

2013

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### Recommended Citation

Triger, Zvi (2013) "The Darker Side of Overparenting," *Utah OnLaw: The Utah Law Review Online Supplement*: Vol. 2013 : No. 1 , Article 3.

Available at: <http://dc.law.utah.edu/onlaw/vol2013/iss1/3>

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## THE DARKER SIDE OF OVERPARENTING

Zvi Triger\*

### *Abstract*

*In response to David Pimentel's article, Criminal Child Neglect and the "Free Range Kid": Is Overprotective Parenting the New Standard of Care?, 2012 Utah Law Review 947.*

In December 2012, the mother of a six-year-old boy whose foot was run over by a school bus was arrested and charged with child abuse and neglect.<sup>1</sup> The mother was arrested because she sent her son and his slightly older brother unsupervised to the bus station.<sup>2</sup> Such a harsh response on the part of the criminal justice system would seem too extreme a few decades ago. Even today, some believe that one of the most important roles of parents is to foster a sense of independence in their child. As such, the law should not choose one parenting style over another as the sole legal standard for good parenting.<sup>3</sup>

Professor David Pimentel's recent article enriches our understanding of this sociolegal phenomenon through the study of legal reactions to intensive parenting, as well as to its counterstyle (dubbed by some as "free range kids"<sup>4</sup>). Professor Pimentel sheds light on some potentially disturbing consequences of the interaction between criminal law and the general culture.<sup>5</sup> He is concerned that "parents who resist the trend toward overprotective parenting, including Free Range parents who consciously choose to give their children a long leash, may expose themselves to criminal liability."<sup>6</sup>

Parenting involves, among other things, a delicate balance of risk management.<sup>7</sup> How involved (or permissive) should parents be? A lot of this risk

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<sup>1</sup> *Las Vegas Mother Arrested after Unsupervised 6-Year-Old Son is Hit by School Bus*, CBS NEWS (Dec. 12, 2012, 01:45 PM), [http://www.cbsnews.com/8301-504083\\_162-57558761-504083/las-vegas-mother-arrested-after-unsupervised-6-year-old-son-is-hit-by-school-bus/](http://www.cbsnews.com/8301-504083_162-57558761-504083/las-vegas-mother-arrested-after-unsupervised-6-year-old-son-is-hit-by-school-bus/).

<sup>2</sup> *Id.*

<sup>3</sup> See Gaia Bernstein, *Intensive Parenting as a Legal Standard: Arresting Mother for Sending Children to Bus Stop*, CONCURRING OPINIONS (Dec. 13, 2012, 12:42 PM), <http://www.concurringopinions.com/archives/2012/12/intensive-parenting-as-a-legal-standard-arresting-mother-for-sending-children-to-bus-stop.html>.

<sup>4</sup> See, e.g., LENORE SKENAZY, FREE-RANGE KIDS: GIVING OUR CHILDREN THE FREEDOM WE HAD WITHOUT GOING NUTS WITH WORRY 31–40 (2009).

<sup>5</sup> See generally David Pimentel, *Criminal Child Neglect and the "Free Range Kid": Is Overprotective Parenting the New Standard of Care?*, 2012 UTAH L. REV. 947.

<sup>6</sup> *Id.* at 968.

<sup>7</sup> *Id.* at 961–63, 972.

management depends on the specific child's capabilities and the surrounding circumstances: Is the child mature enough to engage in this activity? Does the activity take place in a safe neighborhood? Can the parents afford monitoring the child, or must they be at work to be able to provide for their families? Is there any room for mistakes, or should parents be prosecuted whenever they deviate from the law's prescriptions? Some believe that these questions cannot (and indeed should not) be answered by the law, because the law is not nuanced enough to take into account all the intricacies and complexities of parenting, as well as the specific circumstances of parents and children.<sup>8</sup>

One of Professor Pimentel's concerns is that perceived risks to children (such as abduction by a stranger) may encourage criminal law to enforce a more intense parenting style and penalize parents who choose not to become intensive parents.<sup>9</sup> Since much of the current atmosphere surrounding child-rearing practices and potential risks to children is a product of popular media (for example, television shows such as *Law and Order*, and many others),<sup>10</sup> it is highly problematic to use the media uncritically as the benchmark for good parenting. Media reports and representations are often irresponsible and sensationalist and tend to blur the line between responsible news reporting and entertainment. To base policymaking, legislation, and social norms on distorted representations of risk is extremely problematic.

