that it succeeds in developing a plan which will actually fulfill its aspirations — better treatment for children. Our concerns about the potential failure of these proposals will be elaborated in the next three sections of this paper.

The Responsibility to Develop a Thorough Data Base and to Recognize its Limitations

The successful resolution of complex social problems requires that they be appreciated and understood from a range of perspectives. There is no single discipline (and certainly no single approach within a discipline) that is able to perceive and explain all the intricacies of human interaction. Psychoanalysts who wish to function as policy scientists ought not abandon their psychoanalytic orientation, but they ought to strive to integrate it into the total body of theory and evidence that relates to the problem at hand.

Beyond the Best Interests of the Child does not contain a single reference to any empirical study in the extensive literature on adoption and foster placement. In fact, its references to material from the social sciences include only a single citation to non-psychiatric or non-psychoanalytic literature. The failure to review the literature seems to have resulted in an imprecise assessment of the parameters of the problem. The cases on which Goldstein, Freud, and Solnit focus involve natural parents who can not agree between themselves about custody, or who seek to regain custody after having lost it. A much more frequent case involves state action to terminate parental rights to custody because of neglect or abuse of the child.³ The reluctance to separate children from their parents which Goldstein, Freud, and Solnit would enact into law would undoubtedly have an impact on the resolution of those cases; but the specific nature of that impact is unclear. How would judges balance the danger to a child's psychological well-being presented by separation against the danger to his physical (and/or psychological) well-being presented by neglect and abuse? In *Beyond the Best Interests of the Child* a strategy is developed for a small number of cases with no consideration of the impact of that strategy on a problem of much greater incidence. In contrast to Goldstein, Freud,

and Solnit's neglect of the issue, a recent article by Robert Mnookin (1973) in the *Harvard Educational Review*⁴ is explicit in its preference for maintaining neglected and even abused children in their parents' homes. By facing the problem head-on, Mnookin is able to assess the potential dangers to children and to develop strategies to provide counseling and other resources to such families in order to minimize the risks.

A more unfortunate consequence of the author's failure to review a broad range of literature is an insensitivity to the limitations of the evidence cited in support of the book's major psychological premises. Studies by Bowlby and by Spitz on the effects of maternal deprivation are cited, for example, without acknowledging the existence of major criticisms both of the methodologies used and the conclusions reached in those studies.⁵ In consequence, the authors are in the position of urging the enactment of legislation based not so much on "social science facts" as on "social science issues in controversy."

In addition, the authors tend to disregard the limitations on the inferences that can be drawn from the social science evidence they introduce. This tendency is demonstrated early in the book when it is asserted that multiple placement of school age children is "the direct cause of behavior which schools experience as disrupting and the courts label as dissocial, delinquent, or even criminal" (Goldstein *et al.*, 1973: 34). Two objections may be made to this assertion. First, it is based on only a single reported case study; second, it tends to confuse causality and correlation. Of these objections, the second is the more significant. It is plausible to expect that children in contemporary America who experience growing up in many homes are likely to be poor and black, because poor black families are most likely to be broken in the first place and are least likely to have sufficient resources to maintain children at home.⁶ In addition, children who experience multiple placements are likely to be unintelligent and unattractive, because cute and clever children are more likely to work their ways into some would-be-mother's heart. A review of a large number of cases might indeed demonstrate that multiple placement correlates with subsequent delinquency; but causality could not be proven unless such factors as race, relative poverty, intelligence and interpersonal attractiveness were somehow controlled. The issue drawn here is not whether Goldstein, Freud and Solnit are correct in their assessment of the potential damaging effects

of separation and instability on the emotional development of children. It is whether they fulfilled the responsibility, implicit in all scholarly efforts to influence social policy, to demonstrate not only the justifications for action, but also the bases for uncertainty.

Another example of this disregard for the limits of inference that can appropriately be drawn from a given piece of evidence resides in the assertion that: "The prolonged absence or death of one parent may place the child at risk." The evidence for this proposition is that 29 percent of the children seen in the Child Psychiatry Unit of the Yale Child Study Center came from one parent families (Goldstein *et al.*, 1973: 114, fn. 2). However, given divorce rates which approach 33 percent in some socio-economic groups, and given evidence concerning the number of one parent families in the general population, it is not clear that the rate of one parent families at the Yale Clinic is excessive.

