Alliance for Non-Custodial Parents Rights

PARENTAL RIGHTS AND THE LAW

Statement of William Wood

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H.R. 1471, Hearing on Child Support and Fatherhood Proposals, June 28, 2001

WRITTEN TESTIMONY FOR THE HUMAN RESOURCES SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS COMMITTEE

William Wood is a Business Management and Technology Consultant volunteering his time to help families and children in the State of North Carolina and around the country and he is a principal custodian of a 9 year-old little girl. This testimony, in the form of a legal memorandum, and personal commentary and interpretation are offered for consideration on my own behalf. This is a personal representation and opinion and not that of any other group or organization.

Child Custody and Fathers – Legal Ramifications

Parental Rights are special "fundamental rights" under the Constitution.

In the 1920's, the Court asserted that the right of parents to raise and educate their children was a "fundamental" type of "liberty" protected by the Due Process Clause. Meyer v. Nebraska, 262 U.S. 390 (1923) and Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925). Over the years, the courts have often asserted that parental rights are constitutionally protected such as a parent's "right to the care, custody, management and companionship of [his or her] minor children" which is an interest "far more precious than… property rights" (where a mother had her rights to custody jeopardized by a competing custody decree improperly obtained in another state). May v. Anderson, 345 US 528, 533 (1952). In Griswold v. Connecticut, 381 U.S. 479, 502 (1965), Justice White in his concurring opinion offered "this Court has had occasion to articulate that the liberty entitled to protection under the Fourteenth Amendment includes the right "to marry, establish a home and bring up children," and "the liberty . . . to direct the upbringing and education of children," and that these are among "the basic civil rights of man." (citations omitted). Justice White then added;

> These decisions affirm that there is a "realm of family life which the state cannot enter" without substantial justification. Prince v. Massachusetts, 321 U.S. 158, 166 .

Recently (on June 5, 2000), after nearly 100 year of consistent support for parental rights, the Court stated;

> "The liberty interest at issue…the interest of parents in the care, custody, and control of their children--*is perhaps the oldest of the fundamental liberty interests recognized by this Court*… [I]t *cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents* to make decisions concerning the care, custody, and control of their children." Troxel v. Granville, 530 US 2000 (99-138)

> (Justice Souter) We have long recognized that a parent's interests in the nurture, upbringing, companionship, care, and custody of children are generally protected by the Due Process Clause of the Fourteenth Amendment. See, *e.g.,* *Meyer* *v.* Nebraska,262 U. S. 390, 399, 401 (1923); Pierce *v.* Society of Sisters, 268 U. S. 510, 535 (1925); Stanley v. Illinois, 405 U. S. 645, 651 (1972); Wisconsin v. Yoder, 406 U. S. 205, 232 (1972); Quilloin *v.* Walcott, 434 U. S. 246, 255 (1978); Parham v. J. R., 442 U. S. 584, 602 (1979); Santosky *v.* Kramer, 455 U. S. 745, 753 (1982); Washington *v.* Glucksberg, 521 U. S. 702, 720 (1997). As we first acknowledged in Meyer, the right of parents to "bring up children," 262 U. S., at 399, and "to control the education of their own" is protected by the Constitution, id., at 401. See also Glucksberg, supra, at 761.

Justice Souter then opens the very next paragraph indicating the Constitutionality of parental rights are a “settled principle”. In fact, it is a well-established principle of constitutional law that custody of one’s minor children is a fundamental right. Santosky v. Kramer, 455 U.S. 745 (1982), Stanley v. Illinois, 405 U.S. 645 (1972).

