

STATE, RELIGION AND CHILD WELFARE *

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IN the field of child care, religion, religious teachings and the role of sectarian child care agencies have long played a significant part. As one reviews the history of child care, one recognizes that there were at least two positive motivating forces within religious groups that contributed to the powerful role of religion in our child care services. There was the deep concern that the state, through its representatives, should not misuse the power to provide care for children outside their own homes in order to change their religion or engage in proselytizing. There was also the strong feeling on the part of many religious groups that they should provide for the needy children of their own faith.

In providing services and protecting children from the imposition of a religious faith other than that of their parents, strong sectarian institutions have been developed. As they have developed, they have in turn become powerful political forces in our local communities. When they have provided adequate services for children and have placed the welfare of each child above all other considerations, great good has

resulted. When, on the other hand, they have placed institutional interests above the welfare of the child and have even used their political power to thwart and undermine the basic responsibility of the state to provide adequate care for all children, terrible injury to children has resulted.

In recent years, the renaissance in American religious life has too often been reflected in more belligerent opposition to the development of public services than in extending voluntary services. And it has too often been reflected in demands on the state by religious institutions to use the power of the state to enforce religious adherence rather than to strengthen the opportunities for voluntary adherence through the provision of adequate voluntary services. This is to be noted in many aspects of child care work. Occasionally it is reflected in legislative action and judicial opinion. More frequently, it is reflected in more subtle forms of pressure on public officials who have become fearful of the criticism of any powerful religious groups.

The state has a basic responsibility to see that every child who needs placement outside his own home shall receive the type of care which the child needs. It may under the laws of many states

* Presented at the Annual Meeting of the National Conference of Jewish Communal Service, St. Louis, May 30, 1956.

delegate its responsibility for providing such care to voluntary agencies, sectarian or non-sectarian. It does not have the right, in my opinion, to turn a child over to any kind of care, so long as the child is placed with an agency of its own faith, or to keep a child in cold storage till a sectarian agency has a vacancy. Several years ago, a study was carried out jointly in New York City by representatives of the Children's Court, the Department of Welfare, and the sectarian agencies, of children committed to care outside their home. That study showed that approximately 50 per cent of the children so placed did not receive the kind of placement that the social studies and diagnostics indicated they needed.

In practice, we find thus that our public agencies today are all too likely to ask the sectarian agency of the religion to which a child or his parents belong for a place, and do so without determining whether the child's needs are being properly met. Over and over again, we find that though the social study may clearly indicate that a baby needs a foster or adoptive home, if none is available within his own religious group, rather than refer him to an agency of another faith or a non-sectarian agency, such an infant or child will be kept for weeks, months, and even years, in a hospital or shelter. We find that even when a diagnostic study shows the need of psychotherapy and individual care, if none is available within his sectarian group, the child is frequently sent off to a custodial institution in violation of all we know as to his needs. We find that children in need of adoptive care are denied it if the sectarian adoptive agencies of their faith have closed intake, do not take children beyond a particular age, or reject the child for any one of many other reasons.

The dangers in other kinds of monop-

olies also have arisen in the child care field. The power to demand that all children of the same faith shall be placed with such institutions or agencies as are available within that faith has reduced the need and the incentive to provide facilities adequate in quantity, varied in services, and providing the best quality of service. The general practice of public subsidies being paid on a per capita or per diem basis regardless of cost or quality of service has further limited the incentive of the voluntary agencies to improve their services. And, finally, like monopolies in other fields, the sectarian agencies have too often opposed the development of adequate public services, even when they could not or would not themselves provide adequate voluntary services.

In New York we have for over a decade had hundreds of children in need of foster home care, for whom there were no adequate foster home services. Each sectarian group was asked what additional facilities they could provide to meet the needs of the children of their faith. Even when they acknowledged they could not provide the needed services, the opposition to public services under which such children would be placed in homes of their own faith, under the auspices of the Department of Welfare, was opposed for years. The tragic irony of the opposition lay in the fact that these same children were permitted without objection to deteriorate in public hospitals and public shelters, because this did not threaten the theory or myth that children were being cared for by sectarian agencies. Even when public foster home services were finally established, one found that, by what has euphemistically been called a gentlemen's agreement, children of one group were generally not accepted but were continued for long periods in hospitals

and shelters on the demand of the religious group that was opposed to "public care" as a matter of religious doctrine.