Disregard for evidence, and for its limitations, might be less disconcerting were it not for the fact that some of the unsubstantiated claims contradict everyday experience. The assertion that separation for more than just a few days may result in the permanent emotional scarring of a pre-oedipal child,⁷ for example, seems to require proof.⁸ This is especially true since it is claimed that the adequacy of interim care is inconsequential.⁹ Can "more than just a few days" at Grandma's while Momma is ill and hospitalized, or even happy and vacationing, actually be so destructive? The issue is critical because Goldstein, Freud, and Solnit argue that in a short time the child's psychological ties to its natural parents can be broken and replaced by new ties to interim caretakers who would then have a first right, under their plan, to retain custody (Goldstein *et al.*, 1973: 32-33, 40, 42, 137-38). Surely, so large a shift in policy requires more than mere assertion.

There is disagreement among psychologists about whether separation per se is harmful to children, or whether it is the relative deprivation that often follows separation that is destructive. Goldstein, Freud, and Solnit come down on the side that believes the mere fact of separation is harmful. Whatever the utility of that position in clinical practice, it is offered in this book as a guide to the formulation of social policy; and it is offered without any suggestion that a controversy exists.

Many of the studies cited by Goldstein, Freud, and Solnit in support of their contention that separation is harmful for children do not actually deal with the concept of separation, but with parental deprivation. The issues may tend to get confused because separation is often followed by deprivation. Much of the classical literature in this field describes separation occurring under wartime conditions, and often it describes separation resulting in institutionalization and severe deprivation of care. Early, prolonged, and severe deprivation of maternal care associated with institutionalization does have important consequences for early development. Available literature (such as the W.H.O. monograph by Ainsworth *et al.*, 1962, which was cited by Goldstein, Freud, and Solnit; see notes 5 and 8, *supra*)¹⁰ shows that long range outcomes are quite diverse in severity and quality, with the majority of children in many studies failing to show any significant impairment. Moreover, the impairments are often largely, if not wholly, reversible in many children.

An additional point needs to be made here. The authors have not dealt with the totality of psychoanalytic theory that might have relevance to their study and implications for their recommendations. As evidence for the proposition that separation is undesirable and that multiple placements of children are deleterious because they impair the development of psychological parent-child relationships they cite an autobiographical statement by the noted humorist Art Buchwald who indicates that as a foster child he did not not seriously commit himself to foster parents because he knew the temporary nature of the placements; instead he became a clown (Goldstein *et al.*, 1973: 157, fn. 1). The use of this material as evidence for the harmful effects of separation and multiple placements ignores the adaptive implications of Buchwald's experience. Heinz Hartman's classic psychoanalytic monograph, *Ego Psychology and the Problem of Adaptation* (1958), speaks to the potential benefits of adaptation to difficult situations. A thorough consideration of the psychoanalytic literature would have required discussion of this point, and perhaps consideration of the adaptive benefits of working through certain experiences with people who can assist the individual to master difficulties.

Responsible policy formulation requires that competing explanations of a phenomenon be pitted against one another, and that the evidence for each position be carefully evaluated.

In law, it is true, advocates are expected to amass only the evidence that supports their position, and to present it as persuasively as possible. But in this book neither Professor Goldstein nor the others is practicing law; and in any event the usual condition of advocacy — that another side be present — has not been fulfilled. Indeed, these authors' very fame and stature make it unlikely that there could be a counter-presentation which would command equal attention in the public eye. Thus, the responsibility to identify and explain contrary positions falls heavily on their shoulders.

The Responsibility to Develop an Optimal Plan

Apart from questions about the sufficiency of evidence, we may raise issues about the adequacy of the solution proposed. These issues are of two types: one relating to the practicability of the plan — that is, will it work; the other relating to the relative costs and benefits of the plan and of other possible solutions to the problem.

The issue of workability arises because changes in the law do not automatically result in predictable changes in the behavior of real people in the real world.¹¹ Goldstein, Freud and Solnit seem to recognize this as regards the law's incapacity to work changes in the hearts and minds of individuals (Goldstein *et al.*, 1973: 49-52). They fail, however, to recognize that the problems of children exist in the context of the culture and organizational structure of the social agencies involved in adoption and placement work. The introduction of significant change into elaborately organized, complex institutions is extraordinarily difficult. There is not much reason to believe that proposals for change will succeed if they ignore the social forces which make for organizational stability and inertia.¹²

The book's most explicit recognition of the fact that family court judges are part of a social system (which includes parents as well as lawyers, social workers, psychiatrists and others) occurs in a statement by Judge Baltimore, an invention of the authors:¹³

As a judge, I have to recognize as irrelevant feelings which have been aroused in me because of my childhood experiences, my own concerns about being a parent and my religious origins. These feelings would compel me to place the child with the biological parents . . . were it not for the guideline which stresses the child's need for continuity (Goldstein *et al.*, 1973: 109).

