

# WHAT WILL IT TAKE?: IN THE WAKE OF THE OUTRAGEOUS “BALLOON BOY” HOAX, A CALL TO REGULATE THE LONG-IGNORED ISSUE OF PARENTAL EXPLOITATION OF CHILDREN

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## I. INTRODUCTION

On October 15, 2009, the world was captivated by the story of a little boy in peril as he allegedly floated through the Colorado sky in a homemade balloon.<sup>1</sup> The boy’s parents, Richard and Mayumi Heene, first alerted authorities with an “emotional and desperate” 9-1-1 call, claiming that their son Falcon was in a balloon that had taken off from their backyard.<sup>2</sup> Rescuers set out on a “frantic” ninety-minute chase that ended when the balloon “made a soft landing some 90 miles away;” but to their surprise, no one was in it.<sup>3</sup> One of Falcon’s older brothers repeatedly said he saw Falcon get into the balloon before it took off, and a sheriff’s deputy said he saw something fall from the balloon while it was in the air, causing rescuers to fear the worst: Falcon fell out.<sup>4</sup> The story appeared to have a happy ending after Falcon emerged from the family attic where he was hiding because his father yelled at him earlier in the day.<sup>5</sup> That evening, the family appeared on *Larry King Live* on the Cable News Network (“CNN”) to tell their story, and when asked by his parents why he did not come out of the attic when they initially called for him, Falcon responded, “[y]ou guys said we did this for the show”; with that, suspicions began to arise.<sup>6</sup>

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<sup>1</sup> Craig Johnson, *World Watches Odyssey of ‘Balloon Boy’ in Real Time*, CNN.COM (Oct. 16, 2009), <http://www.cnn.com/2009/US/10/15/colorado.balloon.boy.world.watching/index.html>.

<sup>2</sup> *Balloon Boy Incident Raises More Questions, Officials Say*, CNN.COM (Oct. 16, 2009), <http://www.cnn.com/2009/US/10/16/colorado.balloon.boy/index.html> [hereinafter *Incident Raises More Questions*].

<sup>3</sup> *6-Year-Old Colorado Boy Found Alive in Attic After Balloon Lands*, CNN.COM (Oct. 16, 2009), <http://www.cnn.com/2009/US/10/15/colorado.balloon.boy/index.html>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Incident Raises More Questions*, *supra* note 2. Larimer County Sheriff Jim Alderden later called Falcon’s response the “first ‘aha’ moment.” Scott Collins & Nicholas Riccardi, *My Kid, the Ratings*

Initially, authorities did not doubt the incident's legitimacy, despite emerging reports that the Heenes previously appeared on American Broadcasting Company's ("ABC") *Wife Swap*, and were in the process of pitching a reality show to other television networks.<sup>7</sup> But after Falcon's comment, authorities initiated an investigation that not only revealed the balloon was incapable of launching with Falcon in it,<sup>8</sup> but also that Richard Heene called a local television station *before* calling 9-1-1,<sup>9</sup> and an entertainment outlet had *already* paid the Heenes in connection with the balloon launch.<sup>10</sup> The other shoe dropped when Mayumi Heene admitted that the incident was a publicity stunt,<sup>11</sup> which eventually led both Richard Heene and Mayumi Heene to plead guilty to criminal charges.<sup>12</sup> At the Heenes' sentencing hearing, Larimer County Judge Stephen Schapanski condemned the incident as "*exploitation of the children of the Heenes, . . . and it's about money. This was all done for the purpose of making money.*"<sup>13</sup>

Concerned children's rights advocates have further decried the incident, now known as the "Balloon Boy" hoax, as an example of "the potential for the *exploitation of kids* by their own parents in the world of reality TV," a world regulated solely by a patchwork of various state laws in the absence of any federal regulation.<sup>14</sup> Stoked by "Balloon Boy," the fire burning under these advocates in their push for federal regulation burns hotter.<sup>15</sup> Advocates should not lose sight of the forest for the trees, however, because "Balloon Boy" is indicative of a much broader problem. Reality television has provided parents with the most recent means to exploit their children. For some time, parents have exploited their children in film and

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*Bonanza: Beyond the 'Balloon Boy' Saga*, L.A. TIMES (Oct. 19, 2009), <http://articles.latimes.com/2009/oct/19/entertainment/et-media-balloon-boy19>.

<sup>7</sup> *Incident Raises More Questions*, *supra* note 2 (stating also that Sheriff Alderden said, "[w]e believe at this time that it's a real event.").

<sup>8</sup> *Balloon 'Not Capable of Lifting Off' with the Boy*, *Colorado Police Say*, CNN.COM (Oct. 18, 2009), <http://www.cnn.com/2009/US/10/18/colorado.balloon.vessel/index.html>.

<sup>9</sup> Diane Dimond, *A Reality Check on Reality TV*, THE HUFFINGTON POST (Nov. 2, 2009), [http://www.huffingtonpost.com/diane-dimond/a-reality-check-on-reality\\_b\\_343131.html](http://www.huffingtonpost.com/diane-dimond/a-reality-check-on-reality_b_343131.html).

<sup>10</sup> Collins & Riccardi, *supra* note 6.

<sup>11</sup> *Papers: Wife Says 'Balloon Boy' Was Hoax*, CNN.COM (Oct. 24, 2009), <http://www.cnn.com/2009/US/10/24/balloon.boy.investigation/index.html>.

<sup>12</sup> *'Balloon Boy' Parents Sentenced for Hoax*, CNN.COM (Dec. 23, 2009), <http://www.cnn.com/2009/CRIME/12/23/colorado.balloon.boy.sentencing/index.html> ("Richard Heene was charged with the felony of attempting to influence a public servant, and his wife faced a misdemeanor charge of false reporting to authorities.").

<sup>13</sup> *Id.* (emphasis added).

<sup>14</sup> *Gosselin Kin Cite 'Balloon Boy' Saga*, CBSNEWS (Oct. 27, 2009), <http://www.cbsnews.com/stories/2009/10/27/earlyshow/leisure/celebspot/main5424331.shtml>

(emphasis added) [hereinafter *Gosselin Kin*]. This was the concern expressed by Kevin and Jodi Kreider, along with well-known attorney Gloria Allred. *Id.* Kevin is the brother of Kate Gosselin, who is featured in TLC's *Jon & Kate Plus Eight*, which followed the lives of Kate, her then husband Jon, and their eight children.

<sup>15</sup> See *Gosselin Kin*, *supra* note 14. "[W]hat allegedly happened with 'balloon boy' Falcon Heene helps" Kevin and Jodi Kreider's cause. *Id.*

sports—other industries in which there is minimal, if any, legal protection for children.

This Note joins prior calls for federal regulation of child exploitation.<sup>16</sup> Child exploitation is a complex and multifaceted issue, however, so it is important to clarify the scope of this Note. While recognizing the need to regulate children's activity—for example, hours spent acting or training, and appropriate conditions under which it may be done—this Note focuses specifically on regulating parents' conduct. Shifting the focus from children's activity to parents' conduct allows for a more comprehensive regulatory framework. While also recognizing that children have many other interests that need protection, this Note focuses on protecting their psychological and emotional health. In short, this Note argues for wholesale regulation of parental exploitation of children to protect children's health and well-being.

Regulating parental conduct calls into question parental authority, which necessarily requires a twofold inquiry: (1) whether there is a cognizable issue such that the state *should* regulate parental authority, and (2) whether the state has the legal power such that it *can* regulate parental authority. To provide context for these inquiries, Part II reviews the evolution of parental exploitation of children as a consequence of insufficient regulation. Part III highlights the need for regulation by reviewing the process of child development, discussing the significant negative impact of parental exploitation on that process, and exploitation's self-perpetuating nature. Part IV reviews the rights and obligations of parents, children, and the State. Part IV also argues that not only does the State have the legal right to regulate parental exploitation of children, but also the obligation to do so. Finally, Part V reviews previous proposals for regulating child exploitation, and provides a more comprehensive framework specifically for regulating parental exploitation of children.

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<sup>16</sup> See generally Christopher C. Cianci, Note, *Entertainment or Exploitation?: Reality Television and the Inadequate Protection of Child Participants Under the Law*, 18 S. CAL. INTERDISC. L.J. 363 (2009) (arguing for standardized federal regulation of all child participation in the entertainment industry); Adam P. Greenberg, Note, *Reality's Kids: Are Children Who Participate on Reality Television Shows Covered Under the Fair Labor Standards Act?*, 82 S. CAL. L. REV. 595 (2009) (arguing that children on certain reality TV shows do not fall under the Fair Labor Standards Act's exemption for child actors); Jessica Krieg, Comment, *There's No Business Like Show Business: Child Entertainers and the Law*, 6 U. PA. J. LAB. & EMP. L. 429 (2004) (proposing federal legislation that would establish a federal oversight board responsible for overseeing the employment of minors in the entertainment industry); Erica Siegel, Note, *When Parental Interference Goes Too Far: The Need for Adequate Protection of Child Entertainers and Athletes*, 18 CARDOZO ARTS & ENT. L.J. 427 (2000) (proposing federal legislation to safeguard children's earnings, and regulate the employment of child entertainers and training of child athletes through a permit process). See *infra* Part V.A for a more detailed discussion of these proposals.

## II. EVOLVING EXPLOITATION, AND INSUFFICIENT REGULATION<sup>17</sup>

Black's Law Dictionary defines exploitation as "[t]he act of taking advantage of something; esp., the act of taking unjust advantage of another for one's own benefit."<sup>18</sup> Unfortunately, our country has a rich history of parents doing just that—exploiting their own children. Parental exploitation of children has typically been financially motivated, beginning with child labor as a contribution to the income of working-class families. As time passed, parents' interests expanded—not only were children viewed as sources of money, but also as a means of achieving fame and celebrity. With increasing forms of entertainment and media came new opportunities for parents to exploit their children, which the law has yet to address.

### A. CHILDREN IN THE WORKFORCE

At the turn of the twentieth century, child labor in America was an established and accepted activity, with children of working-class families contributing to the household income.<sup>19</sup> Child labor ranged from delivering newspapers to working in coalmines, textile mills, and glass factories.<sup>20</sup> A push for reform was spurred by shifting American ideals. These included humane concerns for working children's health and safety and social concerns for the long working hours that detracted from children's schooling, leaving them unprepared for employment as adults, in turn perpetuating a cycle of poverty.<sup>21</sup>

At first, states were responsible for the regulation of child labor, but efforts varied from state to state, which allowed employers to easily escape regulation by simply moving operations to an unregulated state, making it clear that "reform would need to be federal."<sup>22</sup> Soon thereafter, Congress passed the Fair Labor Standards Act ("FLSA") of 1938.<sup>23</sup> This led to such regulations as a minimum working age, maximum hours of work, and acceptable working conditions.<sup>24</sup> Today, the FLSA remains the primary federal law dealing with the employment of children, but it only provides a framework for the regulation of child labor, and it "is not comprehensive,

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<sup>17</sup> This review does not attempt to comprise an exhaustive list of all forms of child exploitation. The examples discussed are only meant to convey the observation that child exploitation is a widespread problem that current laws cannot adequately address.

<sup>18</sup> BLACK'S LAW DICTIONARY 660 (9th ed. 2009).

<sup>19</sup> JANE O'CONNOR, THE CULTURAL SIGNIFICANCE OF THE CHILD STAR 51 (2008). *See also* WILLIAM G. WHITTAKER, CHILD LABOR IN AMERICA: HISTORY, POLICY AND LEGISLATIVE ISSUES 1 (2004).

<sup>20</sup> WHITTAKER, *supra* note 19, at 1.

<sup>21</sup> *Id.* at 1–2.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 7. The FLSA provisions were intended "to protect the safety, health, well-being, and opportunities for schooling of youthful workers." 29 C.F.R. § 570.101 (2010).

<sup>24</sup> *See e.g.*, 29 C.F.R. § 570.2, (2010); 29 C.F.R. § 570.35 (2010).

nor does it deal with all employment of children in precisely the same way.”<sup>25</sup> Thus, the FLSA has left the door open for parents to further exploit their children.

## B. CHILDREN IN FILM

The year 1920 saw the dawn of the Child Star Era with six-year-old Jackie Coogan’s starring role alongside Charlie Chaplin in *The Kid*.<sup>26</sup> *The Kid*’s success indicated America’s willingness to embrace children in movies, leading to a procession of such legendary child stars as Shirley Temple, Mickey Rooney, and Judy Garland.<sup>27</sup> Coogan’s continued success came with great wealth and he “supported his entire family with the fortune he made.”<sup>28</sup> This caused “many American families to view their children as potential sources of fame and fortune.”<sup>29</sup> Coogan’s story, however, is one of tragedy. On turning twenty-one, Coogan received access to a trust fund that he thought held his earnings—imagine his surprise when he discovered it held only one thousand dollars.<sup>30</sup>

In response, California enacted Coogan’s Law in 1939, which gave courts the power to establish and monitor trust funds.<sup>31</sup> The intent was to extend child labor laws to child actors,<sup>32</sup> who were—and still are—exempt from the FLSA regulations.<sup>33</sup> While California and New York—both of which are major producers of entertainment—have since enacted laws favorable to children in film, the majority of states still provide minimal, if any, protection for such children.<sup>34</sup> Because of states’ differing interests, laws have been adopted inconsistently, leaving child actors vulnerable still.<sup>35</sup>

<sup>25</sup> WHITTAKER, *supra* note 19, at vii.

