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Clare Ryan is a PhD in Law candidate at Yale Law School, where she obtained her JD in 2013. She will be joining the LSU law faculty this fall as an assistant professor of law, and will teach courses in international human rights, family law, and comparative law. Clare's recent work includes *The Law of Emerging Adults* (forthcoming in the Washington University Law Review) and *A Cosmopolitan Legal Order*, with Alec Stone Sweet, (Oxford University Press: 2018). Prior to obtaining her PhD, Clare served as a visiting assistant professor at Macalester College, a human rights fellow at the European Court of Human Rights, and a law clerk to the Hon. M. Margaret McKeown on the Ninth Circuit Court of Appeals.

Children as Bargaining Chips

“Your child or your rights” is an offer no parent wants to hear. Recent immigration policy has brought the state’s threat of family separation into the public conversation. However, the strategy of using children as bargaining chips is not new. Behind the appalling images of children ripped from their parents is a legal structure that allows both the state and private actors to control access to children as a means to influence adult behavior. This article proposes a doctrine of “impermissible leverage,” which would restrict the state’s authority to force parents to choose between access to their children and other rights or entitlements.

The article provides four contexts in which children are used as bargaining chips: divorce, immigration, interrogation, and dependency. In the paradigmatic private law case of divorce, one spouse can threaten to seek custody in order to bargain down their financial obligations to the other spouse. This article focuses on cases in which the state uses similar tactics. It then presents equality, dignity, autonomy, and efficiency reasons why leveraging the parent-child bond should be prohibited. Although lawmakers have articulated some principles restricting the state’s power to use children as pawns in conflicts with adults, the law lacks a coherent and trans-substantive set of criteria for determining when using children as means to adult ends is or is not legally permissible. This article offers new remedies for the harm of “impermissible leverage,” which are grounded in—and expand upon—a foundation of existing state, federal, and international law.