11. SCHOEMAN’S ALTERNATIVE TO THE LIBERAL VIEW OF THE FAMILY

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ABSTRACT. Ferdinand Schoeman criticizes the liberal view of the family which holds that parental rights are based in and limited by parental duties to the child. Instead he proposes the construction of principles based on the value of familial intimacy. Schoeman claims that only by recognizing the value of intimacy can we account for the degree of autonomy we legitimately grant parents in their relations with their children. In opposition, I argue that he misinterprets the liberal view. A correct interpretation allows an appropriate degree of parental autonomy and familial intimacy but without sacrificing the child’s developmental needs.

A widely held interpretation of the liberal view of the family maintains that the primary basis of parental rights is to permit parents to fulfill their paternalistic duties to provide for the welfare of their children. Therefore parental duties take precedence over parental rights. When a child’s welfare would be seriously endangered by a parental decision or action, the state has a duty to intervene. Influenced by this perspective, the courts have adopted a “best interests of the child” standard of reviewing cases involving child rearing.

Ferdinand Schoeman criticizes this view in three essays on the basis and limits of parental autonomy.1 Schoeman’s disagreement with the liberal position involves the following claims:

1) Liberalism cannot account for the degree of autonomy we legitimately grant parents in their relations with their children.

2) Because the family has its own goals and principles of decision making, liberal principles should not be imposed upon it.

3) Liberalism ignores and fails to protect the value of the intimacy of familial relationships.

4) By adopting the legalistic language of rights and duties liberalism cannot adequately analyze intimate relationships.
Schoeman concludes that we must construct an alternative moral theory, one which recognizes familial intimacy, not the individual welfare of the child, as the primary basis for parental autonomy.

Schoeman's critique should receive our attention not only because it attacks the substance of the liberal view of parental autonomy but also because it challenges the conceptual framework in which that view is presented, and in the latter respect is representative of some recent approaches to ethical theory. In evaluating the claims outlined above I shall argue that Schoeman misinterprets the liberal position and exaggerates the importance of familial intimacy. The discussion will focus on the specific question of the state's role in limiting parental discretion regarding medical treatment for children.

I. INTERPRETING THE LIBERAL VIEW

According to Schoeman's first argument, the liberal holds that parental decisions must be aimed at promoting the child's welfare or protecting the legitimate interests of others. But, as Schoeman observes, there are many justified limitations parents impose on their children which cannot be explained by reference to either of these ends. For example, parents require children to help with family chores and to accompany them on vacations which the children will perceive as boring. Moreover, there are legitimate parental decisions which can actually harm the child. The courts have permitted parents to consent to the transplant of a healthy child's kidney to a critically ill sibling. The courts invoked the best interests criterion to support the parent's decision, arguing the healthy child would benefit emotionally from the transplant. But this reasoning strikes us as mere rationalization. And hypothetical cases can be constructed where no benefit to the child at all can be cited and yet the parental decision is justified. In all of these cases we permit parents to compromise the child's interests so that they may pursue familial goals and purposes.

Schoeman concludes that the state must either often intervene illegitimately in parental decisions or acknowledge parental autonomy that goes beyond promoting the best interests of children, thereby abandoning liberal tenets. The former is unacceptable, so Schoeman claims we need alternative moral principles which recognize parents' proper concern to promote familial ideals.

But has Schoeman, by showing that we do not always adhere closely to the best interests standard, attacked the actual liberal position? Though it is debatable whether even the courts have held a strict interpretation of the best interest test, that certainly cannot be said of most liberal theorists. Instead of arguing that parents have a duty to maximize child welfare, the liberal claim has been that children must be provided with certain "primary goods" related to their developmental needs. What is required is that children receive those goods necessary to develop into autonomous, rational adults with a reasonable range of opportunities. These goods include adequate nutrition, health care, education, housing, and affection. While some liberals would contend that children also have a right to noninterference in their actions, the core of the liberal position is that children possess rights to fulfillment of their basic needs. The following statements are representative of the liberal view:
... it is the purpose of childrearing to enable children to lead at least minimally decent and satisfying lives as adults.  

Primary goods thus define children's rights over us and our paternalistic duties toward them.  