Without dispute the Troxel case is UNANIMOUS in its establishment that parental rights are constitutionally protected rights. Even the dissenting judges, not agreeing with the remedy, recognized that parental rights are Constitutional Rights. From the dissents in Troxel:

> (Justice Scalia) …[A] right of parents to direct the upbringing of their children is among the "unalienable Rights" with which the Declaration of Independence proclaims "all Men ... are endowed by their Creator." …[T]hat right is also among the "othe[r] [rights] retained by the people" which the Ninth Amendment says the Constitution's enumeration of rights "shall not be construed to deny or disparage."
>
> (Justice Kennedy) I acknowledge … visitation cases may arise where [considering appropriate protection by the state] the best interests of the child standard would give insufficient protection to the parent's constitutional right to raise the child without undue intervention by the state…
>
> [T]here is a beginning point that commands general, perhaps unanimous, agreement in our separate opinions: As our case law has developed, the [parent] has a constitutional right to determine, without undue interference by the state, how best to raise, nurture, and educate the child. The parental right stems from the liberty protected by the Due Process Clause of the Fourteenth Amendment. See, *e.g.*, *Meyer* v. *Nebraska*, 262 U. S. 390, 399, 401 (1923); *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534-535 (1925); *Prince* v. *Massachusetts*, 321 U. S. 158, 166 (1944); *Stanley* v. *Illinois*, 405 U. S. 645, 651-652 (1972); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232-233 (1972); *Santosky* v. *Kramer*, 455 U. S. 745, 753-754 (1982). *Pierce* and *Meyer*, had they been decided in recent times, may well have been grounded upon First Amendment principles protecting freedom of speech, belief, and religion. …[T]hey long have been interpreted to have found in Fourteenth Amendment concepts of liberty an independent right of the parent in the "custody, care and nurture of the child," free from state intervention. *Prince*, *supra*, at 166.

Parental Rights must be afforded “strict scrutiny” or a heightened scrutiny so stringent as to be utterly indistinguishable from “strict scrutiny”.

The Fourteenth Amendment prohibits the state from depriving any person of “life, liberty, or property without due process of law.” The Court has long recognized that the Due Process Clause “guarantees more than fair process.” Washington v. Glucksberg, 521 U.S. 702, 719 (1997). It also includes a substantive component that “provides heightened protection against government interference with certain fundamental rights and liberty interests.” Id., at 720; see also Reno v. Flores, 507 U.S. 292, 301-302 (1993). Any denial of Due Process must be tested by the “totality of the facts” because a lack of Due Process may “constitute a denial of fundamental fairness, shocking to the universal sense of justice…”

Malloy v. Hogan, 378 U.S. 1, 26 (1964) (quoting from Betts v. Brady, 316 U.S. 455, 461-462 (1942) where it was noted that any violation of any of the first Nine Amendments to the Constitution could also constitute a violation of Due Process). "[T]he court must be vigilant to scrutinize the attendant facts with an eye to detect and a hand to prevent violations of the Constitution by circuitous and indirect methods. Constitutional provisions for the security of person and property are to be liberally construed, and 'it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.' Boyd v. United States, 116 U.S. 616, 635 , 6 S. Ct. 524, 535 (29 L. Ed. 746); Gouled v. United States, 255 U. S. 304, 41 S. Ct. 261, supra." (as cited from Byars v. U.S., 273 US 28, 32). And it is further established that any law impinging on an individual's fundamental rights is subject to strict scrutiny (San Antonio School District v. Rodriguez, 411 U.S. 1 (1973). "In order to withstand strict scrutiny, the law must advance a compelling state interest by the least restrictive means available." Bernal v. Fainter, 467 U.S. 216 (1984). And by fiat, any judge interpreting, presiding, or sitting in judgment of any custody case under the law must apply this same standard. Justice Stevens in Troxel comments on the appropriate standard of review stating:

> "The opinions of the plurality, *Justice Kennedy*, and *Justice Souter* recognize such a [parental constitutional] right, but curiously none of them articulates the appropriate standard of review. I would apply strict scrutiny to infringements of fundamental rights."

Heightened scrutiny is the court's rule, not the exception. "In determining which rights are fundamental, Judges are not left at large to decide cases in light of their personal and private notions[;]… it cannot be said that a Judge's responsibility to determine whether a right is basic and fundamental in this sense vests him with unrestricted personal discretion. Griswold at 493 w/FN7 (A case dealing with marriage relationship privacy). The same court noted "there is a "realm of family life which the state cannot enter without substantial justification". (quoting Prince v. Massachusetts, 321 U.S. 158, 166). In Stanley v. Illinois, 405 US 645, 651 (1972), the court indicated that the State must demonstrate a "powerful countervailing interest" stressing that;

> "the parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection." A parent's interest in the companionship, care, custody and management of his or her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility."