Judicial behavior is seen by the authors to be subject to ex-

ternal influences; but their emphasis on emotions (especially on the psychoanalytic concept of counter-transference) obscures the reality that there are other, and perhaps more important, constraints on judicial behavior. Are judges not responsive to political considerations? Are they not influenced by considerations of social power and social class? Does the reality that poor people are likely to be represented by less able counsel than rich people make a difference — are judges not influenced by the lawyers who practice before them? Are judges in the real world independent decision-makers, or are they dependent on agency professionals for information and interpretation? To what extent are judicial decisions influenced by the advice of social workers and probation officers attached to the courts?

The workability of the plan is thrown into doubt by the book's failure to consider the characteristics of the social system it seeks to change. This doubt might have been vitiated had the book included an analysis of other instances in which law reform has been successfully used to promote social change. Such an analysis might have demonstrated that the child welfare system has characteristics that make it susceptible to change. But no such analysis was attempted. Therefore, no way is provided to assess the probability that the problem defined by Goldstein, Freud and Solnit will prove tractable to the reforms they advocate.

But even if no doubts existed about the practicability of the law reform approach developed in *Beyond the Best Interests of the Child*, it would still be appropriate to evaluate the advantages and costs of proceeding in that manner rather than in some other. By failing to develop other possible strategies, Goldstein, Freud and Solnit fail also to explore the comparative benefits of their preferred solution. One can easily imagine both more conservative and more radical options than the one presented in this book.

A conservative option might involve the creation of special counseling facilities attached to family courts. These "clinical" centers could provide services to children and adults involved in custody fights. The rigors of separation might not be mitigated by such a plan; but arguably the potential for harm would be substantially vitiated, and the amount of change in the existing order would not be very great. A more radical alternative might involve the development of professionally

operated child care facilities and cooperative group living arrangements for mothers who would otherwise have to give up their children to the vagaries of the adoption and foster care placements systems.¹⁴

R. H. Mnookin (1973: 631-38) suggests these and several other proposals for avoiding the separation from the natural parent in the first place. For one concerned with preventing the deleterious impact of separation, the initial removal of the child from the home is by far the most strategic point for intervention. That is the point on which Mnookin's article focuses. It is interesting to note that Goldstein, Freud, and Solnit, while obviously concerned about the effects of separation on children, seem uninterested in how separations occurs initially.¹⁵

The failure of the authors to consider alternative plans and points of intervention, if only to reject them, leads to questions about how and why they defined their tasks as they did. Such questions will be considered in the final section of this essay.

Responsibility to Anticipate Possible Unintended Consequences

In pursuit of social change every solution brings with it a set of new problems. Thus proposals for change must be evaluated not only on the basis of their responsiveness to existing problems, but also on the basis of their own problem-generating capacity. The policy scientist whose plans, though elegant, are likely to create major new difficulties is akin to the surgeon whose technique is unsurpassed but whose patients die. In *Beyond the Best Interests of the Child*, Goldstein, Freud and Solnit propose major changes in the laws that regulate families without any overt recognition that their proposals might cause undesirable disruptions in existing social and political arrangements.

The political issue flows from their preference for psychological rather than biological definitions of parenthood. In cases between natural parents and temporary custodians (foster parents, or even Nannies hired to provide child care services) who wish to retain custody, the adoption of the Goldstein-Freud-Solnit proposal would tend to augment the discretionary power of judges. This is so because psychology does not offer the same guarantee of clear-cut issues as biology. It is difficult to imagine a custody case in which the issue of biological parenthood might be contested. Thus, it is difficult to imagine a case in which the existing natural parent rule would not

appreciably limit the discretionary power of judges. It is easy, on the other hand, to imagine a case in which psychological parenthood might be contested. How extensive must the interruption be in a parent-child relationship before its psychological components are terminated and the requirements for transfer of custody satisfied?

Goldstein, Freud, and Solnit tell us that the answer to this question must depend on the time sense of the child. That is probably the best possible answer; but it is not altogether satisfactory, because it is not altogether determinable. The section of the book that explains that a child's sense of time is related to his impatience and frustration rather than to clocks and calendars seems to concede that the amount of time necessary to break an existing psychological tie varies from child to child, and from developmental stage to developmental stage. Ultimately, it is impossible to determine the point in time at which a child has been psychologically abandoned.

We can concede that a two-year-old separated from his parents during the whole second year of life no longer enjoys a psychological relationship with them;¹⁶ but what if the separation had lasted only six months? Or three months? Or two? Or one? There is no inherent logic in a ten-day rule, or a thirty-day rule, or a sixty-day rule. We must be prepared to accept a case by case decision-making process. Such processes leave great power in the hands of judges. Thus, eventually, we reach the fundamental political issue: Is a comparatively inflexible rule (such as the one that prefers natural parents) preferable to a rule which increases the discretionary power of government officials?¹⁷ In light of the fact that judges are generally untrained in the use of interpersonal skills, the question takes on special importance. Even if the decision is left to well-trained clinicians, the fundamental question remains: Is a government of imperfect rules preferable to a government of wise rules, the implementation of which requires an increase in the discretionary powers of imperfect people?

