

Essay

Market Philosophy in the Legal Tension Between Children's Autonomy and Parental Authority

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I. INTRODUCTION

The family represents a small subunit of a greater community and society. While the family is a unit of social organization it, like the larger community and society, is made up of individuals. The individuals in the typical nuclear family are generally thought of as biologically related and they include a mother, a father, and two children.¹ Our discussion of family need not be so limited, however, and it can include larger or smaller families, single parent families, extended families, or even unrelated individuals that live together with a common bond such as to be a family in every way other than by way of immediate biological connection.²

The significant feature of the family, for this Essay, is to focus on it as a model or method of social organization. In this respect, the family can be studied as a mini-society in order to learn more about how certain political, economic, and legal relationships affect individuals. More specifically, the family can be viewed as a social arrangement in which parents are typically empowered with the authority to oversee or control much of the life and "liberty" of their children. Consequently, in the absence of "outside" interference, the personal autonomy of the child is, relatively speaking, nothing more than a function of how much

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¹For some background on the demographics of the family, see U.S. Dept. of Health and Human Services, *THE STATUS OF CHILDREN, YOUTH, AND FAMILIES 1979* 1-28 (1980) (demographic and economic trends); Urban Land Institute, *DEVELOPMENT TRENDS 1986* 5-8 (1986) (demographic trends in households that affect the economy and the family with respect to real estate activities); K. SNAPPER & J. OHMS, *THE STATUS OF CHILDREN 1977* 1-46 (1977).

²There are many ways to define the "family." See OECD, *CHILD AND FAMILY DEMOGRAPHIC DEVELOPMENTS IN THE OECD COUNTRIES 75-78* (1979) (definitions used by different countries to compile their information).

freedom the parent is willing to allow.³ In this sense the personal autonomy or individual liberty of the child is on the same footing as that of the slave; a good master might treat his slaves well and respect their human dignity, whereas a bad master might not. Additionally, the child, like the slave, enjoys a certain degree of autonomy or liberty only as a result of the parent's or master's benevolence; having only the most minimal claim in their own right, they are dependent upon the continued good nature of those who exercise power over them and they are expected to show gratitude and respect to these authorities when treated in anything less than a harsh or cruel manner.

This situation, I suggest, is the result of the family's insulation from competitive market forces for alternative social arrangements. Furthermore, legal efforts designed to interfere with the totalitarian potential of parental power are, in fact, efforts to interpose simulated market effects in a setting where no effective market exists.

Given this bent on market philosophy, this Essay will seek to examine the legal tension in the conflict between children's autonomy and parental authority. The Essay will progress through a series of subtopics consisting of discussion concerning: (1) the nature and scope of individual liberty, (2) market theory and counterbalancing power sources as a means to greater liberty, (3) legal interference in the parent-child relationship, (4) the implications of legal interference, and (5) concluding observations.

II. THE NATURE AND SCOPE OF INDIVIDUAL LIBERTY

To understand the issues of children's autonomy one must examine the contours of individual liberty. Individual liberty refers to a view of social relationships that provides for a sphere of personal autonomy or self determination over one's own thoughts and actions free from outside coercive interference.⁴ This sphere of personal autonomy is not limitless, however, and the concept of individual liberty embodies within it a

³This conception is similar to the way in which Richard Posner has viewed the rights of the poor. He asserts that the poor have no claim to economic resources except to the extent that they are part of the utility function of someone with wealth. See R. POSNER, *THE ECONOMICS OF JUSTICE* 76 (1983). For criticism of Posner's approach, see Malloy, *Invisible Hand or Sleight of Hand? Adam Smith, Richard Posner, and the Philosophy of Law and Economics*, 36 KAN. L. REV. 210-59 (1988) [hereinafter Malloy, *Adam Smith*]. See also Posner, *The Ethics of Wealth Maximization: Reply to Malloy*, 36 KAN. L. REV. 261-65 (1988); Malloy, *The Merits of the Smithian Critique: A Final Word on Smith and Posner*, 36 KAN. L. REV. 266-74 (1988).