Liberalism therefore respects the capacity of parents to realize themselves in child rearing if their actions are consistent with a proper concern for the developmental rights of the child.  

Thus one finds liberalism committed to a far less stringent standard than a strict interpretation of the best interests test. I have a duty to see that my daughter receives a certain amount of schooling but not a duty to provide her with a Harvard education, even if that is what would most benefit her. And in some cases parents may make decisions which harm a child to some extent as long as the decision does not seriously jeopardize the child's future opportunities as an adult. In the kidney transplant case a certain minimal risk exists for the healthy child but not one that is very likely to affect negatively the child's adulthood. Therefore the parental proxy consent may be respected consistent with liberal maxims. The fact that parents are permitted to compromise the child's interests for ends related to familial goals shows that we attach more value to the pursuit of those goals than to the maximization of individual child welfare, but it does not demonstrate that we are willing to sacrifice the developmental needs of the child for that value.  

There is an additional reason the liberal need not be opposed to parental consent in the transplant example. Even if the liberal were committed to the best interests standard, the parents would have an obligation to maximize not only the healthy child's interests but also those of the unhealthy child. So the consent could be defended simply on the basis of the existence of conflicting duties and the greater need of the unhealthy child. So again this example fails to defeat the liberal analysis.  

II. PRIORITY OF RIGHT OVER GOOD  

Schoeman's second claim is that the liberal fails to appreciate the character of the family as an intimate arrangement having its own goals and purposes. Parents properly are motivated not only to promote the individual welfare of their children but also to pursue familial ideals such as the family's welfare or character. Parents concern themselves with these ends quite apart from individual interests they may serve. Thus Schoeman thinks we must recognize that within the family context "a different range of principles and objectives applies". Accordingly, he says we should not attempt to impose upon the intimate relationships of the family liberal principles that are appropriate for the state in its dealings with abstractly related individuals.  

Liberalism, it is true, generally has not addressed the issues of the virtues of the family and of parents. It has restricted itself to a theory of right and therefore not considered the question of the good
for families and parents. It is also true that being a good parent may involve more than merely respecting the rights and promoting the welfare of one's children. Indeed there is a variety of objectives good parents might choose to pursue for their families. Different parents will have different ideas for their families.

And yet while we may recognize liberalism's silence on the question of the good for parenthood, it is difficult to quarrel with its insistence that, however good parenthood is defined, the child's right to have basic needs fulfilled has priority over the good. That is, if an individual's pursuit of their conception of their own good or the good of their family conflicts with their child's right to need-fulfillment, the right prevails. To use Ronald Dworkin's metaphor, rights are like trumps. The system of justice which sets the framework of rights specifies the limits within which individuals may strive for their goals and objectives. Without these limits some persons would be unfairly disadvantaged in the conflict among attempts to achieve individual conceptions of the good.

Thus parents may not pursue their familial ideals at the expense of the rights of the child. The child's right as a person trumps the parent's pursuit of the good. And the liberal would argue that the theory of right justifies the child's right to be provided with primary goods. Parents must see that their duty in that regard is discharged before seeking other ideals. Schoeman's point that there is a theory of the good ignored by the liberal fails to show that the liberal's theory of right and the priority of right over good is mistaken.

III. THE VALUE OF INTIMACY

Schoeman's third argument emphasizes the intrinsic value of intimate relationships. Intimacy, he says, not only provides the context within which parents seek familial ideals, it is a value individuals find worth pursuing for its own sake. By means of intimate relationships we share ourselves with others and establish personal commitments. Intimate relations are for most people an essential basis for self-definition and the creation of meaningfulness for one's life. And obviously parent-child relationships are a significant potential source of intimacy. Yet the degree of intimacy attainable varies inversely with the amount of state intervention permitted. Hence, according to Schoeman, the value of intimate family relationships requires and justifies parental autonomy. Parental autonomy does not rest on individual child welfare alone.