<sup>26</sup> O’CONNOR, *supra* note 19, at 51.

<sup>27</sup> *Id.* at 51, 53.

<sup>28</sup> *Id.* at 51 (“[I]n a 1923 deal with [MGM Studios], Coogan received 60 percent of the profits from his films, making him one of the highest earners in the country.”). According to his father, Coogan was a “gold mine.” *Id.* at 53.

<sup>29</sup> *Id.* at 53.

<sup>30</sup> *Id.* at 52. Coogan’s mother believed she was entitled to all the money he earned, and even after a lengthy court battle, Coogan recovered only \$126,000 of the \$4 million he sought. *Id.*

<sup>31</sup> Krieg, *supra* note 16, at 434 (citing Kimberlianne Podlas, *Primetime Crimes: Are Reality Television Programs “Illegal Contests” in Violation of Federal Law*, 25 CARDOZO ARTS & ENT. L.J. 141, 143 (2007)). Coogan’s Law was since amended in 2000 to establish a minimum “set-aside” of a child’s gross earnings, and though it has no minimum, New York also has a law establishing a “set-aside.” *Id.* at 437, 440 (citing Posting of Diane Werts to TV Zone, <http://blogs.trb.com/entertainment/tv/blog> (July 18, 2007, 20:10 EST)).

<sup>32</sup> *Id.* at 434 (citing Tim Goodman, *The Reality Is This: Unscripted Shows Are Ratings Winners*, S.F. CHRON., Mar. 24, 2008, at E1).

<sup>33</sup> 29 U.S.C. § 213(c)(3) (2006). See also Cianci, *supra* note 16, at 375; Krieg, *supra* note 16, at 431.

<sup>34</sup> Cianci, *supra* note 16, at 375.

<sup>35</sup> See *id.* at 375–76 (“In fact, production companies in states with lax labor laws for children in the entertainment industry often *boast* about this fact in order to attract filmmakers. Thus, a state’s interest in revenue can outweigh its interest in protecting these children from unsafe or unfair working conditions.”) (emphasis added) (footnote omitted) (citing Jessica Krieg, Comment, *There’s No Business Like Show Business: Child Entertainers and the Law*, 6 U. PA. J. LAB. & EMP. L. 429, 431–32 (2004)).

A recent example of parents exploiting their child in film is Drew Barrymore, who starred in 1981's *E.T.* at the age of six.<sup>36</sup> Her autobiography describes a failed-actress mother determined to achieve fame by taking a seven-year-old Barrymore to clubs and parties, and an alcoholic father who appeared periodically in Barrymore's life only to demand money.<sup>37</sup> Another example is Macaulay Culkin, star of the 1990s *Home Alone* movies.<sup>38</sup> His mother booked roles without consulting him, and he described his father as an abusive alcoholic who forced him to act because of the money.<sup>39</sup> In 1997, Culkin filed a lawsuit against his parents to gain control of his finances.<sup>40</sup>

### C. CHILDREN IN SPORTS

Over the last two decades, professional athletes' ever-increasing salaries, winnings, and endorsement deals have perpetuated the American belief that "sport is a path to upward social mobility."<sup>41</sup> The reality is that there are very few opportunities for a career as a professional athlete, and competition among the many vying for those limited opportunities is fierce.<sup>42</sup> Not all parents, however, are willing to accept this reality.<sup>43</sup> To gain an advantage, athletes not only are training more intensely, but also beginning to train at a younger age.<sup>44</sup> This trend is a cause for concern: when it comes to children, "[a] very thin line divides intensive training that allows children to fulfill themselves from that in which they are abused and exploited."<sup>45</sup>

<sup>36</sup> O'CONNOR, *supra* note 19, at 61.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *See id.* at 94. ("[His father] was abusive and he hit and he got drunk and all those now cliché kind of things.")

<sup>40</sup> Siegel, *supra* note 16, at 428 (citing *Culkin's Parents Lose Control of His Money*, CHI. TRIB., Mar. 5, 1997, at 2).

<sup>41</sup> D. Stanley Eitzen, *Upward Mobility Through Sport?: The Myths and Realities*, in *SPORT IN CONTEMPORARY SOCIETY* 256, 256 (6th ed. 2001). *See also* MARK HYMAN, *UNTIL IT HURTS: AMERICA'S OBSESSION WITH YOUTH SPORTS AND HOW IT HARMS OUR KIDS* 18 (2009) (noting the \$5.3 million average salary of a National Basketball Association player in 2006, and the \$190,000 value of a full athletic scholarship to Georgetown University).

<sup>42</sup> *See* Eitzen, *supra* note 41, at 258.

<sup>43</sup> *See* HYMAN, *supra* note 41, at 33 (noting a 2006 survey of 376 parents of sports players that revealed almost 40 percent hoped their child would someday play for a college team, and "[t]wenty-two parents said they *expected* their children to become professional athletes.")

<sup>44</sup> *See, e.g., id.* at 17 ("[I]t's possible to turn your kid into a champion if you start early enough."); PAULO DAVID, *HUMAN RIGHTS IN YOUTH SPORT: A CRITICAL REVIEW OF CHILDREN'S RIGHTS IN COMPETITIVE SPORTS* 53 (2005) ("[C]hildren as young as four years old may have already been pushed by adults to train frequently."). IMG Academies in Bradenton, Florida is a "state-of-the-art, multi-sport training and educational facility." Elizabeth Quinn, *Sports Training Camps Aren't Just for Kids*, ABOUT.COM, [http://sportsmedicine.about.com/od/sampleworkouts/a/sports\\_camps.htm](http://sportsmedicine.about.com/od/sampleworkouts/a/sports_camps.htm) (last updated June 08, 2010). IMG offers academic programs beginning at PreKindergarten and Elementary levels that "work in conjunction with the athletic development schedules at the IMG Academies." IMG Pendleton School, *Curriculum*, IMG ACADEMIES, <http://www.imgacademies.com/img-pendleton/academic-life/curriculum/> (last visited Sept. 27, 2011).

<sup>45</sup> DAVID, *supra* note 44, at 53 (emphasis added).

A stark example of ending up on the wrong side of this line is Andre Agassi, the tennis great described as a creation of his father's laboratory, "manufactured to be the perfect tennis ball-hitting machine."<sup>46</sup> Mike Agassi viewed tennis as a way for his children to attain the American dream.<sup>47</sup> To attain this dream, Mike's training regimen required seven-year-old Andre to hit 2500 tennis balls a day, served up by a machine that Mike modified so balls were fired at Andre at 110 miles an hour, all while Mike yelled directions and criticized Andre for mistakes.<sup>48</sup>

For others, it is too early to tell which side of the line they may end up on. Basketball prodigy Marquise Walker is known as the "YouTube Baby" because of his father's YouTube marketing campaign that labeled Marquise "the nation's best kindergartner."<sup>49</sup> To live up to the hype, Chikosi Walker, Marquise's father, had nine-year-old Marquise training ninety minutes a day, four days a week, which included running laps, climbing stairs, doing push-ups, and dribbling an eight-pound medicine ball.<sup>50</sup> Chikosi maintains that his goal is "not only to make Marquise a great basketball player, but also a well-rounded person"; Chikosi understands that some people are critical and believe he will end up ruining Marquise, but he responds with, "[t]ime will tell."<sup>51</sup>

Journalist Mark Hyman hopes that his book sparks debate about the proper role for adults in youth sports by examining some of the problems they have caused.<sup>52</sup> Hyman's book, *Until It Hurts: America's Obsession with Youth Sports and How It Harms Our Kids*, was inspired by his own experience with his son Ben.<sup>53</sup> Ben's success and accomplishments in baseball were a source of revelry for Hyman, which he felt validated him as a parent and fed his self-esteem.<sup>54</sup> As Ben's baseball coach, Hyman's vanity and desire to win would lead him to have Ben pitch when he knew Ben's

<sup>46</sup> Joel Drucker, *Agassi Finally Understanding Agassi*, ESPN.COM (Dec. 9, 2009), [http://sports.espn.go.com/sports/tennis/columns/story?columnist=drucker\\_joel&id=4724933](http://sports.espn.go.com/sports/tennis/columns/story?columnist=drucker_joel&id=4724933).

<sup>47</sup> See *id.* Drucker writes that tennis in America, while "once confined to country clubs, [is] now more the province of money-hungry parents (Exhibit A: Mike Agassi)." *Id.* Another potential province of money-hungry parents is women's gymnastics. Dominique Moceanu, a member of the USA gymnastics team that won a gold medal in the 1996 Atlanta Summer Olympics, was granted emancipation from her parents after they spent most of her earnings that had been in a trust fund they controlled. Siegel, *supra* note 16, at 427 (citing *Gymnast: Split with Parents Difficult*, ARIZ. REPUBLIC, Oct. 24, 1998, at C2; *Dateline NBC: Interview, Balance of Power: Dominique Moceanu Talks About Wanting Emancipation from Her Parents* (NBC television broadcast, Oct. 26, 1998)). She also felt that her parents' push for her to be a great gymnast deprived her of a normal childhood. *Id.* (citing Ann Killion, *Overbearing Parents Won't Steal Gymnast Moceanu's Soul*, AUSTIN AM. STATESMAN, Oct. 24, 1998).

<sup>48</sup> ANDRE AGASSI, *OPEN: AN AUTOBIOGRAPHY* 27–28 (2009).

<sup>49</sup> Wayne Drehs, *'YouTube Baby' Still Has Hoop Dreams*, ESPNCHICAGO.COM (May 13, 2009), [http://sports.espn.go.com/chicago/columns/story?columnist=drehs\\_wayne&id=4159077](http://sports.espn.go.com/chicago/columns/story?columnist=drehs_wayne&id=4159077).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See HYMAN, *supra* note 41, at ix–xi.

<sup>53</sup> *Id.*

<sup>54</sup> See *id.* at 26.

shoulder was hurt.<sup>55</sup> Watching his son struggle, Hyman felt regret for his decision and remorse for his son.<sup>56</sup> He now acknowledges that his reckless behavior toward Ben was the result of his own narcissism.<sup>57</sup>

Unfortunately, there are no laws regulating child athletes' training regimens.<sup>58</sup> Because child athletes are not compensated for their time spent training, there is no protection under federal child labor laws, and because youth sports are considered recreational extracurricular activities, they are not protected under state laws regulating child entertainers, either.<sup>59</sup> Child athletes can rely only on the judgment—for better or worse—of parents and coaches.

#### D. CHILDREN IN REALITY TELEVISION

In June 2000, Columbia Broadcasting Network (“CBS”) debuted its reality television show *Survivor*, launching the reality television craze in America.<sup>60</sup> Since then reality television has exploded on the coattails of imitation,<sup>61</sup> and finds its most recent muse in children.<sup>62</sup> Indeed, shows featuring children, such as CBS’s *Kid Nation*, and The Learning Channel’s (“TLC”) *18 Kids and Counting*, *Toddlers and Tiaras*, and *Jon & Kate Plus Eight*—just to name a few—have further induced both networks looking to increase ratings, and parents seeking fame and fortune, to follow in their steps.<sup>63</sup> Cue up Richard Heene.

According to acquaintances, Richard Heene’s “goal in life was to make it on TV,”<sup>64</sup> and it is now known that the Heenes were also in financial trouble at the time of the hoax.<sup>65</sup> Richard Heene “fancie[d] himself a scientist,” and was in the process of pitching to networks a show he called *Storm Chasers* that would feature him and his three sons chasing violent

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<sup>55</sup> *Id.* at 25–27.

<sup>56</sup> *Id.* at 27.

<sup>57</sup> *Id.*

<sup>58</sup> DAVID, *supra* note 44, at 133 (“No country in the world has enacted specific and comprehensive labour [sic] legislation covering young athletes.”); Siegel, *supra* note 16, at 429 (citing JOAN RYAN, *LITTLE GIRLS IN PRETTY BOXES* 11–12 (1995)).

<sup>59</sup> See Siegel, *supra* note 16, at 429, 457. See also DAVID, *supra* note 44, at 130 (“A majority of young athletes practise [sic] competitive sports as a leisure and recreational activity and derive no material gain; . . . The concept of ‘child athletic workers’ is not completely new, . . . but it is a concept that is totally rejected by both public and sport authorities.”).

<sup>60</sup> See RICHARD M. HUFF, *REALITY TELEVISION* 6, 9–11 (2006). “In a mere matter of years, this newfangled genre has infiltrated virtually every corner of the television world and very quickly become a staple of every television programmer’s arsenal of program choices.” *Id.* at ix.

<sup>61</sup> *Id.* at xi (“[T]he rampant copycat situation in reality programming [is] a phenomenon that is more prevalent than in any other genre of television.”).

<sup>62</sup> See Collins & Riccardi, *supra* note 6 (“Falcon is one of many children who have in recent months been featured as players in sensational, reality-TV-ready story lines involving what might be dubbed extreme parenting.”).

