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A REVIEW OF *FAMILY BONDS: ADOPTION AND THE POLITICS OF PARENTING* BY ELIZABETH BARTHOLET

Ruth-Arlene W. Howe*

Family law practitioners and scholars, especially those involved with or responsible for servicing the rapidly increasing numbers of children entering the foster care system, should take the time to read this serious book by Harvard Law Professor Elizabeth Bartholet. *Family Bonds* is an unusual interweaving of autobiographical storytelling with a carefully researched, powerfully crafted indictment of American societal views about parenting, adoption laws and practices.

In her Introduction, Professor Bartholet gives the reader an outline sketch of her own very poignant journey — after nine years of valiant, but unsuccessful attempts to overcome infertility and to bear a second child — into and through the “adoption world” that involved two trips to Peru in 1985 and 1988 to adopt two infant sons. Various details of her personal drama are more fully told in the ten chapters that comprise the book.

Why has she written *Family Bonds*? In Bartholet’s words:

The adoption experience changed me profoundly.
It changed my life and my thinking about life. It

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changed my understanding of parenting and my view of the law, even though I had been a parent and a lawyer all my adult life. And it changed the focus of my professional energies, because I found myself intensely interested in what I had lived through during my struggles to become a parent, and deeply troubled by the way society was shaping parenting options and defining family.¹

For whom is *Family Bonds* written? Again, in Bartholet's words:

For people struggling with some of the issues I encountered in my journey from infertility through adoption, . . . for those who have suffered the pain of infertility, for those who have been subjected to the indignities and the recurrent despair of unsuccessful infertility treatment, and for those who have endured the absurdities of the adoption system, . . . for single people and others classified by the system as marginal parents, who may wonder if they can or should adopt . . . [and] for those who might adopt but for ignorance and fear.²

But Bartholet also targets another audience — “those in a position to make or influence policy.” She asserts that “current policies make no sense for people interested in parenting, for children in need of homes, or for a world struggling to take care of the existing population.”³

First, Professor Bartholet argues that continued adherence by American society to the entrenched practice of defining personhood and parenthood in terms of procreation is harmful to all. Because of this obsession with blood-linkage, she warns that:

We push the infertile toward ever more elaborate forms of high-tech treatment. We are also moving rapidly in the direction of a new child production

1. ELIZABETH BARTHOLET, *FAMILY BONDS: ADOPTION AND THE POLITICS OF PARENTING* xiv (1993) [hereinafter *FAMILY BONDS*].

2. *Id.* at xix-xx.

3. *Id.* at xx.

market, in which sperm, eggs, embryos, and pregnancy services are for sale so that those who want to parent can produce a child to order.⁴

Professor Bartholet also cites some sobering statistics about how few women successfully conceive and bear children as a result of the new medical technology (*real* IVF success rates ranged from 6 to 9 percent during the 1986 - 1988 period, only reaching 12 percent in more recent years).⁵ Bartholet characterizes herself as "one of the lucky infertility patients," because she did move on to adopt. In contrast:

Treatment enables only a limited number of the infertile to conceive and bear children, and it helps prevent many from ever considering adoption as a form of parenting. By the time people exhaust their treatment options, many who might once have been interested in adoption do not have the will, the energy, or the resources to get through the many barriers that society puts in the way of becoming an adoptive parent.⁶

Professor Bartholet's second major contention is that in addition to stigmatizing adoption as something less valuable than biologic parenting, the adoption process has become a "regulatory obstacle course" that leaves many children (minority) languishing in foster care while innumerable prospective adopters (white) are deemed unacceptable due to rigid adherence to a race-matching placement policy and/or agency parental screening and ranking of applicants. Instead of the best interests of children being served by adoption laws and practices, Bartholet concludes that traditional race-matching policies today "function effectively to prevent children from getting the kind of protection they need — a loving, nurturing and permanent home."⁷

In Chapter 6 ("Adoption and Race"), Professor Bartholet is highly critical of the National Association of Black Social Workers (NABSW) for their 1972 proclamation opposing transracial adoption and for the organization's continuing firm stance against placement of black children with white parents under

4. *Id.*

5. *Id.* at 208.

6. *Id.* at 28.

7. *Id.* at 50.

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any circumstances. In this chapter, drawn in substantial part from her 1991 law review article, "*Where do Black Children Belong?*,"⁸ she makes the case that "racial matching policies are doing serious harm to black children" now in foster care who need permanent homes, and "violate the anti-discrimination norm contained in the nation's various civil rights laws and in the equal protection clause of the Constitution."⁹

Everyone may not concur with her future directives that: "We should not view racial matching as an issue on which black interests are pitted against white interests, with blacks who are fighting for the rights of 'their children' opposed by whites who want children for their own benefit and by defenders of white privilege."¹⁰

I can agree that "[t]he issues at the heart of current racial matching policies are the significance of racial difference and the role of separatism in dealing with this difference."¹¹ What Professor Bartholet is perhaps unable to understand or fully appreciate, given her privileged status as a white tenured law professor, is that, sadly, more than 125 years after the abolition of slavery in the United States, race continues to matter *greatly*. One need only consider the harsh realities addressed by African American philosopher Cornel West in his recently published book of essays, *Race Matters*,¹² or by Andrew Hacker in his 1992 book, *Two Nations*,¹³ which documents the continuing struggle of black Americans to overcome the pervasive misconception that they are inferior.

I am sympathetic to the vision for adoption that Professor Bartholet fashions out of her personal experiences. I applaud her clarion call both: (1) to promote adoptive parenting as a positive, legitimate, and valued option through more vigorous outreach and educational recruitment efforts; and (2) to regulate infertility treatment and providers and to require that more sensitive

8. Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163 (1991).