Interestingly, most of the sociolegal attention, both in practice and in academia, has been devoted to either child neglect or child abuse. Both cases—neglect and abuse—usually involve parents who the state (and society) views as incompetent or even dangerous. State involvement in cases of child neglect or abuse set the standard for the desired parenting style, which was generally defined as nonneglectful.

Recent years, however, have seen a surge of attention devoted to the opposite of child neglect and abuse, namely intensive parenting, and its psychological effects on children and legal responses to it. Unlike abusive or neglectful parenting, these parents are intensive—highly involved and constantly monitoring their children. Intensive parenting (also called helicopter parenting or overparenting) is often well intentioned. Intensive parents want their children to be safe, happy, satisfied, and well educated. They invest a great deal in their children, both emotionally and financially. These parents are usually far from being indifferent to their children's fate (as one might think of neglectful and incompetent parents) or outright cruel to their children (as abusive parents are perceived to be). And indeed, research has shown that parental attention and involvement can be tremendously beneficial for children. According to recent psychological studies, Gaia Bernstein and I summed up some of the benefits of intensive parenting, according to recent psychological studies:

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<sup>8</sup> See Bernstein, *supra* note 3.

<sup>9</sup> Pimentel, *supra* note 5, at 948–49, 968.

<sup>10</sup> *Id.* at 963–66, 985–86.

Parents engaging in Intensive Parenting bestow important advantages on their children. Intensive Parenting originated from the desire to produce a securely attached child and evolved to respond to the needs of an increasingly demanding and competitive society. Research has shown that Intensive Parenting raises children who are better prepared to deal with institutions and know how to make rules work in their favor, while children raised under different child rearing practices tend to show a sense of constraint in their interactions with institutions. Other research has shown the positive effects of Intensive Parenting on academic motivation and achievement, behavior in school, likelihood of being injured and satisfaction in college.<sup>11</sup>

We have also shown that when intensive parenting becomes overparenting, these advantages might become disadvantages. To use Hara Estroff Marano's words, "there can be too much of a good thing."<sup>12</sup> As well intentioned as intensive parents might be, their parenting style can be damaging. Children raised through overparenting fail to develop important competencies, such as time management and negotiating conflicts.<sup>13</sup> They also tend to show less creativity, spontaneity, enjoyment, and initiative in their leisure pastime;<sup>14</sup> they are less attentive and caring about others' feelings;<sup>15</sup> and finally, they are more likely to suffer from low self-esteem,<sup>16</sup> depression, anxiety, and stress.<sup>17</sup> In short, the discussion on intensive parenting is very different from the one on neglectful or abusive parents, but both extreme ends of the parenting spectrum can potentially endanger children.

As recent psychological and legal research have shown, good intentions may result in abuse. When children are raised with disregard to their own individual needs, it does not matter whether this disregard is because of neglect or because of the parents' wish to be intensely involved in the child's life; in both cases the result might be damaging to the child. Psychologists have already shown that

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<sup>11</sup> Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221, 1274 (2011) (citations omitted).

<sup>12</sup> Hara Estroff Marano, *Helicopter Parenting—Uh-Oh, It's the Law!!*, PSYCHOLOGY TODAY (Jan. 22, 2013), <http://www.psychologytoday.com/blog/nation-wimps/201301/helicopter-parenting-uh-oh-its-the-law>.