<sup>63</sup> See *id.*

<sup>64</sup> Dimond, *supra* note 9.

<sup>65</sup> Trevor Hughes, ‘Balloon Boy’ Parents Plead Guilty, USATODAY.COM (Nov. 13, 2009), [http://www.usatoday.com/news/nation/2009-11-12-balloon-boy\\_N.htm](http://www.usatoday.com/news/nation/2009-11-12-balloon-boy_N.htm).



storms.<sup>66</sup> After previous attempts to gain publicity for his show were unsuccessful,<sup>67</sup> Richard Heene's quest for fame and fortune became "kookier and almost sinister," as he was "willing to offer up the safety and emotional well being of [his] minor children" to attain the fame and publicity he desired.<sup>68</sup>

While "Balloon Boy" is the most egregious example of parents exploiting their children to appear on television, it is not the only one.<sup>69</sup> Nadya Suleman became known as the "Octomom" after undergoing advanced fertility treatment and giving birth to octuplets<sup>70</sup>—despite already having six children.<sup>71</sup> Octomom and her fourteen children were featured in a reality show that reportedly pays the children \$250 per day.<sup>72</sup>

Currently there are no federal laws protecting children in reality television.<sup>73</sup> As part of the entertainment industry, it would seem that children on reality television shows would be protected under state laws regulating children in entertainment generally, but this is not the case for at least two reasons. First, by not compensating children for their involvement in shows, producers regard them as "participants," not employees.<sup>74</sup> In the few states that do have laws regulating child actors, it is an open question whether that protection should extend to "participants."<sup>75</sup> Second, due to the inconsistent laws among states, even if such protection did extend to participants, producers can simply move production to a state with less

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<sup>66</sup> Dimond, *supra* note 9.

<sup>67</sup> The Heenes had developed "a reputation of putting Falcon and his brothers in the public eye," including, for example, a newscast featuring their two other sons discussing hurricane-chasing, and submitting reports to CNN's iReport about hurricane chasing. Stephanie Chen, *Experts Fear Effects of Media Spotlight on 'Balloon Boy.'* CNN.COM (Oct. 16, 2009), <http://www.cnn.com/2009/LIVING/10/16/colorado.balloon.media.spotlight/index.html>.

<sup>68</sup> Dimond, *supra* note 9.

<sup>69</sup> In fact, the American Film Institute's list of the most significant moments of the year included "Balloon Boy" and "Octomom" as examples of "[r]eality TV's loss of boundaries." Dave McNary, *'Avatar' Among AFI's Significant Moments*, VARIETY.COM (Dec. 28, 2009), <http://www.variety.com/article/VR1118013142.html?categoryid=13&cs=1&nid=2565>.

<sup>70</sup> Collins & Riccardi, *supra* note 6.

<sup>71</sup> Belinda Luscombe, *The Octomom's Reality Show: Not for American Eyes*, TIME.COM (June 3, 2009), <http://www.time.com/time/arts/article/0,8599,1902269,00.html>.

<sup>72</sup> Collins & Riccardi, *supra* note 6. However, the show is not shown in America. See Luscombe, *supra* note 71.

<sup>73</sup> See *Gosselin Kin*, *supra* note 14 and accompanying text. See also Cianci, *supra* note 16, at 375–76.

<sup>74</sup> See Cianci, *supra* note 16, at 368 ("In fact, the contract [for participation in *Kid Nation*] directly states that participation in the show would not be employment and that the children would not be entitled to wages, salary, or other compensation.") (citing to Participant Agreement Between Minor and Producers for "The Manhattan Project," *No Human Rights in "Kid Nation,"* THE SMOKING GUN (Aug. 23, 2007), <http://www.thesmokinggun.com/archive/years/2007/0823071kidnation1.html>). Alternatively, producers can argue that children are independent contractors, who are not regulated under state or federal child labor laws. Greenberg, *supra* note 16, at 596 (citing Scott Collins, *Kids in Reality TV's Tender Care*, L.A. TIMES, Aug. 27, 2007, at E1).

<sup>75</sup> Cianci, *supra* note 16, at 381.

stringent laws, and refrain from using children from states with laws favorable to their rights.<sup>76</sup>

#### E. OBSERVABLE TRENDS

Emerging from this review are trends that should serve as guidelines for regulating parental exploitation of children. First, state regulation is clearly insufficient. Second, this problem is only expanding. “Experts say there are ample opportunities for children to be exploited in an era littered with social media, YouTube, blogs and reality television.”<sup>77</sup> History shows that certain parents are more than willing to take full advantage of new opportunities to exploit their children. Third, exploitation is not isolated to any one industry. Nevertheless, whether it is child actors, child athletes, or child participants being exploited by their parents, it is exploitation of *children*. Fourth, children lack autonomy in whether to engage in these activities and are often forced into them by highly controlling parents.

### III. CHILD DEVELOPMENT UNDER THE HARSH GLARE OF THE MEDIA SPOTLIGHT

From the moment young Falcon emerged from his parents’ attic, he was thrust into the media spotlight. Almost immediately, Richard Heene brought thirty members of the media into his home to interview Falcon.<sup>78</sup> Later that evening, Falcon appeared on *Larry King Live*, and the next morning Falcon was interviewed on both *Good Morning America* and *Today*—vomiting on live television during *Today* and feeling like he was going to vomit on *Good Morning America*.<sup>79</sup> Some suggested that the stress of lying became too heavy of a burden for little Falcon, causing him to melt under the glare of the media spotlight right before the country’s eyes.<sup>80</sup>

Experts generally agree that being in front of cameras is a stressful experience for a child, but it is difficult to determine the precise effects that media exposure will have on children because little scientific research exists on the subject.<sup>81</sup> Alan Kazdin, a professor of psychology at Yale University, does not believe the experience will traumatize Falcon or stunt his growth; but “[o]ther child and developmental psychology experts warn that too much media exposure can be harmful,” specifically cautioning that

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<sup>76</sup> See *id.* at 382–83 (discussing why producers of *Kid Nation* chose not to film in a state such as California or New York, or select any participants from either of those states).

<sup>77</sup> Chen, *supra* note 67. See also HUFF, *supra* note 60, at xii (“As long as viewers continue to tune in, television programmers will look for new, wacky concepts in reality.”).

<sup>78</sup> Chen, *supra* note 67.

<sup>79</sup> *Id.*

<sup>80</sup> E.g., Collins & Riccardi, *supra* note 6.

<sup>81</sup> Chen, *supra* note 67.

it “could skew the child’s sense of self-identity and negatively affect his or her development.”<sup>82</sup>

In Falcon’s case, the potential for harm under the media spotlight became a reality. However, there is another developmental factor at work whose effects are not yet so discernible: Falcon’s parents. Indeed, parents play a significant, if not the most important, role in children’s development. Parents that exploit their children, one could argue, would not be likely to exhibit the parental characteristics leading to optimal child development. One must wonder what life is like for a six-year-old whose parents use him as a pawn in an elaborate hoax, and how such parenting will influence his development. Thus, when parents exploit their children, there is a dual concern for developmental harm: that caused by the parents, and that caused by the exploitation itself.

Moreover, exploitation’s negative effects extend far beyond the children being exploited. The recent surge of reality television shows featuring children—coupled with children’s strong existing presence in film and sports—reinforces the belief that children are a commodity for wealth and fame. This further motivates other parents to exploit their children, and at a time when there is more opportunity than ever. In order to protect children from suffering significant developmental harm, parental exploitation of children must be regulated to prevent parents from taking advantage of any opportunity to exploit their children.

#### A. A CRASH COURSE IN CHILD DEVELOPMENT

The science of “human development” focuses on changes in the individual over the course of life in areas such as physiology, cognition, emotion, and socialization.<sup>83</sup> The study of “child development” focuses on the extremely important stages of development over the first twenty years of life that lay the foundation for adolescence and adulthood.<sup>84</sup>

Developmental change results from both biological and social processes: (1) “maturation” is a biological change resulting from gene expression; and (2) “learning” is a behavioral change resulting from experience.<sup>85</sup> Learning occurs through various methods, but the two most relevant to this discussion are “operant conditioning” and “observational learning.”<sup>86</sup> Operant conditioning asserts that the likelihood of an action

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<sup>82</sup> *Id.*

<sup>83</sup> DAVID R. SHAFFER, DEVELOPMENTAL PSYCHOLOGY: CHILDHOOD & ADOLESCENCE 2–3 (5th ed. 1999).

<sup>84</sup> *Id.* at 4–5. The periods of life relevant to this discussion are infancy and toddlerhood (first two years of life), preschool years (two to six years of age), middle childhood (six to twelve years of age), and adolescence (twelve to twenty years of age). *Id.* at 5.

<sup>85</sup> *Id.* at 3.

<sup>86</sup> *Id.* at 213.

depends on the consequences it produces—reinforcers increase the likelihood while punishers decrease it.<sup>87</sup> Commonly understood as positive and negative reinforcement, operant conditioning is the basis for parental punishment of children's bad behavior.<sup>88</sup> On the other hand, observational learning results simply from watching others.<sup>89</sup> Usually accomplished through imitation, observational learning is the process by which children learn to speak. In addition to learning and maturation, child development is further influenced by factors such as parents and the environment.<sup>90</sup>

### 1. *Brain Growth and Cognitive Development*

The period from three months prior to birth to two years of age is termed the "brain growth spurt," during which time brain weight increases from twenty-five percent to seventy-five percent of eventual adult weight.<sup>91</sup> Subsequently, different parts of the brain develop at different rates, with those areas serving higher intellectual functions continuing to develop past adolescence.<sup>92</sup> As children's brains grow physically, so too do their mental skills and abilities, or "cognition."<sup>93</sup> While there is debate about exactly how cognition develops,<sup>94</sup> it is clear that children's abilities to problem-solve and think rationally are limited during infancy, and by adolescence children think in the abstract and ask hypothetical questions.<sup>95</sup>

"Intelligence" is the term most often used to describe cognitive ability, or rather "the ability to think abstractly or to solve problems effectively."<sup>96</sup> While there is a hereditary component to intelligence, children's environments, their homes in particular, also have an impact.<sup>97</sup> Studies show that in intellectually stimulating homes, parents are warm and actively involved with their children, take time to describe new concepts to

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<sup>87</sup> *Id.* at 216–17.

<sup>88</sup> *Id.* at 217. This type of learning also leads to "learned helplessness," which is the tendency to give up trying because previous attempts failed. *Id.* at 455.

<sup>89</sup> *Id.* at 222.

<sup>90</sup> SHAFFER, *supra* note 83, at 3. More specifically, these factors include genetics, *id.* at 92, gender, *id.* at 168, temperament, *id.* at 398, and peers, *id.* at 444, among many others.

<sup>91</sup> *Id.* at 156. Brain growth also is one of the earliest examples of the developmental interaction between maturation and learning, as a baby is born with more raw materials than needed, and only those that are most often stimulated continue to function while others stand in reserve. *Id.* at 157.

<sup>92</sup> *Id.* at 157–60.

<sup>93</sup> *Id.* at 229.

<sup>94</sup> See generally *id.* at 229–311 (discussing various theories of intellectual growth, including Jean Piaget's universal theory, Lev Vygotsky's sociocultural theory, and the information-processing theory).

<sup>95</sup> *Id.* at 159.

<sup>96</sup> *Id.* at 314.

<sup>97</sup> *Id.* at 331. Parental behavior often may be a strong predictor of children's later intellectual success throughout the periods of life: (1) in infancy, these include parental involvement, "provision of age-appropriate play materials, and opportunities for variety in daily stimulation," *id.* at 334; (2) in preschool, "parental warmth, stimulation of language, and academic behaviors," *id.*; and (3) in middle childhood, stressing the importance of academic achievement. See *id.*

them, present them with age-appropriate challenges, and encourage them to think independently.<sup>98</sup>

Learning, brain growth, and cognitive development act as an orchestra in concert, continually playing off of one another. Learning spurs brain growth, leading to cognitive development, which in turn increases the capacity for learning, and so on. But, learning and cognitive development require stimulus produced through experiences.<sup>99</sup> Formal education becomes a main source of stimulus for preschool and grade-school children because of the time spent in school. On the other hand, infants and toddlers must draw primarily on stimulus from the home.

## 2. *The Significance of Attachment*

Perhaps the most significant influence parents have on their children's development results from the emotional relationship—the “attachment”—formed between parent and infant.<sup>100</sup> The parent-infant attachment is described as one of four types: secure, resistant, avoidant, or disorganized/disoriented.<sup>101</sup> Securely attached infants use their parents as secure bases from which to explore their world and may be distressed when separated from their parents, but greet them warmly on return.<sup>102</sup> In contrast, insecurely attached infants (the resistant and avoidant types) explore little when around their parents, protest separation from them, and act ambivalently or ignore their parents on return.<sup>103</sup> Disorganized infants are the most stressed and may be the most insecure, and they are characterized by confusion about how to respond to their caregivers.<sup>104</sup> The attachment that is formed depends on the quality of caregiving. Secure infants have parents that are sensitive and responsive caregivers, while insecure infants have parents ranging from unresponsive to overly involved.<sup>105</sup> Unresponsive parents are impatient with their children, express negative feelings about them, and may abuse or neglect them,<sup>106</sup> while

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<sup>98</sup> SHAFFER, *supra* note 83, at 334. These parental characteristics commonly result in “an intellectually stimulating home” across various aspects of children’s lives. *Id.*

<sup>99</sup> *See id.* at 3.