~85% to 90% sole maternal custody is Gender Bias in PRACTICE.

The US Supreme Court asserted in the now famous "VMI" case, United States v. Virginia, 116 S. Ct. 2264 (1996), that gender-based matters at both the state and federal level, must meet a level of "heightened scrutiny" and without solidly compelling state interests are unacceptable. In the following excerpt, all references to the female gender have been replaced with the male gender. And since this is a decision with its locus in gender-equality, this replacement is as valid as the original language or the "VMI" decision is utter hypocrisy. Opinion held;

> Neither federal nor state government acts compatibly with equal protection when a law or official policy denies to [men or fathers], simply because they are [men or fathers], full citizenship stature-equal opportunity to aspire, achieve, participate in and contribute to society

> based on their individual talents and capacities. To meet the burden of justification, a State must show ``at least that the [challenged] classification serves `important governmental objectives and that the discriminatory means employed' are `substantially related to the achievement of those objectives.'" The justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females. The heightened review standard applicable to sex-based classifications does not make sex a proscribed classification, but it does mean that categorization by sex may not be used to create or perpetuate the legal, social, and economic inferiority of [men or fathers]. (all citations omitted).
>
> …Benign justifications proffered in defense of categorical exclusions, however, must describe actual state purposes, not rationalizations for actions in fact differently grounded…

Further, states must demonstrate an "exceedingly persuasive justification" (United States v. Virginia at 2274-75, 2286) for why such discrimination continues IN PRACTICE when the statutes are facially neutral. Since "our Nation has had a long and unfortunate history of sex discrimination," (Frontiero v. Richardson, 411 U.S. 677, 684 (1973)) isn't it time to drive a final stake through the heart of this history in "family" law?

The practices in "family" law seize upon a group – men and fathers - who have historically suffered discrimination in family relations, and rely on the relics of this past discrimination under the tender years doctrine, reclassified as "the best interests of the child," as a justification for heaping on additional family destructive disadvantages (adapted and modified from footnote 22, Frontiero, 411 U.S. 677, 688). There can be absolutely no doubt that father absence is destructive to children, yet family courts, and family lawyers perpetuate this cycle every day by the thousands across America. In fact, Gender Bias against fathers in family courts is beginning to gain WIDESPREAD publicity by various newspapers and magazines, some of which are even comparing today's family courts to Nazi-Germany and Hitler's "child of the state" philosophy (the US *parens patriae* doctrine, i.e., *"state as parent"*). Fully developing the Gender-Bias portion of this paper would take about 10 pages or more because the references and citations of well-known media publications are so numerous.

No matter what rational is employed by family court judges, absent special circumstances, which question parental fitness, equal physical and legal custody is constitutionally mandated. Some of the matters that might call fitness into question would include; false claims of domestic violence, false claims of child abuse, and false claims of child sexual abuse which are OVERWHELMINGLY alleged in divorce actions by mothers to destroy the father and seize all family assets as well as the children; or, alternatively, VERIFIED claims of the foregoing – as opposed to simply adjudicated claims without tangible evidence, or in the case of domestic violence, the currently employed "super-Orwellian" [1] standards.

If the ~85% to 90% sole maternal custody, were exactly opposite, rabid feminist shrieks of discrimination, salted with a good dose of all women are victims and all men are evil, would be heard all around the world. And feminists wouldn't be burning just bras, they would likely be burning images of men and children in effigy. Congress wouldn't hesitate to condemn this, yet this commentary from New Hampshire legislator, Gary Gilmore, indicates how most men are "ambushed" when they walk into today's "family" courts." The

statement below is the RULE, rather than the exception, of how naïve fathers are about the anti-father courtroom bias;

> I was naïve and I thought the court system would give you a sense of fairness and in my own experience, I found it was extremely unfair… I felt it was a travesty and a joke. You're treated like a criminal even though you haven't done anything wrong at all… A system like that actively discriminates against men. [2]

The standard for a "compelling state interest" while applying "strict scrutiny" dictates equal physical and legal custody to both natural parents if fitness is not in controversy.

