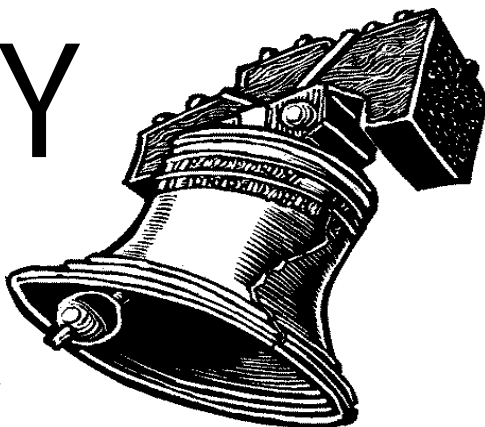


LIBERTY BELL

A News and Commentary Paper



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Tyranny in America -Where, Why, How, and Fighting Back: Part 4

Our Constitutional Rights Won! - and Lost?

WHY THE U.S. WAS FORMED:

Our founding fathers were well aware of the transgression of rights that a government can impose. As colonists and subjects of the Crown, they demanded the rights of Englishmen won some 100 years before. Yet England transgressed the colonists' rights of Englishmen for the profits that it could extract from the colonies. Incensed, we declared independence and insisted that "inalienable rights to life, liberty, and the pursuit of happiness..." existed for all men that were only to be 'secured' by government for the people, not granted to them according to its discretion.

Ratification of our constitution after the American Revolution was possible only by adding the Bill of Rights to assure all that there would exist rights that the state would not be permitted to take away except for clear crimes as recognized by one's peers in a trial. Such rights -such inalienable rights- now called fundamental, constitutional, or civil rights are also beyond the vote of the public. Every American should know them well and be ever vigilant to government's encroachment on them for some supposedly 'greater good', because our fundamental rights are the 'greater good'.

The Bill of Rights, now identified as the first 10 amendments, were written in clear english so all would understand their meaning. Nevertheless in enumerating them, our founding fathers feared that other fundamental rights, not listed, may be lost for lack of inclusion. For this reason the ninth amendment specifically states that such an enumeration of our rights shall not be construed to mean there are not other fundamental rights that the people had an inalienable right to enjoy.

As our nation progressed through the Civil War and into the beginning of the 20th Century, more amendments were added as it became recognized that the state (federal government or state governments) was denying rights to classes of people that the good conscience of the people knew was wrong. Specifically, the 14th amendment -born after the Civil War- demanded that the states treat all US citizens equally in regard to their constitutional rights and that no specific group (as blacks) of people could be denied any of these rights.

GOVERNMENT ACCOUNTABILITY:

Accountability of our government officials and ability for us to seek redress to unjust wrongs is tantamount to preserving our Constitutional rights. The Declaration of Independence complained about the unaccountability of England's actions to the people of the colonies. Also, as stated in Article V of Mass. Constitution, "All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are substitutes and agents, and are at all time accountable to them." and as stated in Article XI "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without denial; promptly, and without delay; conformably to the laws." Where accountability does not exist -or is operationally stifled- tyranny reigns.

The 14th amendment made each of the states accountable to the U.S. Constitution for each and every one of its citizens.

Other rights, not explicitly in the Amendments, but that carry the importance of an amendment -and therefore a fundamental right - are those arising out of individual cases decided by the Supreme Court. In fact in the opening years of the 19th century in the case Madison vs. Marbury the 'Supremacy Clause' was established by which any decision in case law made by the Supreme Court will override any other state or local law. I.e. any state law that conflicts with the constitution, its amendments, or Supreme Court case law is void. The Supreme Court has clarified and exposed many fundamental rights through case law -especially with regard to parental rights and has voided hundreds of state laws over time.

When the Constitution was formed essentially two jurisdictions of law were put in place for each citizen: Federal and those of each State. An understanding (referred to as 'comity') was implied that the Federal Judiciary will try to respect those decisions and judicial procedures of each of the states at least in education, marriage and divorce. The federal courts will deal principally with federal issues. Since the passage of the 14th Amendment and the great intermingling of federal and state issues in education, divorce-related issues, and many other areas, we should look to our constitutional rights in assuring ourselves of what we are ultimately due according to our fundamental rights, and not to state rules or laws that may conflict with them.