⁴See F. HAYEK, *THE CONSTITUTION OF LIBERTY*, 12-13 (1960) [hereinafter HAYEK, *CONSTITUTION*]; M. FRIEDMAN, *CAPITALISM AND FREEDOM* 14-21 (1982) [hereinafter FRIEDMAN, *FREEDOM*].

respect for the liberty of others.⁵ Coercive interference results when the environment or circumstances of an individual are controlled by another to the extent that, "in order to avoid greater evil, [one] is forced to act not according to [one's own designs] but to serve the ends of another."⁶ This coercion is "evil precisely because it thus eliminates an individual as a thinking and valuing person and makes him a bare tool in the achievement of the ends of another."⁷

The social organization of the family makes it a prime setting for the exercise of coercive interference by some individuals against the fulfillment of individual aspirations and liberty on the part of other individuals. While this coercive interference can occur between spouses, the focus of this Essay is on the relationship between the parents and the children within the family. Consequently, discussion will concentrate on four primary sources of power available to parents in exercising effective coercive interference and authority over their children.⁸ The four sources that empower parental authority are: physical, economic, mental, and legal.

In the family relationship, it is generally true that the parents are physically stronger than their young children and teenagers. This allows the parents to exercise raw power over their children based on the mere presence of superior physical strength. The child that refuses to respond or adjust behavior to the wishes of the parent can be picked up, hit, or restrained without much concern for effective physical retaliation from the child.

Like physical power, the parents almost always exercise superior economic power over their children. The wealth and income for the family is generally provided by the work efforts of one or both parents, and it is their control over the family wealth that determines how scarce resources will be allocated within the family.⁹ The power to control expenditures for food, clothes, education, medical care, and leisure are tremendous weapons of potential coercion within the family.

Age, experience, education, and physical development generally give the parents superior mental power over their children. Even parents that would never dream of using physical force against their children will generally succumb to the use of superior reasoning power and mental manipulation of their children in order to coerce certain "desirable"

⁵See L. VON MISES, HUMAN ACTION 179-87 (2d. ed. 1963); HAYEK, CONSTITUTION, *supra* note 4, at 11-21; FRIEDMAN, FREEDOM, *supra* note 4, at 14-21.

⁶See HAYEK, CONSTITUTION, *supra* note 4, at 20-21.

⁷*Id.* at 21.

⁸For an interesting book on the general subject of power, see J. K. GALBRAITH, THE ANATOMY OF POWER (1983).

⁹Even in the family dependent upon welfare benefits, the benefits are received or controlled by the parents.

behavior. The ability to use such mental strategies against the child is a major source of parental power.

In addition to physical, economic, and mental sources of power, the parent-child relationship is affected by legal rules that both empower the parents and disempower the children. The law empowers parents by giving them legal responsibility for the care of their minor children.¹⁰ In assigning this responsibility, the law recognizes the authority of the parent to exercise a great deal of control over the everyday choices available to their children. The children cannot, for instance, complain about the religious beliefs imposed upon them by their parents, nor can they have legal recourse against their parents for bad taste in selection of clothing, nor in the choice of attending private or public school, nor in the granting or refusing of permission for the children to participate in certain extracurricular activities.

While the law empowers parental authority, it simultaneously "disempowers" children. It "disempowers" children by reducing their ability to find refuge from parental authority by appealing to outside sources of alternative or counterbalancing power. For example, child labor laws and minimum wage laws prevent or reduce the ability of children to enhance their own sources of economic power.¹¹ Likewise, the legal impairments to the enforceability of a contract against a minor makes it difficult for children to make alternative arrangements for the exercise of their own choice preferences free of the choice preferences indulged