Goldstein, Freud, and Solnit pose their case as a choice between psychological and biological concepts, pure and simple. It also entails, however, a choice between competing ideologies about the desirable level of governmental power. That the issue exists does not mean that the plan ought not to be adopted; it means that its utility not only for children, but for the whole political structure must be considered. Any attempt to influ-

ence social policy which does not consider such vital components of political reality is incomplete. Not only have these three talented scholars failed to share their insights about the impact of their proposals on the balance between state power and individual freedom, they have failed to articulate their proposals in such a way as makes it clear that issues of this nature exist.

In addition to ignoring political issues, Goldstein, Freud, and Solnit fail to consider the potential impact of their proposals on existing social relationships. In a sense, they have over-estimated the power of the law by under-estimating the power of individuals to circumvent it.¹⁸ Two examples may suffice to demonstrate this point.

The first relates to the suggestion that contested custody issues in divorce cases be resolved by the assignment of the child to the *exclusive* care of one parent, with not so much as visitation privileges remaining with the other. The theory is that if parents are unable to agree on custody terms outside of court then their relationship is probably so strained that the child's best interests will be served by insulating him entirely from the conflict. The idea is elegant, but it might not work. The reluctance of both parents to lose the child entirely, particularly to one toward whom there is no longer much goodwill, might generate pressures to keep families intact. The tension between the parents might then escalate, and the competition for the child's affection might intensify. In such a manner a scheme designed to minimize emotional conflict in the lives of children might actually exacerbate it.

Second, knowledge that a temporary placement might result in what Goldstein, Freud, and Solnit term "common law adoption" might discourage the use of foster homes. A parent wishing to separate from a child for a short time in order to seek better employment in a distant city, or to obtain medical or psychiatric care in order to better raise the child might reasonably refrain, fearing the possible loss of custody. In a case discussed extensively in *Beyond the Best Interests of the Child* (Rothman v. Jewish Child Care Association, 1971), a mother placed her daughter in a foster home in order to obtain in-patient psychiatric care. Had the Goldstein-Freud-Solnit rule been in effect, she might have refused treatment in order to avoid separation from her child. It is not clear on the face of it that a policy which would discourage disturbed

parents from seeking help will actually redound to the best interests of their children.

Goldstein, Freud, and Solnit seem to have forgotten that adults have the capacity to compensate for rules of law. There is a large gap between statutes and judicial decisions on the one hand, and the behavior of real people in the real world on the other hand. Sound policy analysis requires not only that clever rules be formulated, but also that their probable impact on behavior be assessed.

Conclusion: A Reflection on the Sociology of Knowledge

Beyond the Best Interests of the Child is commendable for its sentiments, and for its effort to write laws based on social scientific theory; but its considerable flaws and weaknesses lead us to raise questions about the ways in which knowledge develops.

It is essential to recognize that knowledge, like all cultural artifacts, exists in a social context. The radical critique of social science maintains that academic disciplines generate a culture which limits the perspective of social scientists. The limiting influences derive from the fact that social scientists seek to protect and enhance their social status; thus, they promote the interests of their disciplines and professional ideologies¹⁹ and of their institutional and financial sponsors.

Why was such a limited range of literature consulted, and why did the authors ignore evidence of the weakness of basic studies used to support their propositions? One answer lies in the fact that all three authors are psychoanalysts, and psychoanalysis has been remarkably closed to the idea of outside scholars. Analysts have long contended that non-analysts are unqualified to criticize their data, and that knowledge derived from other methods is irrelevant to psychoanalytic thought.²⁰ The reader is urged to compare *Beyond the Best Interests of the Child* with Mnookin's (1973) article on the same subject in order to fully appreciate the flaws chargeable to the exclusion of relevant evidence.

Not only are the authors psychoanalysts, but they comprise an elite group, each powerful and prestigious in his or her field. To what extent may that power and prestige have operated to insulate them from the pressures toward thoroughness exerted by critics? It has been argued that the concern of authors for the critical opinions of professional peers induces caution against the propensity to overstate a case or to distort

evidence. It is not clear that scholars at the top are particularly susceptible to such pressure; and it may even be that, convinced of their own lucidity and insightfulness, they begin to perceive their own interpretations as the only reasonable ones.²¹ There may be a corollary tendency among professionals standing in awe of such authors' reputation to fail to examine their work with appropriate skepticism.²² Thus, the insulation from criticism may be a self-perpetuating and escalating phenomenon.