<sup>100</sup> *Id.* at 402.

<sup>101</sup> *Id.* at 412–13. These were determined based on Mary Ainsworth’s “Strange Situation” experiment, in which very young children (1) interact normally with a parent, (2) are briefly separated from the parent and encounter strangers, and (3) are reunited with the parent. *Id.*

<sup>102</sup> *Id.* at 413.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 413–14.

<sup>105</sup> SHAFFER, *supra* note 83, at 414–15.

<sup>106</sup> *Id.* One risk of such parenting is that children become so socially deprived that they lose the ability to form secure attachments after finding their efforts for attention useless, an example of learned helplessness. *Id.* at 425. In turn, this affects the child’s ability to later be a sensitive parent. *See id.* at 416. Indeed, one of the risk factors for being an insensitive parent is whether a person was “unloved, neglected, or abused” as a child. *Id.* In a sense, insensitive parenting is hereditary.

overly involved parents provide stimulation to their children when they do not want it.<sup>107</sup>

The attachments that infants form with their parents profoundly affect the infants' psychological development later in life.<sup>108</sup> Studies show that infants who are securely attached later become preschool social leaders, are better problem-solvers, more complex thinkers, and better playmates than insecure infants, who are socially and emotionally withdrawn, and are at risk of becoming hostile or aggressive.<sup>109</sup> One reason that attachments have such a strong influence is that they tend to be stable over time—parents maintain the attachment developed during infancy through adolescence.<sup>110</sup> Attachments also help children develop “internal working models,” which are “cognitive representations of self, others, and relationships” that allow children to interpret events and form expectations about future relationships.<sup>111</sup>

### 3. *The Convergence of Emotional and Social Development*

Attachment serves as the basis for emotional development because children rely on interactions with their parents to learn about emotions. Indeed, infants depend on parents to soothe them in moments of emotional distress, and preschool children need parents to help them understand and constructively address difficult emotions.<sup>112</sup> Parents also foster positive emotions, such as pride, which is important for children's motivation and a healthy sense of self.<sup>113</sup>

Emotional development occurs in stages from infancy through middle childhood.<sup>114</sup> “Social referencing” is a tool that infants use to infer the meaning of ambiguous social situations by observing others'—primarily parents'—emotional expressions.<sup>115</sup> Not only does this help children begin to understand what emotions mean, but it also helps them understand how to act in social settings. By understanding emotions, preschool children are able to begin developing strategies for managing and adjusting their own emotions—“emotional self-regulation.” By middle childhood they begin to

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<sup>107</sup> *Id.* at 415.

<sup>108</sup> *Id.* at 420.

<sup>109</sup> *Id.* at 421.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* (“Sensitive, responsive caregiving should lead the child to conclude that people are dependable (positive working model of others), whereas insensitive, neglectful, or abusive caregiving may lead to insecurity and a lack of trust (negative working model of others).”).

<sup>112</sup> SHAFFER, *supra* note 83, at 421. Family discussions of emotional experiences help children achieve a better understanding of their own and others' feelings and emotions. *See id.* at 397. In fact, a study found that the more often three-year-olds discussed emotional experiences with family members, the better they were at interpreting others' emotions and resolving disputes with friends at the age of six. *Id.*

<sup>113</sup> *Id.* at 395.

<sup>114</sup> *See id.* at 399 tbl. 11.1 (outlining the development of children's emotional expressions or regulations, and emotional understandings from birth to twelve years old).

<sup>115</sup> *Id.* at 396.

understand and comply with society's rules for when certain emotions should be expressed—"emotional display rules."<sup>116</sup>

Emotional regulation is critical to effectively addressing challenges and other people.<sup>117</sup> Thus, emotional development is a critical building block for social development. To reiterate, emotional development begins very early when infants' emotional displays serve a communicative function with parents by promoting social contact and helping parents and children get to know each other.<sup>118</sup> Further, social referencing provides infants with the knowledge of how to feel and behave in various social situations.<sup>119</sup>

"Socialization" is the continuing process by which children acquire "the beliefs, values, and behaviors considered desirable or appropriate" by their society.<sup>120</sup> A critical emotion in this process is "empathy," which is the ability to understand and experience the emotions of others and can lead to "prosocial" behaviors, such as comforting and assisting others.<sup>121</sup> In fact, children who score higher on tests of emotional understanding tend to rate higher in social competence, and have better relationships with peers.<sup>122</sup> In contrast, highly aggressive children lack empathy.<sup>123</sup>

#### 4. *The Sense of Self and Developing an Identity*

Social development is also complexly intertwined with the sense of self. Through "self-recognition" emerges the awareness of oneself as a participant in social interactions, paving the way for further emotional and social development.<sup>124</sup> The "self-concept" is "one's perception of one's attributes or traits," and this perception becomes more psychological and abstract as children progress from preschool to adolescence.<sup>125</sup> As children begin to understand more about themselves, they also begin to evaluate their self-concept, which is measured in "self-esteem" and influences all aspects of their conduct and psychological well-being.<sup>126</sup> Children with high self-esteem recognize their strengths, acknowledge their weaknesses, and are satisfied with who they are; whereas children with low self-esteem dwell on perceived inadequacies and view themselves in a less favorable

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<sup>116</sup> *Id.* at 394.

<sup>117</sup> *Id.* at 395. Indeed, children that do not learn how to regulate negative emotions are at risk of alienating adults and peers through acting out in anger or frustration. *Id.*

<sup>118</sup> *Id.* at 398.

<sup>119</sup> *Id.*

<sup>120</sup> SHAFER, *supra* note 83, at 558. Socialization "serves society in at least three ways[:] [f]irst it is a means of regulating children's behavior and controlling their undesirable or antisocial impulses. Second, [it] promotes the personal growth . . . . Finally, [it] perpetuates the social order." *Id.*

<sup>121</sup> *Id.* at 397.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 522.

<sup>124</sup> *Id.* at 434, 436.

<sup>125</sup> *Id.* at 435, 441.

<sup>126</sup> *Id.* at 441-42.

light.<sup>127</sup> Again, parents' role is crucial: "grade-school children and adolescents with high self-esteem tend to have parents who are warm and supportive, set clear standards for them to live up to, and allow them a voice in making decisions that affect them personally."<sup>128</sup>

Other important aspects of the self-concept are "self-control" and achievement motivation. Self-control is the ability to regulate one's conduct and inhibit undesirable actions—a necessary ability for participation in a society governed by rules.<sup>129</sup> Parents initially control infants' and preschool children's behavior, whereas grade-school children and adolescents gradually internalize control over time.<sup>130</sup> Internalization is also key to developing "morality," which is the ability to distinguish between right and wrong, and then act on that distinction.<sup>131</sup> Internalization requires a model, however, and inappropriate models or a lack of discipline early in life can be detrimental to children's development.<sup>132</sup>

Achievement motivation is the willingness to take on "challenging tasks and to meet high standards of accomplishment."<sup>133</sup> Parents of children with high achievement motivation exhibit an "authoritative parenting" style defined by (1) warmth, acceptance, and praise of accomplishments; (2) providing guidance and control through goal-setting and follow-up on progress; and (3) permitting autonomy in achieving goals.<sup>134</sup> In contrast, children with low motivation have parents that (1) "are uninvolved and offer little in the way of guidance or (2) are highly controlling" and tend to nag and harp on failures or bribe the children.<sup>135</sup>

As children's self-concept develops, they are better able to understand the thoughts, feelings, motives, and behaviors of others through "social cognition," which allows them to interact appropriately with them in social situations.<sup>136</sup> The developing self-concept also leads to a later, more mature self-definition known as "identity," which is "a sense of who one is, where

<sup>127</sup> *Id.* at 441.

<sup>128</sup> *Id.* at 443.

<sup>129</sup> *See id.* at 445 ("If we never learned to control our immediate impulses, we would constantly be at odds with other people for violating their rights [and] breaking rules."). An example of self-control is the delay of gratification—putting off an immediate, small award for a later, larger reward. *Id.* at 447.

<sup>130</sup> *Id.* at 445.

<sup>131</sup> *Id.* at 530.

<sup>132</sup> *Id.* at 448. A study showed that "relatively noncompliant toddlers whose mothers are either emotionally unresponsive or are critical and forceful . . . are likely to become *defiant* and . . . display undercontrolled antisocial and disruptive behaviors . . . throughout early adolescence." *Id.* *See also* RICHARD WEISSBOURD, *THE PARENTS WE MEAN TO BE: HOW WELL-INTENTIONED ADULTS UNDERMINE CHILDREN'S MORAL AND EMOTIONAL DEVELOPMENT 1* (2009) ("Yet we [parents] are the primary influence on children's moral lives.").

<sup>133</sup> SHAFER, *supra* note 83, at 449. Children that are willing to try harder than others show greater achievement motivation. *See id.*

<sup>134</sup> *Id.* at 452.

<sup>135</sup> *Id.* at 453.

<sup>136</sup> *Id.* at 434, 461.



one is going in life, and how one fits in society.”<sup>137</sup> This is a major hurdle faced by adolescents, and the uncertainty and discomfort about who they are and will be may cause an “identity crisis.” This may be too harsh a term, however, because confusion from asking questions and seeking answers about oneself seems to be a necessary and natural part of developing an identity.<sup>138</sup> Nevertheless, some adolescents have more trouble developing an identity than others, and it can have negative consequences because those who are unable to establish an identity have lower self-esteem and are more self-conscious than those who do.<sup>139</sup>

##### 5. *Ideal Parenting for Advantageous Development*

There are two dimensions of parenting identified as especially important to child development: (1) “acceptance/responsiveness,” and (2) “demandingness/control.”<sup>140</sup> The first refers to the amount of support and affection parents give their children.<sup>141</sup> The second refers to the amount of control and supervision parents exert over their children.<sup>142</sup> There are four different combinations of these two dimensions, each representing a different parenting style: authoritarian, authoritative, permissive, and uninvolved.<sup>143</sup> Children of authoritative parents are found to be cheerful, socially responsible, self-reliant, and cooperative.<sup>144</sup> On the other hand, children of authoritarian parents are unhappy, unfriendly, and aimless; children of permissive parents are bossy, aggressive, and lack self-control; and children of unresponsive parents are aggressive, hostile, selfish, and rebellious.<sup>145</sup> Authoritative parenting also promotes “autonomy,” which is the ability to make independent decisions, be one’s own source of emotional strength, and otherwise manage one’s life without depending on

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<sup>137</sup> *Id.* at 457.

<sup>138</sup> *Id.* at 457–59.

<sup>139</sup> *Id.* at 459.

<sup>140</sup> *Id.*

<sup>141</sup> *See id.* at 564–65. Accepting and responsive parents express a lot of warmth, “smile at, praise, and encourage their children,” which contributes to secure attachments, strong social skills, high self-esteem, positive identities, and prosocial concern. *Id.* at 564. Whereas “less accepting and relatively unresponsive parents are often quick to criticize,” punish, ignore, and fail to “communicate to children that they are . . . loved,” leading to emotional instability, poor social skills, physical health problems, and increased risk of depression and other clinical disorders. *Id.*

<sup>142</sup> *See* SHAFFER, *supra* note 83, at 565. Controlling parents place significant limits on their children’s freedom and behavior, whereas parents who are not controlling give their children considerable freedom to pursue their own interests and make their own decisions. *Id.*

<sup>143</sup> *See id.* at 565–67. The authoritarian parent is controlling and unresponsive, placing many restrictions on their children, and expecting their children to accept their word as law. *Id.* at 565. The authoritative parent balances acceptance and control, being responsive to their children’s points of view, while making reasonable demands, and exercising rational control. *Id.* at 565–66. The permissive parent is accepting and not controlling, giving their children total autonomy. *Id.* at 566. The uninvolved parent is completely unresponsive and not controlling—considered to be the least successful parenting style. *Id.* at 567.

<sup>144</sup> *Id.* at 566.

<sup>145</sup> *Id.*

others.<sup>146</sup> Hence, authoritative parenting is strongly correlated with healthy development.<sup>147</sup> It seems that warm and sensitive parents establish secure attachments with their children, laying a strong foundation for and contributing positively to their children's emotional, social, and psychological development.<sup>148</sup>

## B. DEVELOPMENT, INTERRUPTED

For Falcon Heene, while there are already hints of the media spotlight's negative effects, it is unclear how his parents will affect his development. The stories of Barrymore, Culkin, Agassi, and countless others however, serve as eye-opening, cautionary tales of the harm inflicted on children by parents who exploit them.