WARNINGS FROM OUR FOUNDING FATHERS:

Reject trading your liberties for security:

Benjamin Franklin stated, "if the people give up rights for security, they will find [eventually] they have neither." Government always tends to grow and encroach upon all manner of social institutions arises from the power and money that accrues to it and its representatives because it seduces the people with greater security for them -either in government benefits of one sort or another, or through an emergence state -as war. It seeks greater power and money to deliver these government benefits which ultimately restrict the power of individuals to enjoy or exercise their individual rights.

Maintain trial by informed jury to protect of your liberties against government encroachments

Jefferson knew that trial by jury was essential since a jury trial is the only anchor yet known to man by which the government can be held to the principles of the constitution. Adams knew that the jury need to be fully informed to act on its own conscience with regard to the law and the facts. I.e. to find for the defendant inspite of his actions if the law he violated is bad.

The founding fathers knew well that bad laws will always be pushed through by powerful special interest groups. So a fully informed jury is essential for protecting individuals against bad laws. Juries still have their fully informed position; they are just not told so by the court.

Maintain all officers of the state accountable:

Accountability of all persons in government is important. Most important is the accountability of judges, since they directly rule on the rights of defendants. The jury is a protection, in part, but where judicial unaccountability reigns so also will tyranny.

Maintain government branches separate in operation:

The Federalist papers discussed at length how important separating the three branches of government are. Collusion and benefits between branches -at state or federal level - undermines protection from tyranny taking hold.

OUR ULTIMATE RIGHT:

Our founding fathers formed this country in rebellion against an existing state -England. The Declaration of Independence states, "whenever any Form of Government becomes destructive to these ends [i.e. securing the unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness], it is the Right of the People to alter or to abolish it, and to institute new Government...". It also mentioned, "when a long train of abuses and usurpations..., depriving us in many cases of the benefits of a Trial by Jury... for transporting us.. for pretended offenses" as elements evidencing tyrannical rule. Massachusetts's Preamble to its constitution states, "The end of the institution ... to furnish the individuals...their natural [inalienable] rights,...and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures ... for their safety, prosperity, and happiness..."

OUR FUNDAMENTAL RIGHTS.

In recognition of any government's proclivity to restrict and suppress individual rights, our founding fathers placed limitations on the government's interference with your inalienable right to life, liberty, property, and your pursuit of happiness. These rights that you have - unless you have committed and been rightfully tried for a crime - are encompassed, first of all in the Bill of Rights, the further amendments, and then in pronouncements from Supreme Court case law. We enumerate some of your essential rights here:

Bill of Rights

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II: A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. (All citizens may with guns to protect themselves each and together from Government if it seeks to infringe the rights here put forth. That's the purpose of this amendment - to keep the government in line)

Amendment III: No soldier, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner prescribed by law.

Amendment IV: The right of the people to be secure in their persons, houses, papers and effects against any unreasonable searches and seizures by the government shall not be violated, no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Probable cause, Oath -i.e. an affidavit - punishable if lying or purposely misrepresentative of the facts -, who or what taken are all the essential points here)

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; no one shall be compelled in any criminal case to be a witness against himself, nor deprived of private property be taken for public use, without just compensation.

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defense. (Criminal prosecutions generally imply a jail sentence - a high level of rights deprivations. Any court action that can put you in jail requires a very high level of due process - as required in criminal prosecution)

Amendment VII: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (This means that the punishment must match the offense from a reasonable man's view.)

Amendment IX: The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people (What has not been affirmed as a fundamental right does not mean that it is not to be considered so except in a trial with a jury of his peers)

Amendment X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Key Additional Amendments:

Amendment XIII: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. (This means that the state cannot force you to work at what jobs it determines acceptable, nor can it force the product of your labor to be given to someone else if you have not committed a crime.)