There are other areas where the question of the role of religion in child care must be examined. While there is little question that religion can be a significant moral and ethical force in the life of a child, it would certainly seem contrary to the American principle of religious freedom to impose and demand religious adherence and observance of children or parents without at least the consent of the parents. Yet, in recent years, in more and more children's courts, we find judges, as representatives of the state, requiring the performance of religious obligations as a condition of probation. We hear the rationale that if a child is found neglected or delinquent the parent has failed, and the judge has a right to require religious training as part of a program of rehabilitation. That such orders are generally imposed on poor people who have no counsel in court, and that such hearings are closed to the public results in an invasion of the constitutional rights of parents and children, with little likelihood of being tested by appeal or challenged by public opinion.

In New York City we have also been faced by the development of a policy by the Presiding Justice of the Domestic Relations Court that raises yet another question concerning religion and child care. He has decided that probation officers shall be appointed on the basis of a religious quota roughly following the religious affiliation of the children brought before the Court. This means that although the Jewish population of New York City is slightly under 30 per cent, since the percentage of delinquent and neglected Jewish children brought before the Court is roughly 5 per cent, he has decided that only 5 per cent of the

probation officers may be Jewish.¹ As a result, even though a qualified Jewish young man or woman has passed his Civil Service Examination, he will be passed over in favor of a less qualified non-Jew. It has even come to mean that a provisional employee of another faith who has failed or cannot even qualify for a Civil Service Examination is continued as a probation officer as against a qualified Jewish worker. It means that children are being deprived of adequate service. It means that overwhelming case loads are being placed on some non-Jewish workers so that they are unable to render individual service to the children assigned to them. It negates the professional capacity of probation officers by assuming that the worker must be of same religion as the child in order to render the casework service and treatment needed for his rehabilitation. It constitutes a flagrant violation of the United States Constitution by imposing a religious test for public office in the field of child care.²

There is no area in which the negative or unwise use of religious requirements for child care service have be-

¹ In New York City, as a rule, the more seriously delinquent children are sent to our detention home, which is known as Youth House. The report of the Executive Director to the Board of Directors (published April 1956) shows that over a period of 11 years there were 32,871 delinquent boys admitted for detention. Of these, only 956 or 2.8 per cent were Jewish. The report further shows that during the 9 years of operation of the girls' detention home there were 8,423 admissions. Of these, only 356 or 4.23 per cent were Jewish.

² Since this was written, the New York State Commission Against Discrimination has as a result of the complaint filed by the American Jewish Congress induced the Civil Service Commission and the Presiding Justice to agree that no questions about religion will be asked prior to appointment. The Presiding Justice, however, has not agreed to modify his position in regard to assignment of probation officers to the Children's Court which is part of the Domestic Relations Court.

come more strident and unsound than in the adoption field.

In speaking of the adoption of a child, we must never forget that there are generally three parties directly involved. There is the unmarried mother or parent who faces the problem of surrendering a child for whom she cannot or feels she cannot provide an adequate home. There is the child who is entitled to a home in every sense of the word. There are the adoptive parents who have sought to complete their family life by opening their home and their hearts to a child not born to them physically but who by choice and by law is to enjoy all the rights, privileges and responsibilities of the child born to them.

In American society under its Constitution, its laws and in the light of the state's responsibility for human welfare that goes to the essence of a democratic society, the community has a basic responsibility to all three parties. The community therefore has a responsibility to see that an unmarried girl or mother in need of help shall receive not only proper medical care and shelter, when needed, but that she shall receive case-work assistance, guidance and such help that she can plan wisely and freely for the future of herself and her child. It is only as such services are provided, and she is freed of economic pressure, fear and social coercion that she can choose freely whether she can and wishes to keep her child with her, place it in a foster home or surrender the child for adoption. And it is only as each community provides such services for all young women faced with these difficult and, at times, heart-breaking choices that we can hope to free her from the necessity of turning to the "black" or "gray" market.