¹⁰See, e.g., S. Maidment, *The Fragmentation of Parental Rights*, 40 CAMBRIDGE L.J. 135 (1981) (This article discusses the rights of parents in English society and identifies twenty commonly accepted rights and duties: (1) right to physical possession; (2) right to access (visit); (3) right to determine education; (4) right to determine religion; (5) right to domestic services (compensation for interference with parental rights); (6) right to discipline child; (7) right to consent to marriage between sixteen and eighteen; (8) right to consent to medical treatment under sixteen; (9) right to veto issue of passport, and give consent to emigration; (10) right to administer child's property; (11) right to succeed to child's property on death; (12) right to appoint a guardian; (13) right to agree to adoption; (14) right to object to local authority assumption of parental rights (under British law—Child Care Act 1980, s.3); (15) right to consent to change in child's surname; (16) right to represent child in legal proceedings; (17) duty to secure education up to sixteen; (18) duty to protect; (19) duty to maintain; (20) duty to represent child in legal proceedings. *Id.* at 136-137). For a view from the perspective of children's rights under American law, see R. HOROWITZ & H. DAVIDSON, *LEGAL RIGHTS OF CHILDREN* (1984) [hereinafter HOROWITZ, CHILDREN]. For an early, yet interesting, work on the rights of parents, see generally J. COHEN, R. ROBSON & A. BATES, *PARENTAL AUTHORITY: THE COMMUNITY AND THE LAW* (1958).

¹¹See generally HOROWITZ, CHILDREN, *supra* note 10, at §§ 8.02-8.09 (1984) (concerning child labor laws); W. BLOCK, *DEFENDING THE UNDEFENDABLE* 247-56 (1976) [hereinafter BLOCK, UNDEFENDABLE] (dealing with children and the employment setting); H. HAZLITT, *ECONOMICS IN ONE LESSON* 134-39 (1979) (discussing minimum wage jobs); M. FRIEDMAN & R. FRIEDMAN, *FREE TO CHOOSE* 237-38 (1980) (minimum wage laws).

in by their parents.¹² Finally, the laws concerning kidnapping, child abuse, the corruption of a minor, and interference with the parent-child relationship are such as to discourage outsiders from assisting children in an exercise of will against the wishes of their parents in all but the most clear and outrageous situations of parental child abuse. This "chilling effect" on outsiders results from being unable to assess their own risk of serious legal consequences from the variety of potential legal charges that might be levied against them when they try to step into the midst of the parent-child relationship.

A tragic consequence of the above-described power arrangement is that children living in less than desirable family situations may see their only choices as being to stay put and live in their unhealthy environment or to join the growing number of children living on the street or on their own in a society that denies them access to legitimate employment.¹³

III. MARKET THEORY AND COUNTERBALANCING POWER SOURCES AS A MEANS TO GREATER LIBERTY

Market theory, and its ability under democratic capitalism to foster counterbalancing power sources, provides a conceptual analogy for considering the problems of parental coercion in the family setting.¹⁴ An important problem confronting the social organization of the family is that it represents an instance of situational monopoly wherein the parents are empowered to exercise substantial control over the "market" which is the home environment.¹⁵ The home environment is a market in the

¹²See generally E. A. FARNSWORTH, *CONTRACTS* 216-25 (1982) (discussion of the law concerning a minor's ability to contract).

¹³See U.S. Dept. of Health and Human Services, *FY 1983 ANNUAL REPORT TO CONGRESS ON THE STATUS AND ACCOMPLISHMENTS OF THE CENTERS FUNDED UNDER THE RUNAWAY AND HOMELESS YOUTH ACT VI* (1983) (The Department estimated that the number of runaway youth, ages 10-17, ranges from 733,000 to over one million). A related matter seems to be the scope of child abuse in American families. "According to the American Humane Association, the number of official reports of child abuse and neglect has risen 233 percent nationally since 1976. There were 2 million reported cases in 1986 . . ." B. Kantrowitz, P. King, D. Witherspoon & T. Barrett, *How to Protect Abused Children*, *NEWSWEEK*, Nov. 23, 1987, at 70. "Officially, 1,200 children died of abuse last year; some experts say, however, that the true figure is probably closer to 5,000." *Id.* at 70.

