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## Book Reviews: Children's Rights: Contemporary Perspectives

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CHILDREN'S RIGHTS: CONTEMPORARY PERSPECTIVES. Edited by Patricia A. Vardin and Ilene N. Brody. Teachers College Press, New York, New York, 1979. Pp. 182.

Children are a neglected minority in our society. Public policy makers have shunned involvement and innovation in children's rights on a national scale.<sup>1</sup> The policy has been one of non-intervention resulting in a dearth of political activism. There is a need in our society for advocacy on behalf of children because of their passive legal standing, lack of independent control over financial assets, and tendency to become the brunt of an adult's social and economic frustrations.

In *Children's Rights: Contemporary Perspectives*, the editors have published a collection of essays written by children's rights advocates of diverse professional backgrounds. The editors' goal is to give the reader new insights into, and a heightened awareness of, the needs and rights of children. The reader will find that this goal has been met in an informative and interesting fashion.

From a moral and ethical perspective, Maxine Greene's "Overview of Children's Rights" (pp. 1-19) identifies the focal issue as "the right to fair treatment without discrimination" (p. 12). From the reviewer's perspective, this is necessarily the starting point for all questions of children's rights, whether legal, moral, ethical or philosophical. Should children be treated as free agents with desires and needs of their own, or should they be molded to fit society's requirements? If a child is to be afforded the right to fair treatment, he must be given a fair amount of freedom — freedom to act, to choose, to make claims and demands. When there are choices to be made that will affect the child's future, Greene advocates the advancement of the child's preferences if they are rational and responsive to reality. A recognition of the child as an individual with desires that are to be respected is a recurring theme of this book and one noted by several of the other authors as worthy of advancement.

The second chapter deals with a less esoteric view of children's rights and brings into focus the main theme that permeates the book — children's rights, what they are and how they can best be realized. Hillary Rodman's "A Legal Perspective" (pp. 21-36) examines the child's enforceable claims under our legal system and some possible changes in light of the special needs of the child population. Rodman approaches children's rights according to a child's relationship with others and divides them into the four broad categories of children: (1) in society; (2) in juvenile institutions; (3) in relation to families; and (4) without families. Her discussion of these categories is unfortunately general and superficial. She does, however, pose many questions and offer some solutions.

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1. See Rodman, Book Review, 86 YALE L.J. 1522 (1977).

In discussing children's rights and the family, Rodman identifies two situations in which state intervention may be necessary. It is mandatory as a matter of law in the case of parental abuse and neglect,<sup>2</sup> and may also occur when the parent requests aid because of the problems associated with raising an incorrigible child (p. 22). The traditional "best interests of the child" test,<sup>3</sup> while providing necessary circumstantial flexibility, is subject to abuse (p. 23). Often, unnecessary intervention occurs because of a family's socio-economic powerlessness, and, in instances in which assistance is sorely needed, none may be forthcoming because of the state's reluctance to interfere with the family structure. Ms. Rodman advocates that the court resolution of disputes between parent and child be extended only to those decisions involving long-term and possibly irreparable effects on the child. Rodman believes that "[c]hildren should have a right to be permitted to decide their own future if they are competent" (p. 26).

Children without families, placed in a government-sponsored substitute family setting, find the courts unwilling to intervene except when ordering fulfillment of life's minimum necessities. Ms. Rodman, while advocating change in this area, offers few concrete suggestions.

A child's substantive and procedural due process rights, both before incarceration and once within institutions, have been greatly expanded in recent years.<sup>4</sup> The Supreme Court, however, has stopped short of extending all adult procedural rights to children and has held that the state need not afford a juvenile a jury trial during the adjudicatory phase of a state juvenile court delinquency proceeding.<sup>5</sup>

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2. See MD. ANN. CODE art. 27, § 35A (1976 & Supp. 1979); Comment, *Maryland Laws of Child Abuse and Neglect: History, Analysis and Reform*, 6 U. BALT. L. REV. 113 (1976).

3. The "best interests of the child" test is utilized in Maryland as the primary consideration in granting or refusing adoption. The facts and circumstances of the particular case are the determining factors in its disposition. See *Palmisano v. Baltimore County Welfare Bd.*, 249 Md. 94, 238 A.2d 251, cert. denied, 393 U.S. 853 (1968) (primary concern in an adoption proceeding should be the welfare of the child rather than the feelings of the child's mother); *In re Johnson*, 247 Md. 563, 233 A.2d 779 (1967) (adoption petition denied where natural mother was remarried and her husband, who was regularly employed, professed a willingness to care for all of her children); *Lloyd v. Schutes*, 24 Md. App. 515, 332 A.2d 338 (1975) (where child's future with the natural mother was uncertain and problematic while his future with the adoptive parents was optimistic, court held adoption was in the best interests of the child); *Schwartz v. Hudgins*, 12 Md. App. 419, 278 A.2d 652 (1971) (interests of the child best served by allowing adoption of child by foster parents where natural mother had no contact with daughter for two year period and had never expressed love or affection for her).