### 1. *What Type of Parents Exploit Their Children?*

To fully grasp the potential harm that exploitive parents can inflict on their children's development requires an understanding of these parents' characteristics. Usually, they are overly involved and highly controlling. Agassi said, "I took over my dad's rant and just figured this was my life. What else was I fit to do? It didn't cross my mind that I had to like it. I felt like I was in a hamster wheel. I was tortured. I lived in fear, in confusion."<sup>149</sup> Similarly, Culkin said:

It was something that I didn't really want to do in the first place really, . . . it just felt like there was a machine and it was starting to eat me up too. And I kind of didn't want to be part of that whole world. It wasn't me. But it was something that I really didn't necessarily have a choice in the matter. There was too much money and too many livelihoods at stake for me to just quit, or for my father to allow me to quit.<sup>150</sup>

Neither Agassi nor Culkin had any say in, or enjoyed, what he did. When parents deny their children autonomy, children experience personal distress, including difficulty developing a self-concept and establishing an identity,

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<sup>146</sup> *Id.* at 567, 571–72. ("It is mainly when parents react negatively to a teenager's push for autonomy and become overly strict or overly permissive that adolescents are likely to experience personal distress or to rebel and to get into trouble.")

<sup>147</sup> *Id.* at 567.

<sup>148</sup> *See id.* at 564 ("[It] has [been] argued that caregiver warmth and sensitivity 'is the most influential dimension of [parenting] in infancy. It not only fosters healthy psychological functioning . . . but also . . . lays the foundation on which future experiences will build.'")

<sup>149</sup> Drucker, *supra* note 47. Sports-parents, in particular, run a risk of becoming too invested in their children. *See* HYMAN, *supra* note 42, at 19 ("Adults rely on youth sports to feed an array of our emotional needs. The frustrated jocks among us long to see our progeny succeed on the wrestling mat or diving board, where we never could. There's the affirmation that is attached to raising a namesake who is [a] standout player. If a child is the most gifted athlete on the block, it stands to reason she was raised by the most gifted parents.")

<sup>150</sup> O'CONNOR, *supra* note 19, at 94 (quoting Chris Heath, *Return of the Mac*, THE FACE, Nov. 2002, at 90).

as described by Agassi *infra* Part III.B.3. This can also lead to social difficulties, as described by Culkin *infra* Part III.B.5. Further evident in their statements is a feeling of learned helplessness. When children feel they can do nothing to change their situations, they may subserviently submit to their parents' wishes.<sup>151</sup>

Often, these parents may not pay any attention to their children other than by exploiting them. Barrymore used acting and partying to satisfy a need not met by her parents:

Why did I want to act? . . . I loved being part of the group. Actually, I didn't just love it, I needed it. That's what drove me to club hopping later on. . . . As a little kid I was the girl who didn't think anyone loved her, which only inspired me to try to be accepted even more.<sup>152</sup>

Barrymore's uninvolved parents caused her to develop a negative working model of others. This is apparent in her insecurity about being loved and accepted. Also reflected in this statement is Barrymore's low self-esteem. As a whole, Barrymore's statement is strongly indicative of an insecure attachment.

In contrast to parents who promote good behavior and punish bad behavior, exploitive parents fail to acknowledge or praise good behavior and are hypercritical of mistakes—as with Agassi's father—and often promote bad behavior. For instance, Richard Heene had six-year-old Falcon lie continually on national television, and Barrymore's mother took seven-year-old Barrymore to clubs and parties. Such inappropriate models of behavior and lack of discipline subsequently lead to a lack of self-control and morality later in life.

Exploitive parents are a stark contrast to the ideal authoritative parent. Indeed, exploitive parents exhibit characteristics consistent with authoritarian and—to a lesser extent—permissive and uninvolved parenting. They form insecure attachments with their children. Because of attachments' importance to child development, exploitive parents can completely undermine their children's development. As a result, their children are insecure, emotionally and socially withdrawn, have low self-esteem, lack self-control, and engage in antisocial or immoral behavior.

With the foregoing in mind, it is also important to understand who are *not* exploitive parents. The easy examples are the loving, supportive, and authoritative parents, discussed *supra* Part III.A.5, who allow their children to pursue their own goals. More difficult is drawing a distinction between

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<sup>151</sup> See *supra* note 88 (regarding learned helplessness).

<sup>152</sup> See O'CONNOR, *supra* note 19, at 91 (quoting DREW BARRYMORE, *LITTLE GIRL LOST* 43 (1991)).

exploitive parents and bad parents. While exploitive parenting is no doubt bad, bad parenting does not always equate to exploitation.<sup>153</sup> The distinction lies in parents' motives. Bad parents, while not employing the most effective means, may still act in their children's best interests.<sup>154</sup> By definition exploitive parents, however, take unjust advantage of their children, which unavoidably is in direct contravention of their children's best interests. For some parents, like Chikosi Walker, the jury is still out. They are warned, though, that "parents often get swept up in the money and perks of fame and neglect to put their child's best interests first."<sup>155</sup> As Chikosi says, "time will tell."

## 2. *Emotional Instability*

"By 1997 . . . [Andre] Agassi was down, depressed and stuck playing a game he didn't love. He was . . . emotionally spent. He was with the wrong woman . . . and knew it."<sup>156</sup> During this time, Agassi's world ranking plummeted; he used drugs to cope, subsequently failed a drug test, and lied about why he tested positive to avoid suspension and loss of endorsements, all in a plunge toward the lowest point of his life.<sup>157</sup> This emotional breakdown is not surprising—in fact, it may have been inevitable. Children rely on parents for their emotional development, and in Agassi's case, he was thrown to his father's crude values after being "emotionally abandoned by his mother."<sup>158</sup> Agassi's insecure attachment with his parents prevented him from developing emotional self-regulation as a child, so that he was unable to constructively deal with his negative emotions as an adult, resulting in his depression, drug use, and lying.

Many children that are victims of exploitation suffer serious emotional damage, but child athletes may serve as the best illustration because they are measured by performance and harshly criticized for failure by the

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<sup>153</sup> Take, for example, two controlling parents: one is Richard Heene, who uses his son in a stunt and has his son lie on national television, so that Heene may get his own reality TV show. The other is some parent who forces her child to study for *X* hours a day, believing that will enable the child to get into a good college. Stressing academic achievement contributes positively to development, and this parent does not stand to benefit from pushing her child. *See supra* note 97 and accompanying text. Furthermore, our country holds education in the highest regard and recognizes its importance to success in later life. *See infra* note 230. Even if using questionable methods, it is difficult to fault this second parent as much as Heene.

<sup>154</sup> This Note is not condoning bad parenting and recognizes that bad parenting can rise to dangerous levels also requiring regulation, but such a discussion is beyond the scope of this Note.

<sup>155</sup> Krieg, *supra* note 16, at 432. *See also* HYMAN, *supra* note 41, at 24 ("[F]amilies fall into traps, perpetuating the darkest and most troubling stereotypes about the obsessive behavior of adults.").

<sup>156</sup> Rick Reilly, *Crystal Meth, Hair Weaves and Majors*, ESPN THE MAGAZINE, Oct. 28, 2009, available at [http://sports.espn.go.com/espn/columns/story?columnist=reilly\\_rick&id=4601145](http://sports.espn.go.com/espn/columns/story?columnist=reilly_rick&id=4601145). Agassi had married actress Brooke Shields, and the two would eventually divorce. *See id.*

<sup>157</sup> *See id.*

<sup>158</sup> Drucker, *supra* note 46.

parents who exploit them.<sup>159</sup> Focusing on performance causes children to feel shame for not meeting expectations, in turn leading to feeling inferior and fearing disapproval—some of the most destructive emotions.<sup>160</sup> Parents are supposed to protect their children from negative emotions and help children deal with them constructively,<sup>161</sup> but exploitive parents are often the ones inflicting and exacerbating those emotions. Further, the stress of performing well can be overwhelming,<sup>162</sup> and some child athletes buckle under the pressure. With emotion serving as a bedrock for later development, the negative effects of emotional abuse extend well into later life, including an increased likelihood of engaging in risky behaviors and suffering from mood and anxiety disorders.<sup>163</sup>

### 3. *A Skewed Self-Concept*

“I’ve always grappled with the clash of image versus reality. The public saw me as Drew Barrymore, movie star, while I viewed myself quite differently—as a sad, lonely and unattractive girl with not much to her advantage.”<sup>164</sup> This statement could be a case study of the negative effects of a skewed self-concept and inability to establish an identity. Barrymore’s low self-esteem is evident from her negative self-concept, which further reflects the lacking self-recognition and social cognition of a lonely girl who felt like a stranger to peers at school.<sup>165</sup> Barrymore also lacked self-control, abusing drugs and alcohol until being admitted to a rehabilitation program at only thirteen years old.<sup>166</sup> This also exemplifies the negative effects of inappropriate modeling and a lack of discipline. Barrymore observed drug and alcohol use as early as the age of seven, when her fame-seeking mother took her to clubs and parties. Furthermore, the fact that she was not disciplined prevented her from being able to internalize control of her behavior.

Agassi shares Barrymore’s sentiment of contradicting identities: “‘You couldn’t get me because I didn’t get me. So now I find myself in a place where I had to reconcile a lot of contradictions. . . .’ ‘I’ve spent my life not

<sup>159</sup> See Nat’l Youth Sports Safety Found., Inc., Fact Sheet: Emotional Injuries (2001), <http://www.nyssf.org/emotionalabuse.pdf>. The National Youth Sports Safety Foundation (“NYSSF”) describes emotional abuse as, perhaps, “the most common form of maltreatment in youth sports,” identifying examples such as forcing a child to participate, and yelling at, punishing, and criticizing children for poor performance. *Id.*

<sup>160</sup> WEISSBOURD, *supra* note 132, at 12–13, 18.

<sup>161</sup> *Id.* at 14–15.

<sup>162</sup> See DAVID, *supra* note 44, at 83 (“Some sports . . . subject young athletes to high levels of stress as they combine early intensive training, commercial and financial interests and strong visibility through sustained media interest.”).

<sup>163</sup> Nat’l Youth Sports Safety Found., Inc., *supra* note 162.

<sup>164</sup> O’CONNOR, *supra* note 19, at 61 (quoting DREW BARRYMORE, *LITTLE GIRL LOST* 6 (1991)).

<sup>165</sup> *See id.*

<sup>166</sup> *Id.* Barrymore identified her substance abuse as the outcome of a dysfunctional family and acting at a young age. *Id.* at 24, 61.

knowing who I am. . . . I didn't know how fraudulent I was."<sup>167</sup> Agassi's words allude to a skewed self-concept and subsequent identity crisis. This is definitely attributable to a lack of autonomy resulting from a controlling father who forced him to play tennis, but it may also be attributed partly to the attention he received as a star athlete.<sup>168</sup> Still, Agassi did not want to play tennis in the first place. Any harm suffered as a result must be traced back to the person who forced him to play—his father.

#### 4. *Compromised Morality*

A recent study shows that “[p]ower does indeed go to your head, making those in the limelight such as celebrities, . . . and athletes more prone to a double standard . . . .”<sup>169</sup> Power leads to entitlement, which makes people impulsive, self-serving, and greedy, causing a disconnect in their judgment, and subsequent increase in “moral hypocrisy.”<sup>170</sup> Even more worrisome is that this can function on a subconscious level—people often simply forget that rules apply to them in pursuing their desires.<sup>171</sup>

Reflecting on his morality, Tiger Woods said:

I knew my actions were wrong. But I convinced myself that normal rules didn't apply. . . . I thought I could get away with whatever I wanted to. I felt that I had worked hard my entire life and deserved to enjoy all the temptations around me. I felt I was entitled.<sup>172</sup>

Although there is no indication that Woods was exploited as a child, his quote demonstrates the attitude that many celebrities seem to develop. It seems possible that moral hypocrisy is incidental to being in the spotlight, or attaining power and attention. This combined with the influence parents have on their children's morality significantly increases the likelihood of moral hypocrisy when parents force their children into the spotlight. Thus,

<sup>167</sup> Drucker, *supra* note 46. Drucker continues, “[t]he tragedy, as Agassi sees it, is that attaining [his father's] dream came with a heavy price tag: isolation. In his case, not just from others but also from a self he is still only barely beginning to understand.” *Id.* Agassi eventually escaped his rebellious public image of show and glitz, personified by his long, partly fake, hair. Reilly, *supra* note 156.

<sup>168</sup> See Elizabeth Landau, *How the 'Fame Motive' Makes You Want to Be a Star*, CNN.COM (Oct. 28, 2009), <http://www.cnn.com/2009/HEALTH/10/28/psychology.fame.celebrity/index.html>. As James Bailey, a psychologist, said, “[Fame] shifts one's self-perception of who and what one is and what one deserves, and there's little we humans won't do to perpetuate our positive self-concepts.” *Id.* “Charles Figley, a professor of psychology at Tulane University, [cautions against the] long-term effects of the media spotlight” after spending “years studying the children of politicians.” Chen, *supra* note 67. In Falcon Heene's case, Figley does not believe the child will ever be the same, and worries that his self-identity could be impaired from potential teasing or labeling as a result of his role in the hoax. *Id.*

<sup>169</sup> Sharon Jayson, *Psychologists: Those in Power More Apt to 'Moral Hypocrisy'*, USA TODAY (Dec. 29, 2009), [http://www.usatoday.com/news/health/2009-12-29-hypocrisy29\\_ST\\_N.htm?csp=usat.me](http://www.usatoday.com/news/health/2009-12-29-hypocrisy29_ST_N.htm?csp=usat.me).