<sup>13</sup> See BARBARA K. HOFER & ABIGAIL SULLIVAN MOORE, *THE ICONNECTED PARENT: STAYING CLOSE TO YOUR KIDS IN COLLEGE (AND BEYOND) WHILE LETTING THEM GROW UP* 45–59 (2010); ANNETTE LAREAU, *UNEQUAL CHILDHOODS: CLASS, RACE, AND FAMILY LIFE* 67 (2003) (comparing competencies of middle-class children to working-class children).

<sup>14</sup> See LAREAU, *supra* note 13, at 83.

<sup>15</sup> JEAN M. TWENGE, *GENERATION ME: WHY TODAY'S YOUNG AMERICANS ARE MORE CONFIDENT, ASSERTIVE, ENTITLED—AND MORE MISERABLE THAN EVER BEFORE* 22–26 (2006).

<sup>16</sup> See Alvin Rosenfeld & Nicole Wise, *The Over-Scheduled Child: Avoiding the Hyper-Parenting Trap*, 17 BROWN UNIV. CHILD & ADOLESCENT BEHAVIOR LETTER, no. 4, Apr. 2001, at 6.

<sup>17</sup> TWENGE, *supra* note 15, at 104–09.

overparenting is potentially damaging for children who do not need intense parenting to thrive.<sup>18</sup>

Legal scholars have picked up on this theme and have explored the various ways in which the law responds to the social trend of intensive parenting.<sup>19</sup> Professor Gaia Bernstein and I have shown that divorce lawyers channel parents towards intense parenting to build a stronger case for custody.<sup>20</sup> We cautioned against what seems to be the law's hasty endorsement of one parenting style and adoption of it as the sole standard for good parenting.

Now, Professor Pimentel cautions against the hazards of the criminalization of parenting styles other than intense parenting. He argues that the social trend of intensive parenting "may be reinforced and exacerbated by the fear of criminal liability."<sup>21</sup> It seems, then, that the law has joined forces with the social trend of intensive parenting and is channeling parents (mostly mothers) toward this parenting style through its civil and criminal components.

What seems to be threaded as a common theme throughout much of the legal literature on overparenting is apprehension and suspicion for a rising trend of overlegalizing parenting styles in general, and legally penalizing certain nonabusive and nonneglectful styles in particular. Such overlegalization is problematic because of the slow pace in which the law can react to changing knowledge about parents, children, and children's best interests, which in turn might prove to be harmful for children.<sup>22</sup> Overparenting is also undesirable in multicultural societies because many differences in parenting styles stem from differing cultural backgrounds and the parents' philosophy regarding parenting.<sup>23</sup> Legal monopoly over parenting styles may result in discrimination against perfectly good parents who happen to believe that their children do not need or are better off without intense parental involvement.<sup>24</sup> Moreover, as the public

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<sup>18</sup> See HARA ESTROFF MARANO, *A NATION OF WIMPS: THE HIGH COST OF INVASIVE PARENTING* 1–7 (2008); Hara Estroff Marano, *A Nation of Wimps*, *PSYCHOLOGY TODAY*, Nov.–Dec. 2004, at 58, 64–68.

<sup>19</sup> See, e.g., Susan Frelich Appleton, *Reproduction and Regret*, 23 *YALE J.L. & FEMINISM* 255, 297 (2011); Bernstein & Triger, *supra* note 11; June Carbone, *Unpacking Inequality and Class: Family, Gender and the Reconstruction of Class Barriers*, 45 *NEW ENG. L. REV.* 527, 546–47 (2011); Meredith Johnson Harbach, *Outsourcing Childcare*, 24 *YALE J.L. & FEMINISM* 254, 265–70 (2013); Laura T. Kessler, *Feminism for Everyone*, 34 *SEATTLE U. L. REV.* 679, 688 (2011); Suzanne A. Kim, *The Neutered Parent*, 24 *YALE J.L. & FEMINISM* 1, 25–26, 49–50 (2012); Elizabeth G. Porter, *Tort Liability in the Age of the Helicopter Parent*, 64 *ALA. L. REV.* 533, 535–36, 574–75 (2013); Benjamin Shmueli & Ayelet Blecher-Prigat, *Privacy for Children*, 42 *COLUM. HUM. RTS. L. REV.* 759, 789–90 (2011).