Amendment XIV: Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (This amendment imposes the Bill of Rights onto the States and demands that all due process and equal rights be applied to all citizens even under state laws - and these laws cannot conflict with the constitution. There will be no law favoring one sex or race over another either on face value or operationally under the law.)

Amendment XV: Section 1. ...all citizens no matter race, color or previous condition of servitude have the right to vote

Amendment XIX: all citizens regardless of sex have the right to vote

Amendment XXVI: ...all citizens eighteen years or older have the right to vote.

Rights by Supreme Court Case Law:

You cannot be put in prison for not paying a debt either incurred by you through your agreement, nor imposed on you by a state.

You have the right - if you are fit - to the care, custody, maintenance, and companionship of your child(ren) since this is recognized as one of the most fulfilling aspects to a purposeful and satisfying life.

You have the right to follow any choice of lawful occupation without the state's interference.

You have the right to not have your private lives invaded by the state if you have not committed a crime.

You cannot be held (in jail or restricted in where you can go) without cause. (Writ of Habeas Corpus)

You cannot be incarcerated under civil or criminal contempt unless you have full due process warranted for such a serious deprivation of rights. That would entail a trial with witness you can call and evidence you can get to support you, and ability to cross examine your accuser - nothing less. You are in civil contempt only when you willfully refuse to obey an order of a court. You are in criminal contempt when you act up in a court or blatantly refuse to obey or comply with an order of the court.

All controversies in property in all suits between two or more people (except as by what has been the previous practice), parties have a right to a trial by jury and this method of procedure shall be held sacred Mass Art. XV.

What is absolutely designated for the protection of the people against an ever encroaching state are 1) the right to own property and 2) trial by an informed jury. (informed juries are those that understand that they can judge the law as well as the facts in a trial - and find according to their conscience on these two matters, irrespective of what the judge instructs them to decide or restricts them from deciding.)

Our founding fathers, Thomas Jefferson and John Adams both understood the importance of guaranteeing trials with fully informed juries. Jefferson stated, "The jury trial is the only anchor by which the people can hold the government to the constitution's principles".

DUE PROCESS REQUIRED TO DENY A FUNDAMENTAL RIGHT:

Due process implies that the legal process should be a fair process for the litigants when their rights are at stake. Our fundamental rights, also called our civil liberties, requires a higher level of due process than minor privileges (noncivil liberties) in society.

Under criminal law with real (clearly recognized) criminal behavior, much of this is straightforward; however, in civil processes, it is still supposed to be difficult for the state to deny or impair any fundamental right of an individual. In any case, civil liberties require substantive' due process whenever there is a chance that one of your civil liberties may be denied to you.

Two conditions are required for substantive due process: First, the state has to have a 'compelling interest' to deny your fundamental right. 'Compelling' connotes a grave circumstance - like death is imminent if the right is not withheld - not just a rational or legitimate reason. That's because our rights are OURS, they are inalienable; the government can't impair any right if it thinks it could handle things better! Second, if the compelling interest is achieved, the state can, then, only impair your fundamental liberty in the "least possible way", i.e. only to the extent necessary to meet its compelling interest.

There are three subsidiary requirements in these determinations.

First, the compelling interest cannot be vaguely stated, but must be precise, so that citizens may know beforehand what behavior will invoke impairment of their liberties. (The best interest of the child 'standard' is classically void for the vagueness).

Second, the burden of proof is on the state (or the person asking the state to impair the fundamental liberty of someone). It is a high burden of proof - at least "clear and convincing" (90%) in civil proceedings and certainly not "preponderance of evidence" (51%), and it is "beyond a reasonable doubt" in criminal proceedings.

Third, the state must particularize the case with detailed findings of ground level facts and clear causal connections to show just where the compelling interest is justified. It can't be a general excuse of sorts.

So you can see that substance due process required for impairment of a fundamental right has real standards so as to protect each of us from easy state denials of our rights. Much wisdom and suffering went into developing it. The protection of noncivil liberties require only procedural due process - necessarily a fair process, but the state doesn't need a compelling interest to deny it.