¹⁴For a discussion of how capitalism serves individual liberty, see FRIEDMAN, *FREEDOM*, *supra* note 4; Malloy, *Adam Smith*, *supra* note 3; Malloy, *The Political Economy of Co-Financing America's Urban Renaissance*, 40 *VAND. L. REV.* 67, 95-132 (1987) [hereinafter Malloy, *Political Economy*]; Malloy, *Equating Human Rights and Property Rights—The Need for Moral Judgment in an Economic Analysis of Law and Social Policy*, 47 *OHIO ST. L.J.* 163, 168-71 (1986) [hereinafter Malloy, *Human Rights*].

¹⁵In essence the family setting presents a special situation of monopoly wherein the

sense that it represents a community that must share valuable scarce resources including housing space, food, clothes, educational opportunities, medical care, and recreation, among others. Since these choices are usually not priced within the family setting, it represents a market that must function without pricing information as a proxy for assessing the various trade-offs to be made. Consequently, choices within the family concerning the allocation of scarce family resources must be made by mutual agreement or, more specifically, by appeal to the desires and choice preferences of those exercising the power of resource allocation. From the discussion in the earlier part of this Essay, it is clear that the market within the home is dominated by the parents, and in this sense the children must learn to live in a situation of monopolistic parental power.

In the non-family setting our society has generally looked to government as a primary means for protecting individuals from private coercive interference and this is especially true in situations of market monopoly.¹⁶ Government even in the non-family setting, however, cannot be given unchecked power to protect individuals from outside coercive interference for this could, itself, cause government to become an even greater threat to individual liberty than that posed by any individual or private group. As a consequence, steps must be taken to restrict governmental action through a system of general rules and principles.¹⁷ Such rules and principles must provide a framework for ensuring human dignity and the opportunity for individual fulfillment to every person in the community.¹⁸ At the same time, these rules and principles must allocate power within government and as between government and private parties so as to maintain the sort of limited government that is necessary to avoid statist totalitarianism. Of key importance to this social arrangement is the presence of a capitalist market structure that allows

parents exercise the power of a monopolist. For general reference on monopoly in the market setting, see generally FRIEDMAN, FREEDOM, *supra* note 4, at 119-36 (discussing the problems of monopoly power and social responsibility); R. LIPSEY AND P. STEINER, ECONOMICS (4th ed. 1975); A. ALCHIAN & W. ALLEN, EXCHANGE & PRODUCTION (3d ed. 1983); P. WONNACOTT & R. WONNACOTT, ECONOMICS (1979).

¹⁶See HAYEK, CONSTITUTION, *supra* note 4, at 11-21. Within the confines of a free society the state can be a legitimate collective vehicle for protecting the individual's liberty from the coercive interference of others. *Id.* See also F. HAYEK, THE ROAD TO SERFDOM 82-83 (1944). The idea of government as a protector of individual freedom, however, does not mean that whatever the government does in the name of this protection is to be considered proper. Hitler may have gained power and acted in a strictly constitutional manner, but this would not make his rule "right." *Id.*

¹⁷See Malloy, *Adam Smith*, *supra* note 3, at 229-38; Malloy, *Political Economy*, *supra* note 14, at 112-33.

¹⁸Malloy, *Political Economy*, *supra* note 14, at 112-33.

diverse individuals to control significant assets independently of the state, thereby serving as a counterbalancing source of private power against the state while the state itself serves as a check on potential abuse by powerful individuals or organizations.¹⁹ It is this complex network of viable alternative and counterbalancing power sources that best protects individuals from the complete discretion and potential despotism of monopolistic power in the non-family marketplace.