4. When the state seeks to take custody of juveniles, they must be afforded procedural due process. The child has a right to: (1) notice of the charges; (2) a right to counsel; (3) the appointment of a lawyer for indigents; (4) the right to confront and cross-examine witnesses; and (5) the privilege against self-incrimination. *In re Gault*, 387 U.S. 1 (1967). Juveniles also have the right to be proven delinquent beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970).

5. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Furthermore, the Court has deemed corporal punishment permissible within the schools.<sup>6</sup>

An additional philosophical and practical question explored by Ms. Rodman is whether a child is capable of exerting the responsibilities necessary for the assumption of rights. It is her contention that this will not be possible until reversal of the presumption that all minors are incompetent, regardless of age, psychological, and social conditions. Laws should be more discriminately based, and decisions rendered on a case-by-case basis by considering the capacity of the individual child and not the child population as a whole.

In chapter three, "Children as Victims" (pp. 37-52), Robert Burt describes the interrelation of both state and parental victimization. His discussion centers around the failure of state agencies to protect adequately children from parental abuse. This lack of protection is more the result of misfeasance than of nonfeasance. It is Burt's belief that the state is too quick to place abused children in foster homes rather than in working intensely with the family in an effort to preserve the familial cohesiveness that is essential to a child's growth and development. Burt's views are an interesting contrast with Rodman's push for more child advocacy. It is his belief that parents, not judges, should play the dominant role in making major decisions in such areas as abortion and institutionalization. Furthermore, children's rights can best be realized not by state-inflicted solutions but by parental monitoring and attention. Rodman, on the other hand, favors judicial decision-making when the result will have a long-term effect on the child's future.

Burt might have considered, however, possible corrective measures from the state's point of view once state intervention becomes necessary. For example, private or state-run institutions that house children who are mentally unbalanced, retarded, or the product of dangerous home situations, should be required to adhere to stricter standards of care than those presently mandated. In the reviewer's opinion, children should not be subjected to state-sanctioned abuse of a physical or psychological nature. State agencies responsible for the supervision of foster home placement should be required both to remove children from their own homes only in the most undesirable situations and to place them only in an improved environment.

The problem of governmental intrusion into family life is also examined by Marcia Lowry in "When the Family Breaks Down: Massive and Misapplied Intervention by the State" (pp. 53-66). She questions whether state intervention is more destructive than the problematic familial situation it was meant to improve (p. 56). Her criticism is directed at the foster care system that often subjects

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6. *Ingraham v. Wright*, 430 U.S. 651 (1977).

already traumatized children to an unnecessary separation from their families, makes little effort toward the maintenance of family bonds, places children in long-term, inappropriate foster care situations, and makes no effort to plan constructively the foster child's future (p. 57). The blame for the state's failure in this area lies with an agency's inability to deal with the situation, legislative refusal to allocate funds for different solutions (p. 60), and society's failure to recognize the child as a separate legal entity (p. 63).

Francis P. Connor and Dennis M. Connors, in their analysis of the special needs and rights of the handicapped child (pp. 67-83), center their discussion around the Education of the Handicapped Act.<sup>7</sup> This landmark legislation provides for a free, appropriate education in the "least restrictive environment" for every handicapped child. The authors contend that the interpretation of "the least restrictive environment" requirement as "mainstreaming" in the regular classroom raises serious questions (p. 71). Handicapped children placed in regular classrooms may indeed be put into a situation with which they cannot cope. Also, the rights of the nonhandicapped may be unduly infringed. If this solution is to be successful, a great effort on the part of parents and teachers will be necessary to insure an appropriate setting for the particular child. The goal should be to increase the handicapped child's sense of personal worth and his ability to function in the community up to his own capacity. This chapter is concerned with a theme that is central to the children's rights movement which has not been explored in the earlier chapters of this book — that children should have very special rights and immunities which fit their own stage of growth (p. 67). This idea is particularly applicable to the handicapped and equally relevant to the emotionally disturbed child as evidenced in the following chapter.

In chapter six (pp. 84-97), Gerald Koocher discusses the relationship between the child advocacy movement and the mental health profession. It is his theory that mental health professionals can initiate constructive changes in the daily activities of children. Therapists must be prepared to act in a responsible manner on behalf of their child clients. The advisability of advocacy for the "mentally disturbed" child depends, of course, on the individual circumstances of each case. The health professional should not, however, succumb to parental pressure by socializing the child to fit the parents' own wants or needs.