THE JUDICIAL PROCESS - WHERE WE CONFRONT OUR RIGHTS:

People discover what rights they actually have when they are confronted by the state under criminal prosecution or under a civil suit. The body of law dealing with how to go to court and the rules of what to do is called Procedural Law.

When a crime is committed -i.e. breaking of a criminal law-, the state seeks a suspect that it believes committed the crime and prosecutes him. A civil case is between two private parties and deals with a contract breakdown or a noncriminal wrong (a tort) committed by one against the other. Jail is not an option in a civil case.

Each person is under two jurisdiction under the nature of our American system: the federal and the State in which the incident took place. There a specifically federal crimes (like kidnapping, and mail fraud) and state crimes (rape, murder, theft, etc.) Some crimes can be picked up by federal law (drugs, and those involving interstate issues). Federal civil cases must involve either federal (constitutional) issues or the litigants must come from different states. Otherwise, your civil case will be tried in the state judicial system where you live.

We should all be aware of the legal procedure by which these actions are carried out.

The criminal procedure begins with:

1. a warrant for the arrest of a person. (remember how warrants shall issue!)
2. this is followed by an arraignment or indictment in which the charges against the person is made known to him and to which the state -as prosecutor- will through the trial procedure seek conviction of the person -the defendant- for such charges. The defendant has a like opportunity to defend himself against such charges.
- 3 A discovery process ensues during which both the prosecution and the defendant (with his lawyer) both have a right to gather all available evidence and witnesses in preparation for a trial.
4. A pretrial hearing is scheduled to clarify or possibly focus the issues for the trial. These days a Plea Bargain arrangement, 95%, is generally made here to preempt the need for trial. We'll comment on this alternative below.
5. Lastly the trial takes place where the prosecution must make its case beyond a reasonable doubt to the jury.

The civil case is analogous and starts with:

1. a complaint filed by the one who feels he was wronged in some way or in the breakdown of some contract. He is called the plaintiff, the other side complained about is the defendant.
2. The defendant answers the complaint to establish his position with regard to the issue of the complaint.

3. A discovery process takes place by both plaintiff and defendant incorporating the collection of evidence and witnesses, by means of depositions, production of documents, interrogatories, and affirmations on information relevant for the trial on the issues of the complaint.

Hearings may occur during this discovery process to either clarify or enforce discovery procedures or to temporarily make arrangements between the obligations of the litigants (plaintiff and defendant) until the matter is decided after the trial.

4. After discovery is completed, a pretrial is setup to focus the issue for trial -eliminating some issues perhaps. It is at this stage that plaintiff and defendant may make an agreement between themselves that would preempt the need for a trial. This is most often the case, 90%.

5. Lastly a trial takes place, if no full agreement is made, where each side defends his position and requests determination of the matter by the judge -after the jury finds either for the plaintiff or defendant. The jury may help in deciding the nature and amount of award. If you may suffer the loss of a constitutional right-such as legal or physical custody of your child, the burden of proof against you - such as your fitness - must be clear and convincing.

The losing party in both these processes, criminal and civil, can appeal to a higher (Appeal) court if he feels that the trial, the judgment, or procedures leading to it were unfair in some respect. END

EVIDENCE OF A BREAKDOWN OF OUR FUNDAMENTAL RIGHTS: THE JUDICIAL PROCESS - *Where The Rubber Meets The Road*

The warnings have not been heeded!

1) Rights operationally traded away for security benefits:

During predominantly the latter half of the 20th century the people have allowed government to seduce them with government promised benefits of security. Delivering them has permitted government to grow to unimaginable size, power, and control of every facet of our lives. Its octopus nature has put more than one out of five citizens directly in government employ with more seeking and getting special affiliation with some facet of government for its payments. To sustain and grow its power, government has targeted select groups of citizens for specific privileges which are, of course, at the expense of the nonselect groups. A host of affiliated agents, representatives, and the privileged citizen groups have become government-benefited special interest groups who lobby for more benefits at the expense of others groups not so well-connected or formed.