In Wisconsin v. Yoder the Court took up a challenge to Wisconsin's compulsory education laws and found *that even when claiming a purpose of benefiting the child, the state must demonstrate convincing evidence that its intended policy will actually bring about its professed goal.* Wisconsin v. Yoder 406 U.S. 205, 221 & 232-33 (1972).

The "compelling state interest" in child custody matters finds its nexus between the "best interests of the child" doctrine and strict scrutiny. Infringing upon fundamental rights [Constitutionally protected parental rights] dictates that the state show the infringement serves a "compelling state interest" with no Constitutionally satisfactory alternative to meet that interest. Failure to use such non-infringing means, or other Constitutional alternative in making custody determinations causes the state or order to fail the required scrutiny test and therefore violates parental Due Process rights under the 14th Amendment Santosky v. Kramer, 455 US 745 (1982); and (from a quote at 766,767):

> [W]hile there is still reason to believe that positive, nurturing parent-child relationships exist, the [state's] parens patriae interest favors preservation, not severance, of natural familial bonds. The State registers no gain towards its declared goals when it separates children from the custody of fit parents.

Santosky is clearly about the termination of parental rights, but the "standard family court order" of being an every other weekend visitor may be just as traumatic and potentially even greater, like living with a cancer patient that slowly dies. Even a principal adjudication of less than equal custody is still a substantial infringement upon constitutionally protected "fundamental liberty interests". In less than equal custody, a parent's relationship with their child(ren) is forcibly ripped away from them and then they are forced to pay for the destruction of their rights. The non-custodial parent's regular influence in shaping the child's development is virtually eradicated. A father cannot appropriately, or positively influence a child's behavior without physical custody. The Santosky Court also noted:

> Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.

Also, it is interesting that the Santoskly court also clarified in its holding "[t]he 'fair

preponderance of the evidence' standard … violates the Due Process Clause of the Fourteenth Amendment… A preponderance standard does not fairly allocate the risk of an erroneous factfinding between the State and the natural parents." The Court goes on to explain the risks in terminating parental rights. Yet, in reality, when one parent is relegated to a weekend visitor, their Constitutional rights in the "care, custody, management and companionship" of their child(ren) have been substantially eliminated, and without question, infringed upon.

Implications for recognizing the fundamental Constitutional rights that ALL parents possess, not only mothers, but fathers too, demands that the deprivation of "the fundamental right of parents to make decisions concerning the care, custody, and control" of their children constitutes a significant interference with," (citations omitted) the exercise of a fundamental Constitutional right. Deprivation of fundamental liberty rights "for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 96 S.Ct. 2673; 427 U.S. 347, 373 (1976). (Note Justice Kennedy's Troxel remarks on page 2 about parental rights under the First Amendment, the Amendment at issue in Elrod.)

This legislative body has a burden to society to weigh the studies and information demonstrating the devastating affects of father absence on children (a matter worthy of judicial notice) and then consider, as noted above, the ramifications of effectively removing fathers from their children. After all, there is now so much data and information about father absence that in custody matters, continued maternal preferences rise to the Due Process legal bar. The "[r]eality of private biases and possible injury they might inflict [are] impermissible considerations under the Equal Protection Clause of the 14th Amendment." Palmore v. Sidoti, 104 S Ct 1879; 466 US 429.

Best Interests of the child

Certainly, worth noting in Troxel, are Justices Souter and Thomas concurring commentary. They implicate a potential willingness to address, adjudicate, and possibly clarify the "free-ranging best-interests-of-the-child standard" (Souter's characterization of this "standard").