"An International Perspective on Children's Rights" (pp. 99-127) appraises global approaches to children's rights as they relate to health care, poverty, nutrition, and education. David Burgess is critical of United States foreign aid policy toward Third World countries. The traditional "trickle down" philosophy, whereby aid

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7. Pub. L. No. 94-142, 89 Stat. 773 (now codified in 20 U.S.C. §§ 1401-1461 (1976)).

given to the more affluent will ultimately trickle down and create a viable middle class, has resulted in a strengthening of the rich and a weakening of the poor (pp. 105-06). Congress, in reaction to this approach, has recently enacted legislation insuring that United States foreign assistance directly benefit the poor.<sup>8</sup> These recent attempts, however, will only peripherally influence the lives of poor children until the major thrust of foreign aid policy is placed upon the improvement and expansion of basic services that directly affect the lives of children as well as pregnant and nursing mothers (p. 107).

Burgess also examines the efforts of UNICEF,<sup>9</sup> WHO,<sup>10</sup> and various other organizations involved in the improvement of health, sanitation, and education on a world-wide basis. These efforts, while helpful in improving world conditions, have not dented the deep-seated, insidious problems facing children growing up in under-developed countries. The contributions of such organizations must be met with a substantial commitment of funds and personnel on the part of the under-developed countries if the desired goals are to be realized.

Burton White, in "Reassessing Our Educational Priorities" (pp. 129-43), emphasizes the education, or lack of it, afforded the child under age six. It is his belief that a greater emphasis in our national educational policy should be placed on the young child; nonetheless, the primary responsibility should remain with the family.

White delineates four areas of fundamental learning — language development, curiosity, social development, and the foundations of cognitive intelligence, which undergo basic formative development in the first three years, but are ignored by our educational system. Unfortunately, failures in these areas are difficult to correct. According to White, the family must be taught to educate the child. To accomplish this goal, White suggests required high school courses, public television, adult education programs for pregnant women and their husbands, neighborhood resource centers, and home visiting programs.

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8. In the 1973 Foreign Assistance Act, 22 U.S.C. §§ 2151-2443 (1976), Congress directed the U.S. Agency for International Development (USAID) to concentrate its programs on improving food and nutrition, education, and human development to benefit the poor majority in the recipient countries. In 1976, Congress passed a bill requiring that at least 75% of Food for Peace (Title I) be shipped to countries with an average per capita income of less than \$300 (p. 107).
  9. The United Nations Children's Fund (UNICEF) was established on December 11, 1946. It concerns itself with the basic needs and problems of children, primarily those in developing countries. UNICEF encourages governments to be responsive to children's needs as a whole and helps them plan comprehensive programs to benefit children.
  10. The World Health Organization (WHO) is a specialized agency of the United Nations which came into official existence on April 7, 1948. Its headquarters are in Geneva, Switzerland, and it strives to achieve the highest possible level of health for all people. On request WHO provides advice and practical assistance to national governments to enable a strengthening of their health care services.

While White's proposals are interesting and well-founded, lack of money hinders implementation. He contends "you could do it quite nicely for \$400-500 per family" (p. 143). Even if an effective program would be feasible for such a modest sum, in an inflationary time of governmental "cutting back," it might be difficult to convince the public and the government to make such an expenditure. If such expenditures were possible, the benefits to our children and society would far outweigh the costs.

In her article, "Child Advocacy: Youth's Right to Participate", Mary Kohler focuses on yet another avenue toward the realization of children's rights. If the child of today is to become the responsible adult of tomorrow, he must be given the opportunity to participate in the evolving world around him and to learn through experience the techniques of practical problem-solving. Ms. Kohler points out the shortcomings of adolescent education and the rights of youth to educational opportunities beyond the classroom (p. 144). She surveys programs across the country which have been established to give young people the opportunity to have meaningful experiences in the adult world (pp. 148-49). Participating adolescents have made significant contributions to their communities and contributed to their own development in becoming responsible, creative adults.

Although youth participation programs abound throughout the country, Ms. Kohler fears that these programs will not be as productive as possible unless something is done to insure their quality (p. 16). While the responsibility of the participants should be maximized, quality guidance by adults in preparation, selection, and evaluation must be assured. These programs should be available to all students and not just to problem students or over-achievers.

The final chapter (pp. 163-82) appropriately consists of interviews with children conducted by other children. The children interviewed were in trouble and included a runaway child, a child who was in the custody of the state, and children who were patients in a mental institution. The children interviewed emphasized the necessity of representation, the necessity of court hearings before institutionalization, and advocated the recognition of the rights to protection from brutal and inhumane treatment inside institutions, to rehabilitation, and to proper medical treatment. In short, they wanted the rights that adults have in similar situations. The children felt that they were treated as property rather than as human beings and resented being brought up like "Pet Rocks" (p. 169).

The contributors to *Children's Rights: Contemporary Perspectives* present a multi-dimensional approach to children's rights. Special rights to which the child population is entitled are articulated, and possible means for their implementation explored. Some of the authors look to governmental participation as the answer, while others view the increased solidarity of the family as

the source of self-worth from which all rights spring. Whether their approach is legalistic or humanistic, all regard the child as an individual, a unique human being whose rights are to be respected. This book is a worth-while reading experience for the lay person interested in children's rights and a valuable resource for the professional who desires a multi-faceted approach to this area.

*Suzanne Posner*