This book was written for the express purpose of influencing social policy. The title is reminiscent of B. F. Skinner's recent best seller, *Beyond Freedom and Dignity* (1972), a work which inferentially enhances the social position of the psychologist by asserting a claim to order the social world according to scientifically valid principles. In a related field Moynihan (1969) has demonstrated that social scientists, deeply desirous of having a powerful impact on governmental policy regarding poverty relief, overstated their case, and that a deep disenchantment with the role of social scientists in government followed. The firmness of the recommendations of *Beyond the Best Interests of the Child*, and the failure to indicate the tentativeness of the data base may reflect the wish to have a powerful influence on social policy; and that wish may overcome the skepticism and caution usually expected in scholarly efforts.

This book was sponsored by nine private foundations and by the National Institute of Mental Health. Foundations generally support work in the hope that it will prove influential. In fact, success is often measured by the influence a work has, or by the extent to which public agencies assume the permanent funding of foundation-sponsored innovative projects. Such implicit expectations of funding agencies may create pressure on authors to develop "radical" rather than conservative positions. Could this international group, meeting in London, Baltimore, Eire, and Connecticut over a period of four years, possibly have come to a less radical conclusion and still faced their sponsors? Could they have said that existing knowledge is too uncertain to permit a definite recommendation? After spending all that time, effort, and money, could they have concluded that no viable and significant improvement is possible?

The field of policy sciences has begun to develop a literature on the social organization of policy relevant research.²³ Campbell (1971) has recommended, *inter alia*, that there be

independent replications of any critical research sponsored by a public agency. Levine (1973) has recommended that research teams deliberately incorporate an adversary. Kourilsky (1973) has argued that policy relevant knowledge be presented to decision-makers through an adversarial procedure which would include cross-examination of opposing position. The weaknesses of *Beyond the Best Interests of the Child* emphasize the need to think through the social context of the research enterprise much more thoroughly, and to introduce controls which will guard against the overzealousness and the limitations that exist in even the most distinguished scholars. At present the only corrective force is critical analysis published in journals; that, however, is a slow process, and insufficient in an age in which ideas can rapidly gain popular currency.

Beyond the Best Interests of the Child is clearly an important book despite its weaknesses. It is an excellent example of a self-conscious attempt to formulate law and public policy on the basis of psychological data. The book's greatest importance, however, is in its failures. It emphasizes the need to conceptualize more clearly what we are about when we engage in the effort to translate social science concepts into social action. The process by which concepts are translated into action is highly complicated, and the social scientist is far from a neutral translator. It is to be hoped that legislators and others responsible for the formulation and implementation of policy will not be dazzled by the reputations of these authors. Decisions that might influence the lives of millions need to be based on more satisfactory data and on a more thorough examination of alternatives than has thus far been presented.

NOTES

- ¹ There is a growing body of literature relating to the "science" of policy formation. See, for example, Lerner and Lasswell (1959); Dror (1968, 1971); Bauer and Gergen (1971); Lasswell (1971).
- ² See, e.g., Revised Uniform Adoption Act § 12.
- ³ For an article that highlights the significance of this distinction, see Mnookin (1973), particularly at pages 600-01.
- ⁴ Mnookin's review of relevant literature is remarkably thorough, complete and inter-disciplinary.
- ⁵ Goldstein, Freud, and Solnit rely on work done by Bowlby, Spitz and others to support their contention that separation from mother is inherently detrimental to a child's psychological development. Neither their footnotes nor their discussion acknowledges the existence of Pinneau's (1955) devastating critique of Spitz's work which appeared in the *Psychological Bulletin*, a non-psychoanalytical source. They also ignore Yarrow's (1961) careful critique and reconceptualization of the entire literature, which also appeared in the *Psychological Bulletin*. Both of these articles have been widely cited in the child development literature. A trenchant criticism of the literature on separation by O'Connor (1956) was similarly ignored. A 1962 World Health Organ-

ization monograph by Ainsworth *et al.* is cited as supportive by Goldstein, Freud, and Solnit. The Ainsworth article in that monograph, however, contains a chapter called "Review of Findings and Controversy," in which the distinction between separation from a parent and parental deprivation is carefully set forth. That chapter also discusses the variability in the degree of damage caused by deprivation (damage is not manifested in every case, nor are the effects always severe), and the possibility that the damaging effects of deprivation are only temporary. The same monograph contains an article by Prugh and Harlow which emphasizes the limitations on existing knowledge in this area, and an article by Barbara Wootton which reviews a substantial body of literature which fails to confirm Bowlby. In addition, Baroness Wootton's book, *Social Science and Social Pathology* (1959), which is cited in her monograph article reviews the literature in still greater detail. All this material is published in both British and American sources, and was clearly available to Goldstein, Freud, and Solnit. Yet they write as if no questions exist about the concepts they use.