Also, particularly worth noting, both Justices Scalia and Kennedy clearly recognized the Constitutional protections of parental rights. Though they do not agree it appears Justice Scalia noted that part of the problem is the indeterminacy of "standards" in custody cases suggesting that many definitions, such as parent would have to be crafted and he would "throw it back to the legislature" to define standards and terms. Herein implicating the "standard" is a problem.

Further, in Justice Kennedy's dissent, he elaborated that if upon remand or reconsideration of the Troxel case, if there were still problems with the decision regarding parental rights, consideration of that and other issues at the US Supreme Court might be warranted, then went on to state:

> These [issues] include ... the protection the Constitution gives parents against

state-ordered visitation but also the extent to which federal rules for facial challenges to statutes control in state courts. These matters, however, should await some further case…

It must be recognized, of course, that a domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional right of a [parent] to make certain basic determinations for the child's welfare becomes implicated. The best interests of the child standard has at times been criticized as indeterminate, leading to unpredictable results. See, *e.g.*, American Law Institute, Principles of the Law of Family Dissolution 2, and n. 2 (Tentative Draft No. 3, Mar. 20, 1998)… Our system must confront more often the reality that litigation can itself be so disruptive that constitutional protection may be required; and I do not discount the possibility that in some instances the best interests of the child standard may provide insufficient protection to the parent-child relationship

…More specific guidance should await a case in which a State's highest court has considered all of the facts in the course of elaborating the protection afforded to parents by the laws of the State and by the Constitution itself.

The “free-ranging best interests of the child” standard came about for several reasons; 1) The tender years doctrine was repudiated, 2) “Judicial Economy” needed a [non] standard with a strong presumption of nearly limitless discretion to prevent constant litigation, 3) State legislatures were averse to taking up politically charged issues defining real standards, 4) It was more convenient to allow the judicial branch to process as many “no-fault” divorces as quickly as possible [“judicial economy”] while ignoring the root cause which necessitates divorce reform, 5) A HUGE volume of “Family” Lawyers, psychologists, and other special interests have a substantial financial stake in the break-up, destruction, and butchery of marriage.[3] *(it is extremely important to note here that in my extensive research over a few years, there are a few judges, and a few lawyers who have convinced me that not ALL of them are “evil”. Unfortunately, they are the exception as opposed to the rule)*, 6) NOW and feminists have a long history of marriage hatred and have lobbied AGAINST most, if not all, real attempts at reform.

In LAW (as opposed to tyranny), the clarity, singularity, and sharpness of absolutes makes for simple “yes” or “no” judgments. There is no argument, there is no fight, and there is no money to be made by this for the “family” lawyers. Absolutes of right and wrong, truth and lie, or remedy for a wrong are fundamental pillars of “rule by law”, the backbone of a cohesive society. The alternative is “rule by men” which inevitably leads to tyranny, and the worst chapters in human history. Yet ideas and principles of absolutes are anathema to a system of “rule by men” who spout their hatred, with derisions and “scorn” for such ideas of absolutes, branding them as “intolerance.” Where there is clarity, there is no argument. Where there is chaos, mayhem, disorder, and destruction, there is the Mercedes, Country Club, Golf, or fancy home for those who work in the aftermath of such destruction (for arguing on behalf of their clients). The realm of “family” law is generally opposed to any REAL standard that might have accountability and has widely embraced the “best interests of the child” [non-]standard.

The only custodial determination for two fit parents, is equal custody. This survives "strict scrutiny," does not violate Equal Protection or Due Process, is in the "best interests of the child," and is constitutionally sound.

The "old notion" that "generally it is the man's primary responsibility to provide a home and its essentials" can no longer justify a [state-sponsored PRACTICE] that discriminates on the basis of gender. No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas. Stanton v. Stanton, 421 US 7, 10 (1975). After all, the Court has also noted that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. Quilloin v. Walcott, 434 US 246, 255-256 (1978).

Even Laws and court procedures that are "fair on their faces" but administered "with an evil eye or a heavy hand" are discriminatory and violate the equal protection clause of the Fourteenth Amendment. Yick Wo v. Hopkins, 118 US 356 (1886). This principle is so fundamental to our system of justice (i.e. the "rule of law"), that as it approaches 125 years old, it still stands as not only unoverturned, but uncontroversial case law.