The family, when viewed as a mini-marketplace, is similar to a situation of market monopoly. In this sense, the family takes on an almost totalitarian tinge because there are few, if any, effective sources of counterbalancing power capable of penetrating the family relationship. This problem, it seems, is exaggerated when a culture moves, as ours has done, to the smaller nuclear family. The reason for this is that the extended families of the past included multiple adult figures that would have access to information about the children's home environment while also having sources of power that might be used to interfere with the exclusive power of the parents. In response to this situation, government presents itself as a means for reducing the potentially harmful effects of monopoly by altering the division of power and resources between the parties involved. Thus, governmental interference in the relationship between individual family members can be seen as similar to the attempts of government to correct for monopolistic power arrangements in the non-family setting. Likewise, government intrusion in both the family and non-family marketplace requires a recognition that the government intrusion itself cannot be limitless if individual liberty is to be preserved.

IV. LEGAL INTERFERENCE IN THE PARENT-CHILD RELATIONSHIP

One way in which to view legal attempts to counterbalance the potential for parental abuse of power is to consider them as efforts to simulate market forces in a setting of market failure. Laws designed to protect children or to empower children can be viewed as societal efforts to penetrate the inner sanctum of family life in an attempt to impose outside influences upon the social organization of the family. That is, legal interference can be viewed as an effort to establish counterbalancing power sources within the family as a means of creating a competitive market environment. This competitive market environment could provide individual family members with greater choice and individual autonomy in much the same way that the existence of competing sellers of consumer products is said to provide greater choice in the non-family marketplace.

¹⁹See FRIEDMAN, FREEDOM, *supra* note 4, at 7-21. See also Malloy, *Human Rights*, *supra* note 14, at 168-77.

Acting through the vehicle of law, society can thus regulate the family market within the home at least to the extent that it eliminates certain parental preference choices from the available alternatives. Laws preventing child abuse eliminate the parental choice of denying food or shelter to a child as well as putting some limitation on the amount of physical or mental abuse that can be directed towards a child. Likewise, laws requiring mandatory schooling limit the choices available to parents with respect to the provision of educational opportunities. In addition to these examples of legal restraint on parental preferences, the law also provides measures for empowering children through affirmative obligations. Examples here might include the obligation of public schools to provide sex education courses for children without regard to parental consent or objection.²⁰ Likewise, the law has recognized the right of a teenage girl to decide for herself on the issue of an abortion without the need of obtaining parental consent to the procedure.²¹

In each of these situations, the legal interference with the parent-child relationship can be viewed as similar to governmental interference with monopoly power in the business world or with governmental attempts to correct perceived market failures. These areas of governmental interference also involve another issue, however, and that is the threshold issue of determining when the government should or should not act. This threshold issue in non-family matters can involve the question of what size businesses should be required to engage in certain reporting or compliance procedures covered by a governmental regulation. Likewise, the laws governing the grounds for governmental intrusion might include multiple exclusions and exemptions from coverage. Similarly the intrusion by government into the parent-child relationship involves the very difficult threshold question of when children are mentally and physically capable of exercising the degree of autonomy that the government seeks to assure them.²² In other words, the determination that all children should have access to sex education, contraceptives, and abortion services does not answer the threshold question of when, at what chronological time in their life, they should be assured such access.

The answer to this threshold question regarding age of access is beyond the scope of this Essay, but it seems that one of two primary

²⁰See HOROWITZ, CHILDREN, *supra* note 10, at §§ 12.01-48.

²¹See L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1337-61 (2d ed. 1988) (discussing the abortion issue—in particular pages 1344-45 relate to the rights of a teenager) [hereinafter TRIBE, CONSTITUTIONAL].