- ⁶ Welfare rules may have the effect of increasing the probability that poor children will be raised in foster homes. Family maxima rules, for example, limit the size of grants to single family units regardless of size. A typical rule limits grants to the maximum amount for which a family of six is eligible. Larger families must live on insufficient funds or may reduce the number of children in the household (thus making the grant more nearly adequate) by taking advantage of state financial foster placements. The Supreme Court has upheld the constitutionality of family maxima rules. See *Dandridge v. Williams* (1970).
- ⁷ Goldstein *et al.* (1973: 137-38, fn 17; 32-33, 40, 42). Goldstein, Freud, and Solnit are careful to phrase their psychological summaries with qualifications (such as the word "may" or "sometimes," etc.) which suggests an awareness of the tentativeness of the data base. The model statute they develop, however, contains no such qualifications. Such ambiguity and uncertainty would be impermissible in legislative drafting.
- ⁸ Goldstein, Freud and Solnit cite Freud and Burlingham (1973) on the effects of separation. They note that childish grief at separation is short-lived; the process is sometimes completed within forty-eight hours. They go on to say, however, that "it is a psychological error to conclude from this short duration that the reaction is only a superficial one and can be treated lightly." An additional quotation from an article by Anna Freud extends the generalization in much more serious terms, but there is no follow-up to demonstrate whether her views are supported by empirical evidence.

There is, however, a body of literature on the reactions of children to brief hospitalization which Goldstein, Freud and Solnit ignore. Predictably it tends to support the view that short separations do *not* have permanent consequences. This material was close at hand to Goldstein, Freud, and Solnit. Dana Prugh, who was co-author of an article in the World Health Organization monograph cited in *Beyond the Best Interests* (see note 5 *supra*), is senior author of one of the important studies in the area. That study (Prugh *et al.*, 1953) is cited in the Prugh and Harlow chapter in the W.H.O. monograph. Thus, Goldstein, Freud, and Solnit have not merely asserted without proof that brief separations are harmful, they overlooked a body of literature which presents contrary evidence.

- ⁹ The assertion that separation from mother may be harmful to a child may be of particular concern to feminists because of implications for the female role and the social acceptability of the working mother. See, for example, Stoltz (1960). By extension from this assertion it has been argued that any separation of a mother from her child is deleterious. See, for example, *New York Times* (March 25, 1974, at 1, col. 1) in which Ainsworth is cited as saying that day-care makes children anxious, and Bowlby is cited as agreeing with this assertion. Goldstein, Freud, and Solnit are not responsible for that interpretation; but their emphasis on separation *per se* contributes, at least indirectly, to the thesis that a woman's place is at home with her baby. Psychoanalysis has not been notably in the forefront of the women's movement. Thus, it is not surprising that the hidden value premise inherent in the emphasis on separation was not examined by Goldstein, Freud, and Solnit. Their neglect of the issue might be excusable were it not

for the fact that the evidence for the separation thesis is so far from unassailable.

¹⁰ For an additional excellent discussion of the controversy, see Rutter (1972).

¹¹ There is considerable danger that changes in the law will result in unanticipated changes in the behavior of people in the real world, and that those unanticipated changes will undermine or negate the law's intentions. The implementation of the Durham rule (*Durham v. United States*, 1954) provides a particularly appropriate illustration because it is a prime example of psychiatrically-inspired legal reform. The Durham rule, that "an accused is not criminally responsible if his unlawful act was the product of mental disease or defect," replaced the traditional "knowledge of right and wrong" test in the District of Columbia, and was intended to give that jurisdiction the broadest possible expansion of the concept of exculpatory mental illness. In practice the new rule has operated to give the power to resolve issues of criminal responsibility to the psychiatrists who provide expert testimony on the existence of mental disease or defect. There is evidence that psychiatrists have been cautious in the exercise of this power, and that the new standard has not had considerable impact on the resolution of cases.

This seems to be due to psychiatrists holding surprisingly punitive values and their fear that an influx into psychiatric wards of offenders found not guilty by virtue of insanity would place excessive strain on the already scarce resources of public hospitals. For an excellent discussion of the Durham rule in action, see Arens (1967).

¹² There is a vast literature which addresses the factors which intervene between the propounding of legal rules and their implementation in specific social settings. For a broad range of examples, see Friedman and Macaulay (1969: ch. 3). For an overview of the variability in organizational response to American Supreme Court decisions, see Becker and Feeley (1973); Wasby (1970). A recent and excellent piece of experimental work (Stapleton and Teitlebaum, 1972) tends to confirm the inability of changes in rules to change the functioning of courts. For an overview of the problems of creating organizational change, see Levine and Levine (1973).