I have spoken of helping the young woman to choose freely. This means the community has no right to exact a price for such services by demanding that the

young woman conform to the wishes, demands or pressures of any employee of the State, of any voluntary agency or religious group in making her decision. It means that there must be no element of religious coercion used any more than any form of economic or social coercion. Attempts by the State, whether through over-zealous employees in our Courts, Public Departments, or in our Hospitals to infringe on the religious freedom, the right to choose adherence or non-adherence to any faith, through the granting or withholding of public services violates the American Constitution and its guarantee of freedom of conscience and freedom of religion.

To the extent that the religious or voluntary agencies offer services that are adequate in quality and quantity, they should be made available to all unmarried mothers or parents faced with the problem of surrendering their children and who voluntarily select sectarian services. But the State has no right to demand acceptance of religious adherence as the price of admission to services essential to a mother and child. In terms of moral law and human compassion, it would also seem that no voluntary agency, whether sectarian or not, should exact as the price for its services under the pressure of desperate human need, adherence or commitments as to religious adherence of the mother or child, except as it is freely given.

The sad truth is that the major cause for the deplored "black" or "gray" market in adoption and many of the tragic or hard cases that have arisen as a result of direct placements are due to the failure of both the State, which has the basic responsibility for adequate services, and the sectarian agencies, which have a moral responsibility to provide adequate services to unmarried mothers, and services within which the mother's freedom to plan for herself and for her child include her rights as

an American to choose her faith and the faith in which her child shall be reared.

Religious groups have every right to seek to persuade a mother to plan for her child so that it shall be reared in her faith. But, where persuasion fails, it has no right to invoke the State, whether through its Public Welfare Department, its Legislature, or its Courts, to act as a policeman and force a religious choice upon a mother.

I have spoken of the unmarried mother or parent first. What of the child? Every child in America whose natural parents cannot or will not provide a home is entitled to a home in its best sense. The State has here again the basic responsibility to see to it that there shall be such services that no child will be overlooked, forgotten, or left to grow up in institutions and foster agencies without love or a sense of belonging. The State may delegate its responsibilities to voluntary agencies, whether sectarian or non-sectarian, to the extent that they provide adequate and timely service. But to the extent that such agencies do not provide the necessary services, the primary responsibility remains with the State.

We have all been told that the problems arising in the adoption field, including adoption across religious lines, are due to the fact that the demand of families exceeds the supply of children. This is only partly true. Last year when the Foster Care Commission of New York City turned its attention to the problem of adoption, we finally dug up certain startling facts. Approximately 300 children in 1954 were referred by the Department of Welfare alone to private agencies who rejected them because their intake was closed, because they were no longer infants, or because they had problems or they belonged to a minority racial group. About one half were white children despite the

previous explanation that the problem was primarily the problem of placing Negro children. And so, these children, including many babies, were added to the thousands left in the well-baby wards, shelters, and private institutions for years of care at public expense—and without hope of adoptive placement. This situation has been going on for years. But only when the facts became known did the Commission recommend that a public adoption agency be established within the Department of Welfare for children needing adoptive homes for whom no private agency services were available.

There are today throughout America tens of thousands of children who need permanent adoptive homes, but who are growing up in hospitals, in shelters and in institutions. They are not all infants; some are of pre-school age; others are of school age. Some have physical or emotional problems for whom the only hope for a happy and useful life lies in adoptive homes. There is a real need to search out and discover the great untapped potential in American families of all faiths so that children will not drag out their young lives without ever knowing the meaning of the word home.

These sectarian agencies throughout the country that are providing only custody and care for these children, but which are neither seeking to rehabilitate the natural homes nor find adoptive homes, are failing not only to meet the needs of these children, but also fail in the most profound religious obligations toward them. And the State is failing in its legal and moral responsibility where it satisfies itself with paying the cost of care or subsidy for such children, but does not require that voluntary agencies give the right kind of service, or if they fail, provide such service itself.