[As adapted from a Joint Custody brief from an unknown California attorney] There is logically only one possible distribution of custody among two parent's that is the least restrictive, and that is an award dividing custody equally between the parents. Any other custodial award determination will immediately impair one parent's fundamental right in an amount greater than what would otherwise exist in an equal custody award.

This is not to say that an award under which one parent received an extra day of the year for some logistical reason, would necessarily be unreasonable and therefore violate due process. Nor would it violate due process to award custody unequally where a parent voluntarily waves their fundamental custodial rights in some amount. And it would be completely irrational to assume that a court could offend due process by making an unequal custody determination, in the event that a parent is criminally or otherwise unfit to exercise custody over his or her child. But where both parents are reasonably fit custodians, and both assert their full fundamental rights to custody in court, the only determination that does not violate due process is equal custody.

Despite this obvious logic, neither the state, nor the court, acknowledges what should be an obvious conclusion of law. Rather, it is routine in custody determinations, where both parents assert their fundamental rights, for the court to ignore the parent's rights entirely and instead concentrate only on the state's interest in the child. We disagree that by itself, the best interests of the child is a talisman to dissolve all constitutional protections (United States v. Dionisio, 410 U.S. 1 (1973). Strict scrutiny is an extremely high bar to legislation that presumes a law is invalid unless it satisfies both the elements of the test, and as already demonstrated, any law or court order that determines custody unequally where both parents are reasonably fit, and both assert their fundamental rights, cannot pass that bar. A rather articulate citation on what is truly best for the child was noted in the New Jersey Court decision stating:

"The greatest benefit a court can bestow upon children is to insure that they shall not only

retain the love of both parents but shall at all times and constantly be deeply imbued with love and respect for both parents." Smith v. Smith, 205 A.2d 83 (New Jersey, 1964)

Thomas Jefferson offers insight on Due Process and Equal Application of the Law

- "[Our] principles [are] founded on the immovable basis of equal right and reason." --Thomas Jefferson to James Sullivan, 1797. ME [4] 9:379
- "An equal application of law to every condition of man is fundamental." --Thomas Jefferson to George Hay, 1807. ME 11:341
- "The most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens." --Thomas Jefferson: Note in Destutt de Tracy, "Political Economy," 1816. ME 14:465
- "To unequal privileges among members of the same society the spirit of our nation is, with one accord, adverse." --Thomas Jefferson to Hugh White, 1801. ME 10:258
- "[The] best principles [of our republic] secure to all its citizens a perfect equality of rights." --Thomas Jefferson: Reply to the Citizens of Wilmington, 1809. ME 16:336
- "Nothing... is unchangeable but the inherent and unalienable rights of man." --Thomas Jefferson to John Cartwright, 1824. ME 16:48

Conclusion

Liberty is a state of being and cannot be embodied in the law. Lawful and artful words only serve to place a fence around liberty, to bind it, to chain it, to alter its form into something other than liberty. Parenting has been accorded a special class of “rights” or “parental rights” that rise to the level of “fundamental liberty”.

Our Founding Fathers grappled with the issue of “individual liberty” as the tension existing between two or more equally recognized individual liberty interests--, at their point of intersection. What they constructed, for the marvel of the modern world, was a Constitution, which in few words recognized the sovereignty of the citizen, and the requirement of that sovereignty stopping at the intersection point of another’s liberty interests. A new nation was born and what was birthed was a Republican form of government who finds its form in Democratic, people centered government. That government’s purpose was to serve only as “umpire” and protector of those rights at their intersection.

At that point of tension between equal liberty interests, lies the embodiment of equity and justice [5] as memorialized above the Supreme Court, “Equal Justice Under the Law”. That “Equal Justice under the law” demands that where two fit parents interests in “the companionship, care, custody and management of … children” collide, equality is the rule rather than the exception.