¹³ For an excellent and more catholic discussion of unconscious influences on judicial behavior in which it is argued that a judge ought not necessarily decline to act on his subjective sense of justice when it is in conflict with an established rule of law, see Cardozo (1963).

¹⁴ Is it the cultural ethnocentricity of psychoanalysis that causes the authors to ignore all the evidence that multiple mothering (as in the Kibbutz or the extended family) may have favorable effects on the psychological development of children. References to such evidence can be found in Ainsworth *et al.* (1962). A goodly proportion of the article in that monograph by Margaret Mead is devoted to a review of comparative studies critical of the psychoanalytic proposition that healthy emotional development requires attachment to a single, consistent mother figure.

¹⁵ One can raise questions about the dynamics of the authors' emphasis on the concept of psychological parenthood. The concept fits certain cases very well and it is attractive both because of its radical nature and its novelty. However, one can also speculate that it represents an extension to the world at large of the psychoanalytic therapeutic relationship in which it is implicit, and sometimes explicit, that the psychoanalyst as a surrogate parent is superior to the natural parent who damaged the child in the first place.

¹⁶ It does not necessarily follow from this, however, that such a relationship cannot be resumed with no discernible bad consequences for the child. See notes 5 and 8 above.

¹⁷ Early in the book (at page 7) the authors assert their preference for privacy — that is, "the right of parents to raise their children as they see fit, free from government intrusion, except in cases of neglect and abandonment." And their statute has the advantage of forcing courts to make final decisions quickly and then get out of a family's affairs. This may represent a distinct advantage over the current practice which often permits continuing jurisdiction in child custody cases. It certainly reflects the authors' desire to contain judicial discretion. The

issue is whether they have reduced one type of state interference only to appreciably increase another type.

- ¹⁸ This failure, of course, is intimately related to the failure to conceptualize the problem as existing in the context of an elaborate social system. See the content of the text accompanying notes 12 and 13 above.
- ¹⁹ It is worth noting that some unintended consequences might redound to the advantages of the legal and psychiatric professions. One of the authors' suggestions is that children involved in custody proceedings be granted party status and legal representation. Aside from questions that might be asked about what the probable quality of that representation might be, one cannot but observe that in the age of no-fault insurance and an abundant supply of lawyers, adoption of the Goldstein-Freud-Solnit plan would be advantageous for the legal profession. It is interesting that Mnookin (1973), careful as he is about most issues, also assumes that utility of independent representation without critical evaluation of the cost and benefits. The ambiguity of the concept psychological mothering would, if this plan were adopted, create a whole new market for the expert testimony of child psychiatrists. The benefits that would accrue to children under this statute are less predictable than the benefits that would accrue to the professions. In that sense it may be that the authors have unconsciously looked *Beyond the Best Interests of the Child*. One is able only to speculate on whether it is *accidental* that professionals develop plans for the social good which enhance the power and prestige of their professions.
- ²⁰ Consider, for example, the following passage from a review of this article solicited by the editors of the journal. The reviewer, who identifies himself as psychoanalytically oriented, states: "Here the reviewers [authors of this article] seem to be asking a psychoanalyst not to be a psychoanalyst. Rather than ask what type of empirical methods are consistent with psychoanalytical theory of human nature, the reviewers assume any kind of empirical method ought to be considered valid in defining the data base." The reluctance of the psychoanalytic movement to accept outside ideas and criticisms stems in part from the pattern set by Freud in casting dissidents such as Rank, Jung, Adler and others. This attempt to preserve psychoanalysis as a movement and as a social organization inadvertently set an authoritarian pattern which excluded vigorous intellectual exchange.
- ²¹ A parallel tendency has certainly been observed in clear-thinking and talented individuals who reach the top level of success in political pursuits. Indeed, processes of insulation from criticism have been conceptualized by some as having influenced the perpetuation of the war in Viet Nam. See, for example, Halberstam (1972).
- ²² Witness, for example, the rather uncritical comments by prestigious and powerful individuals which are printed on the back cover of the book.
- ²³ See, for example, Levine and Levine (in press).

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- Dandridge v. Williams, 397 U.S. 471 (1970).
 Durham v. United States, 214 F. 2d 862 (D. C. Cir. 1954).
 Finlay v. Finlay, 240 N. Y. 429 (1925).
 Rothman v. Jewish Child Care Association (166 N. Y. Law Journal, Nov. 5, 1971, at 17, col. 1).