To the extent that children can be

placed in homes of the same faith, as that of their parents, this should be done, except in those cases where the parent or parents freely choose to have their children placed in a home of another faith. Americans have the right to choose and to change their faiths and those of their children. That a parent decides to surrender his or her child for adoption does not abrogate this right or transfer it to any other person, official, institution or the State.

When no adoptive home of the child's faith is available for a child, it is the duty of the State and indeed of voluntary agencies to see that, in the interests of the child's welfare, he shall be placed in the best adoptive home available. No person, no religious institution, no public department, and no State has the right to say to a defenseless child, "You have no home. But because of your race or religion, you shall stay in an institution until you are 16 or 17 and then be turned out into a world in which you have no one to whom you belong."

This is happening today in too many areas. It is our duty to see that such injuries to children shall not continue. They can be prevented if we as citizens will accept certain basic principles:

First, that every religious group in our communities accepts the responsibility to provide adequate skilled and timely services to unmarried mothers and parents confronted with the problem of surrendering a child for adoption.

Second, that every religious group in our community that accepts responsibility for the care of its children shall unceasingly recognize that practically no children are "unadoptable," and that it is their duty to leave no stone unturned to find the right home for each child who needs and will benefit by adoptive care.

Third, that every religious group together with all other religious groups, citizens' groups and the public agencies

of the State shall assume a share of responsibility for creating a program of community services that will exclude no child on the basis of race, faith, or national origin.

Fourth, that religious groups and voluntary agencies recognize that, to the extent that they are unable to provide the services which children need, the State continues to have and must meet its basic responsibility to all children.

Fifth, that the State shall never be invoked to compel parents to comply with religious observance or to interfere with their right as parents to fully choose the religious faith in which their children shall be raised.

The hard and sad fact is that a major portion of the difficulties that have arisen in the child care field involving religious problems are directly traceable to the failure of some of our religious and sectarian agencies to provide adequate, timely and appropriate services to meet the needs of their own children and their continuing opposition to the development by the State of basic services so that no child will be deprived of the help it needs.

Questions of adoption across religious lines would rarely arise if each religious group provided adequate services to unmarried mothers, necessary casework, medical and supplementary help and the free choice of the right kind of adoption services or adequate foster home care for each child.

Questions of placement of children in long term care in agencies other than those of their own faith or in public institutions would not be raised if each religious group provided the right kinds of service to meet the needs of children who must be placed away from their own homes.

The question of applying a religious test as a condition to public office in our Courts and in public departments in order to avoid or circumvent civil serv-

ice would not seem so important, if equally adequate professional training were provided to young people of all faiths, and if all groups assumed responsibility for inspiring their ablest young people to enter such fields of public service.

The question of using the Courts to secure compliance with religious obligations would not need to be raised if the religious charitable groups geared themselves to provide the needed community services that members of their own groups could seek on a voluntary basis. Instead, when Courts wish to make referrals, and parties before us are eager to seek help from the social agencies of their own faith, we too often find the answer is "Intake is closed," "The problem is too difficult," or the child is of the "wrong" race.

In every one of these areas where religious issues have been raised, and increasing community tension and conflict has arisen, we find certain common elements:

There has been a failure on the part of religious or sectarian agencies to fulfill their obligation to meet the real needs, or to provide necessary and ade-

quate services on a voluntary basis that assure those who need help that they will receive the help they need.

There has been an increasing reaching out by voluntary and sectarian agencies to the State, not only for tax funds, but to secure the authority of the State to enforce the rights of religious institutions or agencies, to enforce religious obligations, and to secure religious conformity.

There has been too little concern for the doctrine of religious freedom and freedom of conscience and indeed of the constitutional safeguards which have protected religious freedom in America.

In all candor, I must remind those who would use such short cuts to gain or hold religious adherents, that history has long proven that there are no short cuts, no bargain methods, and no indoctrination by compulsion that has ever strengthened the true religious impulses of any man, woman or child. Measures that seek to use the State to compel support of religious institutions not only violate the American Constitution, but the essence of true religion—man's freely given faith in, work for, and love of his God and his fellow men.