Imposing itself upon individual liberty, our Founding Fathers saw fit to constrain the “state”. During the Constitutional debates, much history was discussed, the history of governments, of political systems, of people’s nature and motives, and of power--, power of governments to destroy, to enslave, and to crush through tyranny. A power that history taught them must be limited. To restrain this powerful “big brother” from abusing his smaller siblings and trampling on their individual liberties, a caretaker, a nanny, even a schoolmaster was employed.

The caretaker of those liberty interests is the Constitution. And that Constitution finds its nanny, even its schoolmaster in the core concepts of “a more perfect union, … establish[ing] justice, …insur[ing] domestic tranquility, …promot[ing] the general welfare, … [and] secur[ing] the blessings of liberty to ourselves and our posterity.” This schoolmaster dictates that all constructions, interpretations, and considerations of legislation, order, or law, must promote these principles, or at least, not be antagonistic to them. In the absence of propagation, any antagonism is patently unconstitutional, and under the Supremacy Clause of the US Constitution, states must avoid this antagonism. In the case of two fit parents, the only Constitutionally sound decision is equality of parenting, equality under the law, and “natural law” equality in the physical relationship.

When dealing with marriage, the early court declared “[w]e deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.” Griswold v. Connecticut, 381 U.S. 479, 486 (1965).

The RIGHT of parenting existed before governments of men, and existed at the first human, or preter-human birth (a hominid if one’s faith is in evolution), LONG BEFORE the zenith of the law’s existence. This “RIGHT” of parents existed before the edicts of tyrants, before the sovereign decrees of kings, before the 10 commandments, before Hammurabi’s code, before the Magna Carta, and LONG before Constitution of the United States. [6] Parenting is a special and unique kind of right with certain characteristics that our Founding Fathers described as “natural law” in the Federalist papers. Certainly any "[l]aws abridging the natural right of the citizen should be restrained by rigorous constructions within their narrowest limits." [7]

If you are a mother, you can almost be absolutely assured that your consequences for shredding this social contract will be some division of the marital assets, possibly taking the home and car if you are willing to allege (often falsely) that you have been somehow abused, some form of personal support, “child” support, and the children to reign control over your ex by using them as pawns and tools. You couldn’t do much better on a game show. And there is no lack of “family” lawyers to help. We no longer have a “no-fault” divorce system, we have a feminist propagandized “male-fault” system where all women are victims, and all men are considered child abusers, wife-beaters, rapists, and child molesters. Anyone studying the feminist propaganda that is rooted in our current “justice” system, will quickly discover the level of misandry displayed in custody cases all across the country. We can now see the absolute destruction, mayhem, chaos, and child abuse that is promoted through fatherlessness and the breakdown of marriage. Yet serious proposals to stem this tide are lacking.

There are shrill detractors of equal parenting parading extreme examples, in a propaganda-like attempt, insisting these exceptions are the norm. For example, accepting feminist groups views on matters of a presumption of equal custody, the party line is that all men are abusers, evil, rapists, and only want custody of the children to abuse them (references available on request). Lying propaganda is routinely used to dismiss the social studies demonstrating the importance of fathers. Instead, they push the “poisoned fruit” of

father-absence and male-hatred down the collective throat of our culture. Some of that propaganda even includes the idea that ALL of the men on this committee, in the Congress, in the Judiciary, are rapists, murderers, and child molesters; this feminist misandry is embraced in a “misguided chivalry”. So pervasive and evil is their influence that in allegations of child sexual abuse it is the FATHER who is targeted for investigation first by the Youth and Family Services organizations nationwide. Studies show that the biological father is one of the LEAST likely perpetrators of such a heinous act, and that such confirmed claims, of child sexual abuse, are generally associated with the paramour of the mother. Or, under the “super-Orwellian” (see footnote 1) standards in Domestic violence, no-evidence is required, merely the “fear-thoughts” to “win the family law game-show prize” of the house, the kids, the car, and the bank accounts, with child and spousal support to boot!