<sup>170</sup> *Id.*

<sup>171</sup> See *id.* (“In their minds, they're not being brazen. They forget there are rules governing what they do. They're just pursuing their own desires.”).

<sup>172</sup> Tiger Woods' Apology: Full Transcript, CNN.COM (Feb. 19, 2010), available at <http://www.cnn.com/2010/US/02/19/tiger.woods.transcript/index.html>.

it is no wonder that Barrymore and Agassi engaged in substance abuse, or that Agassi lied to cover it up.

### 5. *Other Threats of Harm*

As if the negative developmental effects caused by exploitive parents were not enough, children consequently face other threats of harm to their health, safety, and other interests purely as a result of being exploited. There is substance abuse, potentially at a very young age. There is also financial ruin, as seen with the greedy parents of Culkin. The long hours these children are forced to work deprives them of the opportunity to attend a traditional school or obtain a full education.<sup>173</sup> This can also lead to isolation and an inability to make friends, a regret expressed by Agassi, Barrymore, and Culkin.<sup>174</sup>

Child athletes face an added threat from sports' inherently physical nature. With any physical activity injuries are inevitable, so it should be no surprise that there are a significant number of injuries in youth sports each year. Alarmingly, "as many as half of all youth sports injuries are the result of overuse."<sup>175</sup> Such injuries are particularly infuriating to medical professionals because (1) they are preventable, and (2) "adults are the great enablers of overuse."<sup>176</sup> Indeed, youth training regimens are not usually designed with consideration of children's development and abilities.<sup>177</sup>

## C. EXPLOITATION BEGETS EXPLOITATION

### 1. *The "Fame Motive"*<sup>178</sup>

We live in a time when people, now more than ever, are seeking fame.<sup>179</sup> Ann Oldenburg's article, *Decade in Celebrities*, referred to the 2000s decade as "the decade of the self-made celeb."<sup>180</sup> This is not necessarily bad, since the desire to be famous stems from a basic human

<sup>173</sup> See Reilly, *supra* note 156. Andre Agassi did not make it past the ninth grade. *Id.*

<sup>174</sup> See O'CONNOR, *supra* note 19, at 95. For example, Culkin said, "I didn't have any friends. I was one of those kids who lock themselves in a room and drown themselves in television." *Id.* (quoting Peter Lennon, *Away from Home Alone*, GUARDIAN (London), Oct. 9, 2000, at Features 2).

<sup>175</sup> HYMAN, *supra* note 41, at 65. Lyle Micheli, a youth sports medicine pioneer, estimates that in the 1990s about 20 percent of patients he saw in his clinic had injuries from overuse, whereas now that number is closer to 75 percent. *Id.* at 66.

<sup>176</sup> *Id.* at 66.

<sup>177</sup> DAVID, *supra* note 44, at 130.

<sup>178</sup> See generally Landau, *supra* note 168 (discussing the motivation for seeking fame).

<sup>179</sup> See *id.* ("In the era of reality TV, YouTube, and social media 'friends' and 'followers,' it seems that everyone wants to be a star.") (emphasis added).

<sup>180</sup> Ann Oldenburg, *Nobodies Walk the Path to Stardom*, USA TODAY, Dec. 31, 2009, at LIFE 1D, available at [http://www.usatoday.com/life/people/2009-12-30-decadeceleb30\\_CV\\_N.htm?csp=usat.me](http://www.usatoday.com/life/people/2009-12-30-decadeceleb30_CV_N.htm?csp=usat.me) ("Anyone could become famous. Random people became famous for being famous. Or famous for nothing at all.")

need to be part of a group.<sup>181</sup> The quest for fame, however, “becomes problematic when the desire for fame becomes dysfunctional and all-encompassing,”<sup>182</sup> which is exactly what happened to Richard Heene.

## 2. *Monkey See, Monkey Do*

Reality television’s ubiquity has inspired hoards of fame-seekers.<sup>183</sup> Another extremely accessible source of fame is the Internet, as illustrated by Chikosi Walker’s YouTube campaign to market his basketball prodigy son, Marquise. Clearly, for those who want fame, the opportunity is there.<sup>184</sup> Not to mention that opportunity itself, is enough to encourage people to seek fame in the first place.<sup>185</sup> Thus, the more parents obtain reality television shows featuring their children, the more incentive for others to follow in their footsteps. Most concerning is that it is “very clear that parents and people will do whatever they can do [to] get on a reality show.”<sup>186</sup>

### D. THE NEED FOR REGULATION

Tragedies generate headlines, raise awareness, and lead to reform. Therefore, it would be remiss not to acknowledge the positive aspects of acting, playing sports, and even participating in reality television. Many child actors continue with successful, lucrative acting careers into adulthood, or transition to a life outside of the spotlight.<sup>187</sup> Similarly, millions of children find their youth sports experience to be positive.<sup>188</sup> Sports provide children with “healthy, safe, and character-building recreation”<sup>189</sup> and serve as a means for children to “make friends, have fun, and pick up a few basic skills.”<sup>190</sup> Sports can also help “children avoid

<sup>181</sup> See *id.* (“It’s a yearning to belong somewhere that causes us to seek the fulfillment of attention and approval of strangers.”).

<sup>182</sup> *Id.*

<sup>183</sup> HUFF, *supra* note 60, at x (“In less than a decade, this new form of television has transformed everyday people with a hankering for attention into media stars.”).

<sup>184</sup> See Landau, *supra* note 168 (“[O]pportunities for people to try for their 15 minutes have exploded through the Internet and reality TV shows.”); Oldenburg, *supra* note 180 (“The growth of reality television, celebrity bloggers and paparazzi combined with the speed of the Internet has created an insatiable appetite for gossip fed by a fast lane to stardom for anyone who wanted to jump on and drive.”).

<sup>185</sup> See Landau, *supra* note 168. See also Chen, *supra* note 67 (“[P]sychologists say shows like TLC’s ‘Jon and Kate Plus 8’ and CBS’s ‘Kidnation’ have influenced ordinary parents to seek fame.”).

<sup>186</sup> Gosselin *Kin*, *supra* note 14.

<sup>187</sup> O’CONNOR, *supra* note 19, at 10 (“There are plenty of child stars who have gone on to have either a successful acting career or a ‘normal’ life, who never became addicts, criminals, or serial divorcé(e)s and are no more newsworthy than anyone else.”).

<sup>188</sup> HYMAN, *supra* note 41, at 24 (“Millions of children manage to survive youth sports without emotional scars, . . . the memories are mostly happy ones.”).

<sup>189</sup> *Id.* at xii.

<sup>190</sup> *Id.* at 19. See also DAVID, *supra* note 44, at 130 (“While the practice of sport generally has a positive impact on children’s physical and psychological development, intensive training and competitive sports carried out to excess can jeopardize the health of young athletes.”).



drugs, crime, and gang involvement and . . . develop many virtues such as courage, fairness, and responsibility.”<sup>191</sup> For some, there is an opportunity for a college scholarship, and for the very best, a lucrative professional career. There may also be positive aspects to participating in a reality television show—Jon and Kate Gosselin used their reality show “as a way to pay the freight for such a large family.”<sup>192</sup> The likelihood of a positive outcome for children in these contexts, however, is contingent on parents who have their best interests at heart,<sup>193</sup> which the examples above show are not always the case.

By the very definition of exploitation, parents take unjust advantage of their children for their own benefit, which is a direct contradiction to acting in their children’s best interests. To achieve the fame and money they desire, exploitive parents control their children’s lives, have them lie, expose them to threats of harm, push them until their bodies break down, and then squander any compensation they may have received for their efforts. As a result, their children end up lost, insecure, unconfident, and immoral. Their children do not know who they are, have no friends (or the wrong kind of friends), become depressed, turn to drugs and alcohol, and lie and cheat. All that the public sees is a character, a box score, an edited tape, and dollar signs, leading to the thought, “why not my child?” and the process begins anew. To protect these children and prevent the perpetuation of parental exploitation of children, this issue must be regulated. On to the next question: does the State have the authority to do so?

#### IV. RIGHTS AND RESPONSIBILITIES: WHO SPEAKS FOR CHILDREN THAT ARE NOT ALLOWED TO SPEAK?

“[T]he primary function of law in relation to children is to outline a framework for the distribution of decisional power among the child, family, and various agencies of the state.”<sup>194</sup> In general, this distribution skews toward parents, and the State affords great deference to their authority on decisions regarding their children’s lives. However, the distribution shifts toward children as their cognition develops, and the State increasingly considers their wishes until fully recognizing their autonomy at the age of majority. Regardless of how the decisional power is distributed between

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<sup>191</sup> WEISSBOURD, *supra* note 132, at 137.

<sup>192</sup> Dimond, *supra* note 9.

<sup>193</sup> *Cf.* WEISSBOURD, *supra* note 132, at 139 (“[B]enefits and costs of sports depend . . . on how coaches and parents relate to children.”). Further, there is nothing wrong with being a proud parent—it is inescapable that parents are emotionally invested in their children; problems begin when the investment becomes so great that parents forget what is best for the child. *See* HYMAN, *supra* note 41, at 28 (“When it becomes bragging rights or the parents finding meaning in their lives through the sports successes of their children, that’s when you’ve entered the gray area.”).

<sup>194</sup> ROBERT H. MNOOKIN & D. KELLY WEISBERG, *CHILD, FAMILY, AND STATE: PROBLEMS AND MATERIALS ON CHILDREN AND THE LAW* xxv (5th ed. 2005).

parent and child at any given time, the State has a compelling interest in protecting the health, safety, and welfare of *all* of its citizens, and may enact regulations to do so. In parent-child matters, the requisite inquiry is whether the State can regulate parental authority.

#### A. PARENTAL RIGHTS AND OBLIGATIONS

The right of parents to direct the “upbringing” of their children is a fundamental liberty protected by the Fourteenth Amendment’s Due Process Clause.<sup>195</sup> The Supreme Court first recognized this right as it related to children’s education in a pair of 1920s opinions.<sup>196</sup> The Court’s *Meyer v. Nebraska* decision struck down a state statute that prohibited teaching foreign languages in schools, concluding that because “[m]ere knowledge of the German language cannot reasonable [sic] be regarded as harmful,” parents had the right to engage teachers to so instruct their children.<sup>197</sup> In *Pierce v. Society of Sisters*, two private schools challenged a state statute mandating public education, and the Court struck it down, reasoning that a private, instead of public, education was not harmful to children, so that it was within parents’ rights to so direct their education because “[t]he child is not the mere creature of the State . . . .”<sup>198</sup>

“Upbringing” now encompasses parental decisions regarding the “care, custody, and control of their children,” generally.<sup>199</sup> This includes religious training,<sup>200</sup> visitation with third persons,<sup>201</sup> discipline,<sup>202</sup> and medical

<sup>195</sup> See *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (citing extensive precedent recognizing and protecting this right).

<sup>196</sup> See *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925) (recognizing parents’ right “to direct the upbringing and education of children under their control”); *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923) (recognizing parents’ right to “establish a home and bring up children”).

<sup>197</sup> *Meyer*, 262 U.S. at 400. The Court continued to stress that learning a foreign language posed no threat of harm to children: “No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition . . . and experience shows that this is not injurious to the health, morals or understanding of the ordinary child.” *Id.* at 403.

<sup>198</sup> *Pierce*, 268 U.S. at 531–35.

<sup>199</sup> *Troxel*, 530 U.S. at 66. *Accord* *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (stating that “[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents”).

<sup>200</sup> See *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Amish parents were convicted under compulsory education statute, requiring attendance until age sixteen, for refusing to send their children, ages fourteen and fifteen, to school after they completed the eighth grade, on the ground that high school was inconsistent with beliefs of the Amish faith. *Id.* at 207–08. The Court affirmed reversal of their convictions, holding that the parents had the right to direct their children’s religious upbringing, *id.* at 236, and that foregoing one to two more years of schooling would not be harmful to their children. *Id.* at 222.

<sup>201</sup> See *Troxel*, 530 U.S. at 63. Grandparents petitioned for visitation rights with their deceased son’s children, pursuant to state statute allowing *any* person to do so. *Id.* at 60. They were granted more visitation time than the mother wanted, and she appealed the order. *Id.* The Court affirmed reversal of the order, holding that the statute infringed on the mother’s fundamental right to parent, given that she was a fit parent and never indicated a desire to cutoff visitation entirely. *Id.* at 68.

<sup>202</sup> See MNOOKIN & WEISBERG, *supra* note 194, at 232. See also RESTATEMENT (SECOND) OF TORTS § 147 (1965) (“A parent is privileged to apply such reasonable force or to impose such reasonable confinement upon his child as he reasonably believes to be necessary for its proper control, training, or education.”).

care.<sup>203</sup> Underlying the deference afforded parental authority are the presumptions that (1) “parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions[,]” and, more importantly, (2) “natural bonds of affection lead parents to act in the best interests of their children.”<sup>204</sup> These presumptions bore strongly on the Court’s decision in *Troxel v. Granville*:

[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.<sup>205</sup>

The *Troxel* Court’s statement also hints at the parental duties and obligations incidental to parental rights. Such duties include parents’ care, support, and protection of their children.<sup>206</sup> Therefore, parents must provide their children with adequate nutrition, housing, education, medical care, and protection from harm.<sup>207</sup> In addition, “those who nurture [a child] and direct his destiny have the right, *coupled with the high duty*, to recognize and prepare him for additional obligations,”<sup>208</sup> which include being a responsible adult and citizen.<sup>209</sup>

Thus, as long as parents’ decisions regarding their children’s upbringing are consistent with fulfilling their parental obligations, the presumption that parents act in their children’s best interests holds firm, and their authority may not be questioned.