²²See B. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 107-24, 140-67 (1980) (pages 107-24 relate to the family and parental power; pages 140-67 relate to education—the “liberal” approach); BLOCK, UNDEFENDABLE, *supra* note 11, at 247-56 (discussing a child’s “autonomy” in the work setting).

approaches might be taken when considering the legal response to this issue. The first approach would be to seek an administratively easy test that simply establishes an age at which certain claims by a child would be recognized without detailed inquiry as to the actual capabilities of the child. For instance, the law may simply say that a child at least sixteen years of age can work in certain types of businesses, or an eighteen year-old can vote in political elections, or a twelve year-old can consent to sexual intercourse (usually done in the negative by establishing the age under which sexual intercourse will be treated as statutory rape.) In contrast to this "bright line" approach, an attempt could be made to establish legal criteria for demonstrating the requisite mental and physical attributes deemed necessary for exercising personal autonomy. This approach would be more difficult to administer and would result in different children exercising autonomous decision making at different chronological ages. Importantly, implementation of either approach would require lawyers to rely heavily on the research and input of many other disciplines.

V. IMPLICATIONS OF LEGAL INTERFERENCE

There are several important implications of legal interference in the parent-child relationship. The three most important implications involve issues of diversity, statism, and discipline.

The first implication to consider involves diversity. When law is used to empower children, it may reduce cultural diversity while also reducing the beneficial consequences of family life. For instance, family life can have positive consequences for individuals and for society by preserving diverse cultural and ethnic values. In this sense, the family should be seen not only as having a key role in value training but also in maintaining the diversity of the greater society by preserving familial differences in cultural experiences that are closely linked to these values. However, the intrusion of law into the family can disrupt the process of transferring values from one generation to the next by enhancing the children's ability to reject familial customs and values in favor of current societal values and cultural norms. The societal values that intrude on family life can, therefore, be good in the sense that they present children with a choice, but they can also be bad in the sense that they undermine the parent's ability to pass on values and customs deemed worthy of preservation. To the extent that creativity, discovery, artistic, and productive capacity are enhanced by diversity in individual perspective, society may see a decline in these attributes as future generations become more homogenized in popular culture and less sensitive to their own unique heritage.²³

²³See generally A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987) (discussing similar problems of popular culture with respect to education).

Related to this issue of diversity is the problem of statism. While legal interference with family relationships can be seen as a beneficial attempt to simulate market forces, it can also be seen as an attempt to merely displace discretionary parental authority with authority exercisable by the state. In other words, governmental interference in the family relationship can be viewed in one of at least two different modes. First, law may be brought to bear on the problem in a genuine effort to protect and empower children. Second, law may be used as a means for merely enhancing state power and control over individuals by displacing the authority of parents with that of the state. The state, for instance, "steps" into the family relationship and announces when the children will be educated while also prescribing the curriculum and value-training that will make up their formal education.²⁴ Furthermore, the state and not the parents will set the guidelines for access to such controversial rights as the right to an abortion. In this regard, legal attempts to empower children can be viewed as mere attempts to indoctrinate children into values and customs set by the state rather than by their parents.²⁵

A third and final implication of legal interference with family relationships concerns the matter of discipline. All complex relationships seem to require some degree of discipline. For the most part, discipline is centered around the effectiveness of self constraint based on internalized values and norms. Where one fails to properly conform to requisite norms and values, external reinforcement designed to correct for the breach of discipline generally exists. In the greater society, we have the police as an example of an enforcer against the undisciplined member of the community. In the family, one may experience "shunning" as a means of enforcing familial norms against the individual that has refused to conform to the expected values and norms of the group. In each setting one observes the role of and the apparent need for discipline when living in the community of others.

In the parent-child relationship the question of discipline follows the issues of diversity and statism. This is because society, having charged parents with the primary responsibility for child rearing and education, seeks at the same time to balance that mandate with a contrary mandate which limits the power of parents to enforce value-training through effective discipline. As an example, consider the devout Roman Catholic couple who teaches their daughter to abstain from sexual intercourse until marriage. Their value-training is undercut by laws empowering the

²⁴See generally Ingber, *Socialization, Indoctrination, or the "Pall of Orthodoxy": Value Training in the Public Schools*, 1987 UNIV. ILL. L. REV. 15-95.