In evaluating this argument we should be aware that the liberal would not neglect the instrumental value of intimacy to the child in determining where state intervention is justified. An intimate relationship unquestionably is extremely important to the emotional and psychological development of the child. It also may be necessary to the achievement of a sense of self-respect. A liberal might even accept the position of the "radical non-interventionists" who emphasize the child's need for continuity of relationships and argue for a high threshold of harm before state intervention is permitted. Furthermore, the liberal may acknowledge certain non-paternalistic rights of parents. These could include the right to privacy, the right to raise one's child as one sees fit, and the right to educate one's child in one's religious faith. The liberal position
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is only precluded from allowing any of these rights from having priority over the developmental rights of the child.

Should the parents' desire for intimacy, or the intrinsic value of the intimate relationship, ever be respected at the expense of seriously endangering one of the primary goods of the child? Again we must refer to the liberal notion of the priority of right over good. Surely the liberal is correct in disallowing the promotion of the intimacy of a relationship when the cost is a fundamental right of one of the partners of the relationship, especially if that partner has not voluntarily entered the relationship. For example, we would find unacceptable a defense of a master-slave relationship which appealed to the opportunity for intimacy it created for both persons.

If intimacy were a value strong enough to override need-fulfillment rights, the state would be obligated not only not to intervene in intimate relationships, but also to take positive steps to promote intimacy. Tax allowances for those involved in intimate relationships and development of other social structures that encourage intimacy would be in order. Indeed, Schoeman should support these measures before opposing state intervention to protect children's welfare since, unlike non-intervention in parental decisions, they will not require occasional violation or non-protection of basic rights. However, there is no mention of these other methods of promoting intimacy in Schoeman's essays.

IV. THE LANGUAGE OF RIGHTS AND DUTIES

In defending the liberal perspective on parental autonomy I have relied on the liberal principle that right has priority over the good. Schoeman's final argument challenges the conceptual framework which is the presupposition of that principle. He finds the language of rights and duties perhaps appropriate in discussing the morality of those who are "abstractly related" but inadequate to analyzing the fullness and complexity of intimate relationships. The legalistic vocabulary emphasizes the boundaries and distinctions of persons, whereas intimate relationships involve identification with others and mutual pursuit of another's good.

Schoeman believes "ideal pictures" are more appropriate than talk of rights in the analysis of intimate relationships. The ideas found in myths, traditions and literature are more likely to capture the emotional and motivational factors involved in family relationships. Parents generally do not act from a sense of duty or respect for the rights of their children. Rather, they are motivated by a sense of identification, shared values, and love. Moral dilemmas are not perceived as conflicts between the competing rights of those in the relationship but as conflicts internal to the parent regarding which of her roles or responsibilities is to take precedence.

Moreover there is, according to Schoeman, a danger in talking about family relationships in terms of rights and duties. Parents and children may be caused to view the relationship between themselves as one of adversaries bound by a quasi-contract. Emphasis on the rights of the child can suggest there is a one-way relationship, directed toward the benefit of the child. The result may very well be that the sharing and identification necessary for intimacy is decreased or even lost. Hence liberalism, couched in the language of rights and duties, presents
a misleading and potentially dangerous picture of the family. The solution is "a reorientation of moral philosophy along the paths of ideal pictures".9

Carol Gilligan, in her study of the moral development of women, claims to have discovered a similar contrast in moral orientations between an "ethic of justice" and "ethic of responsibility".10 Gilligan found that men, employing the ethic of justice, typically view persons as separated, autonomous individuals. They seek to resolve moral dilemmas in terms of a system of rights and duties. Women, on the other hand, tend to see persons as connected through relationships and sustained by activities of care. They perceive moral problems in terms of conflicting responsibilities rather than competing rights. While men try to abide by rules and depict relationships as easily replaced, women attempt to change the rules in order that relationships may be kept intact. One interpretation of Gilligan is to see her as suggesting, like Schoeman, that we need a theory that is an alternative to the liberal ethic of rights and duties for dealing with moral matters involving special relationships.