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<sup>203</sup> See *Parham v. J.R.*, 442 U.S. 584, 603 (1979) (“Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.”). See also MNOOKIN & WEISBERG, *supra* note 194, at 361 (“As a general rule, informed parental consent is both a necessary and sufficient condition for the medical treatment of minors.”).

<sup>204</sup> *Parham*, 442 U.S. at 602.

<sup>205</sup> *Troxel*, 530 U.S. at 68–69.

<sup>206</sup> See MNOOKIN & WEISBERG, *supra* note 194, at 2 (“Within the family, parents have legal power to make a wide range of important decisions that affect the life of the child, but the state holds them responsible for the child’s care and support.”); NANCY E. WALKER, CATHERINE M. BROOKS & LAWRENCE S. WRIGHTSMAN, *CHILDREN’S RIGHTS IN THE UNITED STATES: IN SEARCH OF A NATIONAL POLICY* 72 (1999) (“Generally, parents are expected to bear the responsibility for the care and protection of their children.”).

<sup>207</sup> See WALKER, BROOKS & WRIGHTSMAN, *supra* note 206, at 53 tbl.4.1.

<sup>208</sup> *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925) (emphasis added). Accord *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (explaining that the function and freedom to direct a child’s upbringing “include *preparations for obligations* the state can neither supply nor hinder”) (emphasis added).

<sup>209</sup> See, e.g., *Bellotti v. Baird*, 443 U.S. 622, 638 (1979) (“This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.”); *Prince*, 321 U.S. at 168 (“A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies.”). The hope is that parents instill in their children morals and “elements of good citizenship.” *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

## B. “CHILDREN’S RIGHTS” IS A MISNOMER

“Children’s rights” has long been a muddled concept.<sup>210</sup> Disagreement about children’s rights ranges from what rights they have to whether they are even entitled to any rights at all.<sup>211</sup> The latter debate is a non-issue, since the Supreme Court has recognized that children have certain constitutional rights.<sup>212</sup> The former remains a heated debate, however, with those arguing that minors should be afforded maximum rights of autonomy on one side, and those taking a paternalistic approach on the other.<sup>213</sup> Presently the paternalistic approach is the prevailing view: children’s rights are understood “to describe [their] profound, fundamental needs.”<sup>214</sup> That is a significant contrast to parental rights, which are defined in terms of freedom, liberty, and autonomy.<sup>215</sup> Essentially, children’s rights equate to parental obligations—“children are accorded the ‘right’ to have their needs met to ensure their progress to adulthood.”<sup>216</sup>

As a further consequence of their minority, children have minimal rights of autonomy due to (1) their vulnerability, (2) their inability to make critical decisions in an informed and mature manner, and (3) the importance of the parental role.<sup>217</sup> Thus, the constitutional rights extended to minors generally are not intended to protect their decisions of self-determination, but to protect them from the decisions of others—for example, equal protection under the law,<sup>218</sup> and due process

<sup>210</sup> See WALKER, BROOKS & WRIGHTSMAN, *supra* note 206, at 12. In fact, in 1973, then Hillary Rodham referred to children’s rights as “a slogan in search of a definition.” *Id.* at 47 (citing Hillary Rodham, *Children Under the Law*, 43 HARV. EDUC. REV. 487, 487 (1973)).

<sup>211</sup> *Id.* at 12.

<sup>212</sup> See, e.g., *Bellotti*, 443 U.S. at 633 (“A child, merely on account of his minority, is not beyond the protection of the Constitution.”); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) (“Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.”).

<sup>213</sup> WALKER, BROOKS & WRIGHTSMAN, *supra* note 206, at 12. See *id.* at 46–51 for a further description of these opposing views, labeled the “self-determination orientation” and the “nurturance orientation,” respectively.

<sup>214</sup> *Id.* at 69.

<sup>215</sup> See *id.* at 50 (“Adults’ rights tend to fall into the self-determination classification (e.g., the right to enter into contracts, the right to vote, the right to choose legal counsel), whereas laws recognizing the needs of children tend to fall into the nurturance category (e.g., the right to an education and the right to an acceptable home environment, with the state determining the meaning of *education* and *acceptable*.”). See also *In re Gault*, 387 U.S. 1, 17 (1967). In explaining why states traditionally did not afford the same procedural rights to juveniles as to adults in criminal proceedings, the Court noted “the assertion that a child, unlike an adult, has a right ‘not to liberty but to custody.’ . . . If his parents default in effectively performing their custodial functions . . . the state may intervene. In doing so, it does not deprive the child of any rights, because he has none.” *Id.* (emphasis added).

<sup>216</sup> WALKER, BROOKS & WRIGHTSMAN, *supra* note 206, at 70.

<sup>217</sup> *Bellotti*, 443 U.S. at 634. “States validly may limit the freedom of children to choose for themselves . . . . These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *Id.* at 635.

<sup>218</sup> See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (overruling the “separate but equal” doctrine, while holding that segregation of children in public schools deprives them of equal educational opportunities under the law).

requirements.<sup>219</sup> Although minors do have some rights of autonomy,<sup>220</sup> these are often attenuated, for example, in their freedom of expression.<sup>221</sup> Similarly, minors may be able to express their preference in custody determinations, but their preference is only one of many factors considered, and their right to voice a preference is limited by age and maturity.<sup>222</sup> The same limitations are placed on their right to consent to medical treatment without a parent or guardian present.<sup>223</sup>

Thus, under the law, through at least middle childhood a minor's life follows a road paved by the decisions of others, first and foremost, by the minor's parents. Minors begin to have some say in decisions affecting their lives as they become adolescents, but the law will not fully recognize their autonomy until they reach the age of majority.

### C. THE STATE AS PARENS PATRIAE

Though the State affords great deference to parental decisions, parental authority is not limitless. In the seminal case of *Prince v. Massachusetts*, the Supreme Court upheld a state statute that prohibited parents from permitting their children to sell literature in a street or public place, concluding that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."<sup>224</sup> Though the Court limited its ruling to the facts,<sup>225</sup> its examination of the tension between parental and State authority is nonetheless instructive. The Court

<sup>219</sup> See, e.g., *Parham v. J.R.*, 442 U.S. 584, 606–07 (1979) (concluding that children are entitled to a due process inquiry before their parents may have them institutionalized for mental health care); *In re Gault*, 387 U.S. at 32–34, 41, 57 (holding that children in juvenile delinquency proceedings are entitled to due process, including written notice of the factual allegations, notification of the right to counsel, protection against self-incrimination, and the right to a hearing).

<sup>220</sup> *Bellotti*, 443 U.S. at 643 (holding that if a state requires parental consent for a minor to get an abortion, they must also provide an alternative procedure whereby she may consent on her own upon a showing that she is mature and informed enough to do so).

<sup>221</sup> See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (holding that a public school could censor student written articles for a school newspaper that were inconsistent with its basic education mission, even though articles could not otherwise be censored outside of school).

<sup>222</sup> See WALKER, BROOKS & WRIGHTSMAN, *supra* note 206, at 85. See also Children's Bureau, U.S. Dep't of Health & Human Servs., *Determining the Best Interests of the Child: Summary of State Laws*, CHILD WELFARE INFO. GATEWAY 5 (Mar. 2010), [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest](http://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest). ("In making this determination, the court will consider whether the child is of an age and level of maturity to express a reasonable preference.").

<sup>223</sup> See, e.g., ARK. CODE ANN. § 20-9-602 (West 2009) (authorizing the consent to medical treatment by "[a]ny unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for himself or herself"); CAL. FAM. CODE § 6922 (Deering 2010) ("A minor may consent to the minor's medical care or dental care if all of the following conditions are satisfied: (1) The minor is 15 years of age or older. (2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the consent of a parent or guardian and regardless of the duration of the separate residence. (3) The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.").

<sup>224</sup> *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944). In this case, appellant provided her children with religious literature to disseminate, and was subsequently convicted under the statute. *Id.* at 159. She argued that it violated her freedom of religion and fundamental right to parent. *Id.* at 164.

<sup>225</sup> *Id.* at 171.

explained that “basic in a democracy [are] the interests of society to protect the welfare of children,” thus “the family itself is not beyond regulation in the public interest . . . [and] [a]cting to guard the general interest in youth’s well being, the state as *parens patriae* may restrict the parent’s control.”<sup>226</sup> As examples of appropriate concerns for State regulation, the Court cited child labor and other activities subject to the influences of the street—in this case, religious propagandizing—that posed threats of emotional, psychological, or physical injury to children.<sup>227</sup>

The Court’s examples of appropriate state concerns are the type of compelling interests required for the State to rebut the presumption that parents act in their children’s best interests.<sup>228</sup> In accordance with this rationale are numerous examples of state limitations on parental authority, including the regulation of child labor,<sup>229</sup> compulsory school attendance,<sup>230</sup> and child health requirements.<sup>231</sup> To ensure that parents do not violate these limitations placed on their authority, the State also may penalize parents for acting beyond those limits.<sup>232</sup> Further, the State may intervene when

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<sup>226</sup> *Id.* at 165–66 (even over a claim of religious freedom).

<sup>227</sup> *Id.* at 168, 170. “Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.” *Id.* at 170.

<sup>228</sup> *Compare* *Parham v. J.R.*, 442 U.S. 584, 603 (1979) (stating that merely “because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state”), *with* *Wisconsin v. Yoder*, 406 U.S. 205, 233–34 (1972) (stating that “the power of the parent . . . may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens”).

<sup>229</sup> *See* MNOOKIN & WEISBERG, *supra* note 194, at 642. “Every state now has laws regulating child labor,” including provisions establishing a minimum working age, the number of hours and times during which minors can work, and appropriate working conditions for minors. *Id.* *See generally supra* Part II.A.

<sup>230</sup> *See, e.g.*, CAL. EDUC. CODE § 48200 (Deering 2010) (“Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education.”). *See also* *Yoder*, 406 U.S. at 213 (“There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education.”); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (“The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.”).

<sup>231</sup> *See* MNOOKIN & WEISBERG, *supra* note 194, at 375 (“The range of compulsory public interventions for children encompasses immunizations, school and newborn screening, and fluoridation of public water supplies. All states require that school children be immunized against certain contagious diseases . . .”). The *Prince* Court analogized compulsory vaccinations as an example of state limitation on parental authority, noting it “does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.” *Prince*, 321 U.S. at 166–67.

<sup>232</sup> *See, e.g.*, CAL. EDUC. CODE § 48293 (Deering 2010) (“Any parent, guardian, or other person having control or charge of any pupil who fails to comply with this chapter, unless excused or exempted therefrom, is guilty of an infraction and shall be punished as follows: (1) Upon a first conviction, by a fine of not more than one hundred dollars (\$100). (2) Upon a second conviction, by a fine of not more than two hundred fifty dollars (\$250). (3) Upon a third or subsequent conviction, if the person has willfully refused to comply with this section, by a fine of not more than five hundred dollars (\$500). In lieu of imposing the fines prescribed in paragraphs (1), (2), and (3), the court may order the person to be

parental decisions threaten their children's wellbeing, such as with excessive discipline,<sup>233</sup> or with inappropriate demands for, or refusals of, medical care.<sup>234</sup> In such cases, courts employ the "best interests of the child" standard to determine which action best serves the child by considering a variety of factors, such as the child's health, safety, protection, and when possible, wishes.<sup>235</sup>

Thus, when parental decisions jeopardize the safety, health, and wellbeing of their children, the State has a compelling reason to rebut the presumption that parents are acting in their children's best interests, and it may regulate parental authority. Indeed, to protect its own interests in the welfare of children, the State must regulate.

#### D. UNTANGLING THE WEB OF PARENT, CHILD, AND STATE AUTHORITY

Empirical research supports the Supreme Court's view that minors—especially the very young—generally are not able to engage in the deliberate thought process necessary to make well-informed decisions of self-determination, so that authority on those decisions resides first in the parents. Though it is presumed that parents act in their children's best interests, the past and present are replete with examples that illustrate that is not always the case.<sup>236</sup> If the State has a compelling reason to rebut the presumption, it may regulate parental authority. When parents' decisions directly conflict with their duties to care for, support, and protect their children—as is the case when they exploit their children—the presumption is rebutted, and the State has the legal power to limit parental authority. Further, such decisions compromise the State's interest in the general

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placed in a parent education and counseling program.”). Section 48293 sets forth the penalties for failing to comply with California's Compulsory Education Law as seen *supra* note 230.

<sup>233</sup> See RESTATEMENT (SECOND) OF TORTS § 151 (1965) (“Force applied or confinement imposed primarily for any purpose other than the proper training or education of the child or for the preservation of discipline is not privileged . . .”).