REFERENCES

- AINSWORTH, Mary D., et al. (1962) Deprivation of Maternal Care: A Reassessment of Its Effects. Geneva: World Health Organization, Public Health Papers 14.
- ARENS, Richard (1967) "The Durham Rule in Action," 1 Law & Society Review 41.
- BAUER, Raymond A., and Kenneth GERGEN (1971) The Study of Policy Formulation. New York: Free Press.
- BECKER, Theodore L. and Malcolm M. FEELEY (1973) The Impact of Supreme Court Decisions. 2nd edition. New York: Oxford University Press.

- CAMPBELL, Donald T. (1971) *Methods for the Experimenting Society*. Presented at State University of New York at Buffalo.
- CARDOZO, Benjamin N. (1963) *The Nature of Judicial Process*. New Haven: Yale University Press.
- DROR, Yehezkiel (1971) *Ventures in Policy Science*. New York: American Elsevier Publishing Company.
- (1968) *Public Policy Making Re-examined*. Chicago: Chandler Publishing Company.
- FREUD, Anna and Dorothy BURLINGHAM (1973) *Infants Without Families: Reports on the Hampstead Nurseries. The Writings of Anna Freud, Vol. III*. New York: International Universities Press.
- FRIEDMAN, Lawrence M. and Steward MACAULEY (1969) *Law and the Behavioral Sciences*. Indianapolis: Bobbs-Merrill.
- GOLDSTEIN, Joseph, Anna FREUD, and Albert SOLNIT (1973) *Beyond the Best Interests of the Child*. New York: Free Press.
- HALBERSTAM, David (1972). *The Brightest and the Best*. New York: Random House.
- HARTMAN, Heinz, (1958) *Ego Psychology and the Problem of Adaptation*. New York: International Universities Press.
- KOURILSKY, Marilyn (1973) "An Adversary Model for Educational Evaluation," 4 *Evaluation Comment* 3.
- LASSWELL, Harold D. (1971) *A Pre-view of Policy Sciences*. New York: American Elsevier Publishing Company.
- LERNER, Daniel, and Harold D. LASSWELL (1959) *The Policy Sciences: Recent Developments in People and Methods*. Stanford: Stanford University Press.
- LEVINE, Adeline and Murray LEVINE (in press) "The Social Context of Evaluative Research," in Rollo L. HANDY (ed.) *Education and the Behavioral Sciences*. St. Louis: Warren H. Green.
- LEVINE, Murray (1973) "Scientific Method and the Adversary Model: Some Preliminary Suggestions," 4 *Evaluation Comment* 1.
- LEVINE, Murray and Adeline LEVINE (in press) "Change in Organizational Settings: A Diagnostic Framework," in Howard J. PARAD (ed.) *Proceedings of the N.I.M.H. Continuing Education Seminar on Emergency Health Services* (Washington, D. C., June, 1973).
- MNOOKIN, Robert H. (1973) "Foster Care: In Whose Best Interest?" 43 *Harvard Educational Review* 599.
- MOYNIHAN, Daniel P. (1969) *Maximum Feasible Misunderstanding*. New York: Free Press.
- O'CONNOR, N. (1956) "The Evidence for the Permanently Disturbing Effects of Mother-child Separation," 12 *Acta Psychologica* 174.
- PINNEAU, Samuel R. (1955) "The Infantile Disorders of Hospitalism and Anaclitic Depression," 52 *Psychological Bulletin* 429.
- PRUGH, Dane G., Elizabeth M. SANDS, Harriet A. KIRSCHBAUM, Ruth M. LENIHAN, and Ellenora A. LENIHAN (1953) "A Study of the Emotional Reactions of Children and Families to Hospitalization and Illness," 23 *American Journal of Orthopsychiatry* 70.
- RUTTER, Michael (1972) *Maternal Deprivation Reassessed*. Baltimore: Penguin Books.
- SKINNER, B. F. (1972) *Beyond Freedom and Dignity*. New York: Bantam/Vintage.
- STAPLETON, W. Vaughan and Lee E. TEITELBAUM (1972) *In Defense of Youth: A Study of the Role of Counsel in American Juvenile Courts*. New York: Russell Sage Foundation.
- STOLTZ, Lois M. (1960) "Effects of Maternal Employment on Children: Evidence from Research," 31 *Child Development* 749.
- WASBY, Stephen L. (1970) *The Impact of the United States Supreme Court: Some Perspectives*. Homewood, Illinois: Dorsey Press.
- WOOTTON, Barbara (1959) *Social Science and Social Pathology*. London: G. Allen and Unwin.
- WORTIS, Rachelle P. (1971) "The Acceptance of the Concept of the Maternal Role by Behavioral Scientists: Its Effects on Women." 41 *American Journal of Orthopsychiatry* 733-46.
- YARROW, Leon J. (1961) "Maternal Deprivation: Toward An Empirical and Conceptual Reevaluation," 58 *Psychological Bulletin* 459.