Under simple equity rules, if two people have the same constitutional interest in a piece of property, it is divided equally. Yet in a custody case, where the constitutional interest is "far more precious than… property rights” (May v. Anderson), courts routinely hamper, or outright RAPE [8] the constitutional rights of a parent (where fitness is not at issue) in an unconstitutional preference in making a “sole custody determination.” After all, "[i]t is well settled that, quite apart from the guarantee of equal protection, if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional." Harris v. McRae, 448 US 297, 312 (1980). “No-fault divorce” is the feminist and lawyer lingo for “automatic men-at-fault-divorce.” Only women get “no-fault” in courtrooms all across the country--; no matter how many families and children they destroy, it’s never their fault.

Recommendation

It is long past time to end the misguided feminist experiment in marriage destruction and restore the foundations of America’s families once again. Tie ALL FEDERAL TANF FUNDS to the constitutional requirement of a presumption of equal physical and legal custody.

If single-parent poverty is really so destructive to children, simply mandate custody to the higher earning parent, after all, if it is so destructive, that would be in the child’s best interests. Unless of course, that is another “straw man” propaganda tactic advanced by marriage and father hating special interests.

Tie ALL FEDERAL TANF FUNDS to MANDATORY prosecution for false claims in divorce or custody proceedings and create a SPECIAL FELONY FRAUD CLASSIFICATION FOR ATTORNEYS THAT PROMOTE THE USE OF FALSE CLAIMS (it’s more common than anyone knows, it’s the ultimate guaranteed “father-nuke” in custody proceedings, references available!)

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[1] George Orwell in his famous book “1984” spoke of a tyrannical government system where “thought-police” could imprison a person for improper thoughts. Today, under VAWA as implemented and practiced by the states, America has exceeded even George Orwell’s fertile imagination--; now you can be jailed

FOR SOMEONE ELSE'S THOUGHTS! All it takes is for a woman to claim that she is in "fear" to immediately remove a father from the home, the children, the bank accounts, and everything he has. There does not even need to be a threat, tangible or otherwise, only the claim of fear… What a wonderfully Orwellian country we live in today. This attitude pervades the entire domain of "family" law.

[2] Associated Press, Tuesday, June 26, 2001. Group: Courts favor women in custody cases. New Hampshire. The Union Leader and Sunday News. Numerous additional citations available.

[3] In fact, "Family" Lawyers depend exclusively on their livelihood from the breakup and destruction of families. The lucrative "expert" market is attractive to the psych professions, and the resulting counseling, pathologies, etc., make for a long-term boon to an industry heavily pressed by HMO and medical reforms. And, financial reasons [greed], is one of the items that have brought out some of the worst evils in humans in recorded history…

[4] The Writings of Thomas Jefferson - (ME) Memorial Edition (Lipscomb and Bergh, editors). 20 Vols., Washington, D.C., 1903-04; The Writings of Thomas Jefferson - (FE) Edition by Paul Leicester, Ford 10 Vols., New York, 1892-99.

[5] "We lay it down as a fundamental, that laws, to be just, must give a reciprocation of rights; that without this, they are mere arbitrary rules of conduct, founded in force, and not in conscience." --Thomas Jefferson: Notes on Virginia Q.XIV, 1782. ME 2:199

[6] Quoting from Griswold v. Connecticut, 381 U.S. 479, 493-494 (1965); In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there] . . . as to be ranked as fundamental." Snyder v. Massachusetts, 291 U.S. 97, 105 . The inquiry is whether a right involved "is of such a character that it cannot be denied without violating those `fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' . . . ." Powell v. Alabama, 287 U.S. 45, 67 . "Liberty" also "gains content from the emanations of . . . specific [constitutional] guarantees" and "from experience with the requirements of a free society." Poe v. Ullman, 367 U.S. 497, 517.

[7] Thomas Jefferson to L. McPherson, 1813

[8]rape (r p) *n.*

2. The act of seizing and carrying off by force; abduction.

3. Abusive or improper treatment; violation: *a rape of justice*.

The American Heritage® Dictionary of the English Language, Fourth Edition, (2000). Houghton Mifflin Company.