9. BARTHOLET, *supra* note 1, at 116.

10. *Id.* at 110.

11. *Id.* at 110-11.

12. CORNEL WEST, *RACE MATTERS* (1993).

13. See ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE AND UNEQUAL* 3-49 (1992).

counseling assistance be given the infertile in a manner that would liberate them from pursuing such extraordinarily expensive, yet generally unsuccessful methods of procreation.

What I am unable to endorse is her wholesale deregulation of adoption. Agency screening practices may not always have been appropriate. But a legitimate *parens patriae* justification exists for why agencies should evaluate and assess the suitability of applicants to parent, although we have no comparable process for those who procreate naturally. The child being placed for adoption has already undergone some loss or trauma and should not be subjected to "double jeopardy." Just as everyone who can and does naturally bear a child may not possess the requisite capacity to rear that child, so every applicant who proclaims a desire to parent may not have the skills to rear a child sensitively. The appropriate adopter should be a mature adult, primarily invested in nurturing and guiding the development of a child to maturity, rather than a person who seeks to attain some individual sense of emotional fulfillment. I believe that there is a strong societal interest in attempting to place each child in a home that will promote that child's healthy growth and development.

It is commonly recognized that not every adult would want or be able to care for the needs of a physically, mentally or emotionally challenged child. As we near the end of the twentieth century, therefore, I submit that it is irresponsible to deny the harsh reality of the continuing role and tension that race plays in our society. Audrey Edwards and Dr. Craig K. Polite in *Children of the Dream: The Psychology of Black Success* (1992) state:

As we head into a new century, the tide of progress is slowly, ominously, rolling back - shifting to the right, to an era of backlash and retrenchment not unlike that which followed the first great movement for civil rights in America, the Civil War. Today's national mood, however, reflects not only the old venom of racism but the odious bile of new resentments that threaten the rights of all. Recent judicial assaults on abortion rights, freedom of religion in the classroom, protection from unwarranted search and seizure by the police, and deliberate discrimination by em-

ployers are just a few of the danger signs indicating that we may be approaching the critical mass experiences by nations that erupt into racism.¹⁴

This is not to endorse a wholesale prohibition of transracial adoptive placements, but rather to assert that the race of the child is an appropriate factor to be considered when assessing whether a prospective adopter has the awareness and capacity, with sensitivity, to prepare the nonwhite child to handle the challenges that will be encountered because of the child's race. From my own parenting experiences in Boston, of rearing both four biological children (two boys and two girls) and opening our home to a number of foster children, spanning the decades since 1960, I know *just* how abusive our society can be to the developing egos of black youth.

If the "true" interests of the African American children, now entering the foster care system at an alarming rate, are to be well served, there must be two types of assault strategies. When making transracial placements, care must be taken to place these children with adults who feel comfortable and unthreatened by race and who, by the example of their own personal and group associations, can maximize within the child the development of positive self-esteem and acceptance of race. The findings reported by Edwards and Polite in *Children of the Dream* are very instructive.

Whatever the personal behavioral styles, the one common trait that emerged from all of the interviews presented here is that successful blacks are first and foremost affirmed and empowered by a positive sense of racial identity. They fully understand that as blacks they will encounter obstacles, prejudices, and inequities, but *they never view their race as the liability or cause of the problem*. They understand it is the perverse reactions of others to the black race which constitute the deficiency. It is this essential recognition that grounds the thinking of achieving blacks, enabling them to successfully operate out of a "positive sense of blackness," a positive sense of who they

14. AUDREY EDWARDS & DR. CRAIG K. POLITE, CHILDREN OF THE DREAM: THE PSYCHOLOGY OF BLACK SUCCESS 274-75 (1992).

are - and to gain a powerful measure of spiritual strength from the physical and psychological struggles that racism inevitably demands.¹⁵

The other pressing need is to address the systemic racism that contributes to the disproportionate presence of minority children in our American child welfare and juvenile justice systems. Researchers Katherine Hunt Federle and Meda Chesney-Lind have documented exhaustively how the special issues of gender, race and ethnicity interact to contribute to the disproportionate presence of minorities in these systems.¹⁶ They conclude that “[t]he overutilization of the foster care system itself is the expression of a policy that is intolerant of, and insensitive to, the realities of ethnicity and race.”¹⁷

In conclusion, although Professor Bartholet’s vision for adoption proclaims that adoptive parenting ought to be just as valued and accepted as biological parenting in a society that rethinks the meaning of parenting, families and community, I fear that her proposals for deregulating adoption fail to grapple with the underlying systemic forces and failures that currently result in the harsh reality of too many minority children in foster care who are legally freed for adoption when not enough approved minority adopters can be found. To focus just on facilitating the movement of minority children out of foster care, without seriously questioning why so many of these children are entering the system, may not be enough.

Thus, those who read *Family Bounds* are urged to be mindful of a profound observation of Dr. Luther Halsey Gulick, generally regarded during his lifetime as the dean of American public administration: “Once an indivisible problem is divided, nothing effective can be done about it.”¹⁸

15. *Id.* at 6 (emphasis in original).

16. Katherine Hunt Federle & Meda Chesney-Lind, *Special Issues in Juvenile Justice: Gender, Race, and Ethnicity*, in *JUVENILE JUSTICE AND PUBLIC POLICY* 165-95 (Ira M. Schwartz, ed. 1992).

17. *Id.* at 189.

18. LUTHER H. GULICK, *THE METROPOLITAN PROBLEM AND AMERICAN IDEAS* 24 (1966).