<sup>20</sup> See Bernstein & Triger, *supra* note 11, at 1242–48.

<sup>21</sup> Pimentel, *supra* note 5, at 949.

<sup>22</sup> See Bernstein & Triger, *supra* note 11, at 1263–65.

<sup>23</sup> *Id.* at 1266.

<sup>24</sup> See *id.* at 1251–53, 1266.

discourse demonstrates, intensive parenting is quite controversial,<sup>25</sup> and thus it is even more problematic to codify as the mandatory style of parenting.

This evolving sociolegal monopoly of intensive parenting can also result in parents ignoring their children's needs and subjecting them to damaging parental involvement and scrutiny, thus hampering one of the parents' most important roles: to cultivate their children's independence and coping skills in preparation for adulthood.<sup>26</sup> This is not the classic question of parental autonomy, but rather a more nuanced and complex question: Should the law shape parental functioning of "good enough parents"? Should it privilege one parenting style over others (that are not neglectful or abusive)?

Overparenting norms have already radically changed the relationships between parents and children. For example, they require parents in general, and mothers in particular, to sacrifice much more for their children (as implied by the word "intensive" in "intensive parenting").<sup>27</sup> Since mothers are still, by and large, the primary caregivers in most families in this country, they carry most of the burden of intensive parenting, as well as the risks—legal and social—that accompany any breach of its demands. This requirement, as well as other prescriptions of overparenting influence parent-child relationships. Legally privileging overparenting will even further reshape these relationships.

According to the constitutive approach to law and culture, which was developed in American legal scholarship in the 1980's, the law does not merely provide mechanisms for enforcement or dispute resolution, but also actively participates "in the constitution of culture and thereby in the constitution of people's minds, practices, and social relations."<sup>28</sup> This means that the incorporation of intensive parenting norms into the law will reinforce the changes in parent-child relationships even further, and perhaps in directions that are not beneficial to those involved. There are various reasons why parents choose to practice intensive parenting. Some opt for overprotectiveness, believing that children are helpless creatures in constant need of supervision and guidance.<sup>29</sup> Others wish to equip their children with the best tools to succeed in an extremely competitive world and believe that the right way to achieve this goal is by being intensely involved in every single aspect of their children's lives. Some parents focus on their own point of view and compete with other parents over who is more involved in their child's life, assuming that the more involved parent is the better one.<sup>30</sup> And yet other parents become overinvolved in their children's lives because they see their children, probably subconsciously, as an extension of themselves, thereby failing to cater to their children's actual needs and instead catering to their

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<sup>25</sup> Debates over Amy Chua's book have demonstrated this. See AMY L. CHUA, *BATTLE HYMN OF THE TIGER MOTHER* (2011); Pimentel, *supra* note 5, at 950 n.17, 979–80.

<sup>26</sup> See Bernstein & Triger, *supra* note 11, at 1274.

<sup>27</sup> See *id.* at 1271–73.

<sup>28</sup> Menachem Mautner, *Three Approaches to Law and Culture*, 96 CORNELL L. REV. 839, 841 (2011).

<sup>29</sup> See Pimentel, *supra* note 5, at 951–52.

<sup>30</sup> See Marano, *supra* note 12.

own.<sup>31</sup> As Professor Pimentel implies in his analysis, criminalization of uninvolved parenting may drive more parents into intensive and overparenting for all the wrong reasons.

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<sup>31</sup> See Bernstein & Triger, *supra* note 11, at 1231–32.