<sup>234</sup> See, e.g., *In re K.I.*, 735 A.2d 448, 450 (D.C. 1999) (affirming trial court's “do not resuscitate” order over a mother's objection, given prior adjudication of neglect, and clear and convincing evidence that it was in the child's best interests to avoid aggressive efforts that would cause pain and discomfort); *State v. Perricone*, 181 A.2d 751, 753 (N.J. 1962) (affirming trial court's order appointing guardian to administer blood transfusions to child, given that the parents' refusal to allow transfusions on religious grounds exposed child to ill health or death, which amounted to neglect). See also MNOOKIN & WEISBERG, *supra* note 196, at 380 (“[E]very state now has a statute allowing a court . . . to assume jurisdiction over a child in order to override individual parental judgments concerning the medical treatment of their child.”); WALKER, BROOKS & WRIGHTSMAN, *supra* note 206, at 144 (“[S]tate intervention is appropriate only if parental conduct threatens a child's safety or health.”).

<sup>235</sup> Children's Bureau, *supra* note 222, at 2, 5.

<sup>236</sup> As explained by Gloria Allred, a noted child-advocacy attorney, in the context of reality TV, “[t]he children's interests are so often different . . . than the interests of their parents, and that's why they need special protections [sic].” *Gosselin Kin*, *supra* note 14. Case-in-point: Falcon and Richard Heene. See also DAVID, *supra* note 44, at 90 (“The sports world has difficulties accepting that children might not always share adults' motivations.”). See generally *supra* Part II.

safety, health, and wellbeing of its citizens, obligating the State to regulate parental authority to protect its own interests.

The crucial issue with State regulation of parental authority is whether the State is limiting authority that would otherwise pose a threat of harm to children. In cases such as *Meyer*, *Pierce*, and *Wisconsin v. Yoder*, the Court either struck down state statutes or held them inapplicable because they limited parental authority to make decisions not otherwise harmful to their children. In contrast, the Court in *Prince* upheld the state statute because otherwise parents would have been able to expose their children to threats of emotional, psychological, or physical injury, which are the same threats that children face when they are exploited by their parents. In the case of parental exploitation, parents make decisions in blatant disregard of their parental duties to care for and protect their children. Indeed, children can suffer significant emotional and psychological damage at the hands of highly controlling parents who force them into situations that pose further threats, such as physical injury or substance abuse. This is more than compelling evidence to rebut the presumption that parents are acting in their children's best interests. Therefore, the State has the legal authority to don its *parens patriae* hat and regulate parental exploitation of children.

Further, the negative impact that exploitation has on children's development seriously impedes their growth into mature, responsible citizens, something in which the State has a significant interest. Regulations such as compulsory education and child labor laws aim to protect that interest in other contexts. In recognition of education's importance to success in later life and promoting a democratic society, parents cannot deprive their children of an education.<sup>237</sup> The FLSA's child labor provisions were included specifically to protect children's safety, health, well-being, and opportunities for schooling. There are also laws allowing the state to intervene when parents' decisions threaten their children's health and safety, as in cases of excessive discipline and

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<sup>237</sup> Education is also a perfect example of the balance struck between parental and state authority. Through recognition of education's importance, and the consequent harm of not having one, states require parents to provide their children with an education, but recognize parental authority to direct that education. *See, e.g.*, EDUC. § 48200 (mandating that minors between the ages of six and eighteen be subject to compulsory education); EDUC. § 48293 (imposing fines on parents if their children fail to attend school). Other examples include parental discipline and the provision of medical care. Discipline is necessary for developing self-control, and becoming a responsible citizen, but in excess constitutes harmful abuse. In light of this understanding, parents have the authority to discipline their children, but when doing so exceeds the bounds of reason so as to constitute abuse, the State may intervene. *See In re K.I.*, 735 A.2d at 450 (holding that the state had the authority to seek a court order to not resuscitate a child against the mother's wishes, given the mother's history of neglect and that attempts to revive would cause the child pain and suffering); *Perricone*, 181 A.2d at 753 (holding that the state had a right to appoint a guardian to administer blood transfusions to a child whose parents refused to consent to treatment despite it being in the child's best interest). Similarly, parents have the authority to consent to or refuse medical treatment, but if their decisions threaten their children's health or safety, the State may intervene.



improper medical decisions. Parental exploitation of children is analogous to those instances of appropriate state regulation identified in *Prince*. Failure to limit parental authority to exploit their children jeopardizes the State's interest in the safety, health, and well-being of its child citizens. To protect that interest, the State must regulate parental authority to exploit their children, just as it has done with education, child labor, abusive discipline, and improper medical decisions.

In sum, when parents exploit their children they are unquestionably acting contrary to their children's best interests. This also threatens the State's interests in fostering a responsible citizenry necessary for the continuance of a democratic society. These are compelling reasons for rebutting the presumption favoring parental authority such that the State can regulate it.

## V. REGULATING PARENTAL EXPLOITATION OF CHILDREN

Previous suggestions for regulating child exploitation range from applying existing law to proposing new legislation. These suggestions focus primarily on regulating children's activity, which subsequently limit extending any regulation's coverage across multiple and new forms of exploitation. Each suggestion in itself is insufficient to comprehensively regulate parental exploitation of children across different industries and forms of media. However, drawing from each provides the pieces for a more comprehensive framework to protect children.

### A. PREVIOUS SUGGESTIONS

Erica Siegel's 2000 note in the *Cardozo Arts & Entertainment Law Journal* proposed either legislation under the FLSA or adoption of a Model Code by the states to safeguard children's earnings, set uniform labor requirements, and recognize the need for regulation of child athletes.<sup>238</sup> Most importantly, Siegel recognized the need to make parents the target of the regulation.<sup>239</sup> The biggest issue with Siegel's proposal is her proposed requirement that a determination be made that the activity constitutes labor, which is a substantial hurdle to overcome as new forms of exploitation arise. Second, labor standards focus on the children's activity, which further limits its coverage of new forms of exploitation. Each industry and form of media is different, and there is no uniform standard applicable to all

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<sup>238</sup> Siegel, *supra* note 16, at 463–64.

<sup>239</sup> *See id.* at 429 (“To prevent exploitation of children, there must be legislation available to address the root of the problems that frequently occur. These children need protection not only from their careers or employers, *but most essentially, from their parents.*”) (emphasis added).

activities, especially those not yet known. Nevertheless, Siegel provided a very solid foundation for building a more comprehensive framework.

In a 2004 note in the *University of Pennsylvania Journal of Labor & Employment Law*, Jessica Krieg proposed establishing a federal oversight board to monitor the employment of minors in the entertainment industry by requiring each state to submit a “Child Entertainer Welfare Plan” to address how the State plans to safeguard children’s financial, educational, and psychological interests.<sup>240</sup> There was a brief mention of children in sports,<sup>241</sup> but Krieg’s primary focus was on children in film. Reviewing one form of exploitation in isolation from others limits any suggested regulation to that specific form. Krieg’s suggestion also faces the same issues as Siegel’s because it requires determining that a certain activity constitutes labor. Thus, its applicability to future forms of exploitation is also limited.

The recent tidal wave of reality television shows featuring children has left a plethora of commentary examining children’s participation in such shows. In a 2009 note in this journal, Christopher Cianci argued for the extension of federal child labor laws to protect such children and the penalization of parents who permit children “to participate on a film or TV production where there is a sure threat of danger.”<sup>242</sup> Cianci also recognized the importance of having preventive regulation.<sup>243</sup> Interestingly, he then argued that “[v]iewer activism is ultimately necessary . . . [because] [i]t is the job of society to make sure kids are protected.”<sup>244</sup> Such an assertion improperly shifts accountability away from parents,<sup>245</sup> and as a practical matter, it is unlikely that society will boycott movies, sports, or reality television. Adam Greenberg’s 2009 note in the *Southern California Law Review* further examined current labor law’s applicability to children in reality television.<sup>246</sup> Greenberg concluded that children’s participation on shows similar to *Kid Nation* constitutes employment for purposes of the FLSA.<sup>247</sup> However, Greenberg also cautioned that such a narrow determination “does not compel the conclusion that all future reality children are per se covered by the Act. The determination of a worker’s

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<sup>240</sup> Krieg, *supra* note 16, at 443–48.

<sup>241</sup> *Id.* at 443.

<sup>242</sup> Cianci, *supra* note 16, at 388–89, 394.

<sup>243</sup> *Id.* at 389 (“While such protection is obviously favorable to children, it is still only retroactive protection. Our goal should be to *prevent harm* to a child.”) (emphasis added).

<sup>244</sup> *Id.* at 394.

<sup>245</sup> Cf. WEISSBOURD, *supra* note 132, at 1 (“Blaming peers and popular culture lets adults off the hook—and dangerously so.”).

<sup>246</sup> See Greenberg, *supra* note 16, at 623–24 (“This Note focuses on one narrow issue: whether reality children are covered, and thus protected, by the FLSA.”).

<sup>247</sup> See generally *id.* at 625–42.

FLSA coverage is fact sensitive.”<sup>248</sup> Similar to Cianci, Greenberg highlights the limitations of reviewing exploitation in isolation.

## B. A COMPREHENSIVE REGULATORY FRAMEWORK

The regulatory suggestions discussed immediately above, coupled with the trends observed in Part II.E, provide building blocks for constructing a more comprehensive framework to regulate parental exploitation of children. Incorporating the two leads to a regulatory framework that (1) is federal, (2) more prophylactic than remedial, (3) non-qualifying, and (4) targets parents.

### 1. *Federal*

Regulation related to children should be federal. This necessity is borne of the states’ failures to sufficiently regulate other matters involving children, such as child labor in the early twentieth century, and, more currently, children in the entertainment industry. The unfortunate reality in both of these instances was that the states’ disparate interests led to the inconsistent adoption of laws, allowing an escape from regulation by simply moving from one state to another. Accordingly, regulation must come from the federal level to set minimum standards for states to follow.

### 2. *Prophylactic*

Any regulation must be forward-looking. Part II illustrates that new opportunities for parents to exploit their children are sure to emerge in the future. Thus, regulation must not only remedy current forms of exploitation by parents but also deter parents from taking advantage of new opportunities to exploit their children. While there must be remedial measures to assist children already being exploited, the goal should be to prevent parents from putting children in such situations at all.

### 3. *Generalized*

Regulations limiting parental exploitation of children must not be limited to a certain industries or specified activities because that necessarily restricts the scope of regulation. Regardless of whether parents are exploiting a child actor, child athlete, or child participant in a reality television show, at bottom it is still a *child* who is exploited. Further, industry-specific regulation naturally focuses on children’s activity. This misplaces the focus if the goal is to prevent parents from exploiting children in the first place. For example, limiting the amount of hours spent doing any activity does not protect children from controlling parents who

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<sup>248</sup> *Id.* at 642.

force them into the activity in the first place. All this does is limit the amount of exploitation, not the exploitation itself. More importantly, industry-specific regulation has limited applicability when a new form of exploitation emerges, particularly when it does not fit within the definition of that industry. This is precisely why coverage of certain labor laws regulating child actors does not extend to child athletes or child participants who are not considered employees. Thus, to be preventive, regulation must not target the children's activity but instead take aim at parents' conduct.

#### 4. *Target the Root Cause*

Shifting the focus of regulation from children's activity to parents' conduct eliminates difficult issues with regulating exploitation, such as whether athletic training or participation in reality television constitutes labor. Additionally, before children can be exploited by producers or coaches, they must be placed in situations ripe for exploitation. These examples show that it is the parents who put them there, quite often against the children's wishes. Plain and simple, regulation should be consistent with the definition of exploitation set forth in Part II, *supra*, and should mandate that: parents not be allowed to take unjust advantage of their children for their own benefit. Similar to compulsory education laws, an effective regulation must penalize parents who violate it.

## VI. CONCLUSION

Parental exploitation of children has been expanding for the last century. Today, there are more opportunities and motivation than ever for parents to use their children as a means of achieving fame and fortune. Nevertheless, there are very few laws to prevent this from happening, and this issue needs to be regulated. When parents exploit their children, they cause serious damage to their children's emotional and psychological development, and expose them to additional harm to their mental and physical well-being. This is sufficient to rebut the presumption that parents act in their children's best interests when making decisions regarding their lives. As a result, it is within the State's legal power to limit parental authority in these instances. Not only *can* the State regulate parental exploitation of children, but also in order to protect its own interest in children's welfare the State *must* regulate it.

Our country is one of redemption. Andre Agassi found it: he found himself, he learned to love the game he hated, and he learned to love his father.<sup>249</sup> However, not all children are as fortunate. For every success,

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<sup>249</sup> Reilly, *supra* note 156.

“there are thousands of anonymous young people who did not make it—some are burnt out at too young an age, others have bitter memories of abusive experiences, and still others will long struggle with psychological traumas and scars.”<sup>250</sup> Our eyes should now be open, but a question remains: How will “Balloon Boy” be remembered? If there is cause to look back on this hoax, will it be in recognition of a point at which another child’s life was ruined, or will it be in recognition of a wake-up call that led to much needed regulation? Let us hope for the latter.

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<sup>250</sup> DAVID, *supra* note 44, at 91.