²⁵See generally *id.*

child to make alternative choices and by a popular culture which, under protection of the first amendment, uses the media to send countless contrary messages on the subject.²⁶ As a consequence, the parents are not only undercut in their attempts to have their daughter internalize *their* values on the subject of sex, but their serious concern for a value deemed so contrary to legal and popular norms undercuts their authority and credibility in other areas as well. Without regard to the value in question, for there is probably at least one such value for every parent, the point is that the counterbalancing effort to empower children makes it that much more difficult for parents to discharge their responsibility for child rearing and education.

Unfortunately, having created a process for ongoing tension between the child and its parents, our society often provides very little help for those having difficulty with the human realities of confronting these often emotional and deeply personal conflicts in the family relationship.

VI. CONCLUDING OBSERVATIONS

This short Essay probably raises more questions than it could ever hope to answer. Nonetheless, the effort has been to suggest at least one useful conceptual framework for viewing family relationships. Such a framework, for instance, allows one to consider the problems of children growing up in an abusive family environment. For these children, the family home becomes a prison insulated from the scrutiny of the outside community and within which the power of the parents rules supreme. Temporary excursions into the world beyond the family, such as attending school or visiting friends, do little to release the children from their abusive environment or to expose it to others. Ultimately there is always the need to return to the home at night and deal with the same parental problems the next day. Understanding the family relationship in this way helps one to see that governmental interference with family relationships will likely be of only marginal importance given the presence of a situational monopoly that makes it almost impossible for the children to be assured of long-term care and protection outside the home environment. Furthermore, piecemeal legislation intended to empower children in some respects, while other legislation simultaneously "disempowers" them, ends up being no substitute for a properly func-

²⁶By this I simply mean that the first amendment protects various speech messages that many parents might find objectionable. This does not mean that first amendment protection is bad, it is merely meant to show that it provides a source of empowerment for alternative viewpoints and some of these viewpoints may come into conflict with the views and values that parents deem important to the family. See generally *TRIBE, CONSTITUTIONAL*, *supra* note 21, at 785-1061.

tioning marketplace and provides children with no real choice or autonomy in their family life. The best that governmental interference can hope to achieve is a marginal reduction in outrageous physical abuse of children (mental abuse is harder for outsiders to detect), and a questionable ability to offer children information on alternative lifestyles, although it is unclear that the government's current choice of lifestyle alternatives offers any positive value to the individual (I suggest that it principally reflects the political agenda of a particular segment of the community rather than a significantly beneficial enrichment for the individual child).

As a consequence, the market philosophy framework lets one look at the family in a unique way: to expose its monopolistic and totalitarian tendencies.²⁷ This, it seems, is useful because it provides a means for considering the problems confronting children while also providing a conceptual basis for evaluating the potential consequences of various legal efforts to restructure the parent-child relationship.²⁸ Unfortunately, here as elsewhere, the market analysis fails to answer the underlying problem of defining the moral worth, human dignity, and individual liberty that rightfully attaches to every child and which society must protect.²⁹

²⁷At the same time, such a view of the family lets one consider the potential problems of organizing a greater part of society along the same monopolistic and totalitarian power lines as that of the family. In other words, a statist ideology can lead to societal consequences similar to those outlined in this Essay concerning the family.

²⁸My market perspective in this area is admittedly the outgrowth of my own personal and subjective life experience. Having grown up in a large lower class family subject to the ongoing abuse of my alcoholic father, and having stood helpless in the presence of the abuse of my mother throughout my childhood, I have come to be suspicious of all concentrations of power. Consequently, I have always found the decentralized and individualistic character of the market metaphor to be appealing.

²⁹I have tried elsewhere to deal with the general issue of how moral worth, human dignity, and individual liberty fit into a conception of law and economics. While my own ideas are still developing, I have approached this problem in other contexts as illustrated by general reference to Malloy, *Human Rights*, *supra* note 14; Malloy, *Adam Smith*, *supra* note 3; Malloy, *Political Economy*, *supra* note 14.