Schoeman's proposal may be interpreted in two ways. First, it may be viewed as a call for some concepts and principles in regard to the family which will supplement the liberal analysis. As mentioned earlier, the liberal program generally has neglected to develop a theory of the good for parenting and the family. We need a theory of family virtues and ideals. Schoeman surely is correct to note that parents are motivated by more than simply a consideration of children's rights and needs. An individual who provides for the needs of his child solely from a sense of duty is unlikely to be a good parent. And we may agree that talk of rights and duties alone not only misses a good deal of the character of family relationships but degrades them in a possibly damaging manner. A theory of virtues and ideals could supplement the liberal perspective without affecting the liberal view of the basis and limits of parental autonomy.

An alternative interpretation of the proposal is that the "ideal pictures" should displace the language of rights and duties, at least for matters of family morality. This the liberal must reject. There are family situations in which the normal parental identification with the interests of the child is non-existent. And in other instances, care is present but parental judgments concerning appropriate treatment are intellectually deficient and clearly immoral. In these cases reference to parental duties or a child's right is necessary and desirable. When a parental decision poses an immediate and serious threat of harm to a child, we ought to employ the strongest moral terms available to assert and protect the child's claim. Schoeman presents no argument that successfully shows we do or should permit concern for familial ideals to take precedence over parental duties to provide for a child's developmental needs. As with his earlier claims, Schoeman's remarks on the language of rights and duties provide no basis for rejecting the liberal view of parental autonomy.

V. SCHOEMAN'S PRINCIPLE

Schoeman's descriptions of his own principle for justified state intervention in parental decisions regarding medical treatment of chil-
dren reflect the ambiguity of his proposal. One statement suggests that parental discretion is limited by the physical welfare of the child:

Short of subjecting a child to extreme, irremediable, and obvious harm as a result of parental discretion, I do not think that parental discretion ought to be legally undermined whatever the source of the mistake. However, in the case of impending danger resulting from parental discretion, whatever its typology, intervention is desirable.11

But another statement indicates that even endangering the child's health or life may not be due absolute prohibition:

Regarding medical treatment (or non-treatment) of children, unless the parental decision would seem from most perspectives as shockingly reckless or negligent, these decisions should count as decisive . . . the parent's decision should be supervened, in general, only if it can be shown that no responsible mode of thinking warrants such treatment of a child.12

The Baby Doe case illustrates the conflict between these two statements. Born in 1982 in Bloomington, Indiana, Baby Doe had an incomplete esophagus and Down's syndrome. His parents refused to consent to the operation necessary to prevent death from starvation. They reasoned that Down's children never live very good lives. And they believed they must consider the burden a severely handicapped child would be on their other children and the family as a whole.

According to Schoeman's first statement of his principle it would appear that the only question in this case is whether non-treatment constitutes an "extreme, irremediable, and obvious harm" to Baby Doe. If it does, there should be no parental discretion. However, the second statement seems to permit a parental decision resulting in extreme and obvious harm if a "responsible mode of thinking" warrants it. The mode of thinking of Baby Doe's parents was responsible even if their decision harmed their child if one agrees with Schoeman that their judgment may properly be based on "concern for family relationships".13 So Schoeman's standard for evaluating parental decisions regarding medical treatment of children is ambiguous.

In contrast, the liberal standard for judging these cases is clear. The parents have a duty to provide for the child's basic needs, especially those necessary for survival. Exceptions may be made only where continued survival constitutes harm to the child. Baby Doe may have been an exception and his parents might have been the appropriate judges of whether this was the case. However, we should evaluate their decision and determine the need for state intervention solely by reference to the child's developmental needs. The liberal would refuse to permit parental rights or family relationships to override concern for Baby Doe's welfare. The liberal view not only possesses greater clarity than Schoeman's description of his alternative but, as I argued earlier, it assigns the proper relative weight to child welfare and familial intimacy. Intimacy is an important good but it cannot outweigh the developmental rights of the child.
ENDNOTES


2 Jeffrey Blustein, Parents and Children: The Ethics of the Family, (New York: Oxford University Press, 1982), 120.


8 Schoeman, "Childhood Competence", 279.

9 Schoeman, "Childhood Competence", 284.

10 Carol Gilligan, In A Different Voice (Cambridge: Harvard University Press, 1982).

11 Schoeman, "Parental Discretion", 52.

12 Schoeman, "Parental Discretion", 58.

13 Schoeman, "Parental Discretion", 58.