These government -benefited special interest groups overwhelmingly influence -at taxpayers expense- the elected branches of government and through them control and influence the judicial branches. They seek their own betterment at the expense of others, and are able to suppress the securing of fundamental rights of others though their power and the incestuous relations between the different branches of government. Their dominance allows them to set the tone at all levels of society as more of the people

must comply with contrived benefits and rules of government in their life.

2) Deterioration of Legal Processes and Trials by Jury

Indeed, powerful special interest groups -most especially, those funded and supported directly by the government are able to push through laws injurious to the fundamental rights other nonfavored classes of people. Abuse Laws are an example which requires no wrong doing yet deprives men of all their rights and sets them up for criminal prosecution for never a real criminal act - "just pretended offenses" (as mentioned in the Declaration of Independence).

Juries are not at all informed of their right to judge the law as well as the facts during a trial - a key protection against bad laws. Juries are excluded in family court where the greatest transfer of wealth occurs and sets the stage for enormous violation of due process and fundamental rights against fathers.

Enormous loss of privacy and the rights this implies occurs in family court as well as by phony emergencies such as perennial war and the need to know by government.

Rampant plea bargaining -a form of present day torture -in criminal cases forcing innocents to fear the excessive penalty possibilities of an unjust trial and thereby cop a plea. The Salem witch trials are back in more way than ever. Criminal penalties imposed -as incarceration-without the required due process for civil contempt as well as criminal

contempts. The Writ of habeas process has in large part been lost in federal court bureaucracy. Defendants can get up to six months in jail without a trial and certainly without a trial by jury.

3) The accountability of state officials -especially in the legal areas is almost nonexistent. Judges have created absolute immunity for themselves no matter what their offense while adjudicating a case. Aids to the court and lawyers are very well protected so almost any perfidy can take place by them and no redress is operationally possible.

4) Separation of Branches of Government:

Complete breakdown of the envisioned separation of government branches has caused tyrannical control of court by special interest groups -as most evident in divorce suits. Family court initiates the extortion of money from fathers under the rubric 'child support'. However, assigning this support collection to the DOR help increase DORs coffers through assisting federal funds. The DOR in turn pays money directly to the very family court system that unjustly denied the father his children so as to extort money from him.

These are just a few of the perversion of our rights. Ironically it is the perversion of equal rights legislation of the 1960's -to create new phony rights -like affirmative action, harassment, and abuse laws for favored group rights that has created the engine and interest groups that have eroded much of our rights. This is because the government through an unconstitutional 'greater good' mindset created and funded special interest groups that perverted and socially engineered the destruction that we now see in the rights of certain classes of people -fathers and white males in general.

PRESENT TYRANNY AGAINST FATHERS' FUNDAMENTAL RIGHT TO PARENT & OTHER FRAUDULENT STATE ACTIONS

The most blatant denial of the constitutional rights has been aimed at the heart of our society -the family- and specifically, fathers.

Benefiting special interest have effectively

1. eliminated the fundamental parental right of a father by depriving him of his children,

2. created the ability to extort from a father - under the threat of immediate incarceration- financial support for the mother who has stolen his children with the help of a perverted, unconstitutional family court process and

3. produced restraining order legislation guaranteeing elimination of the father at the whim of the mother.

Make no mistake about it, all these actions against father

occur by violating constitutionally required due process and most of the fundamental rights of fathers -as referral to fundamental rights shows.

These rights denials takes place under a state-imposed 'greater good' standard (than fundamental rights) called "the best interest of the child", a completely unconstitutional standard (as we shall see) in conjunction with the state imposing the status of 'noncustodial' parent upon fit fathers. This imposition requires father to support 'custodial' parents (overwhelmingly mothers) who then raise his children. Such a noncustodial classification it violates the 14th Amendments equal protection clause.

At stake in paternity and divorce suits -under present state law - are all the father's assets, a third or so of all he has and will earn for up to 22 years, his estate proceeds if he dies, the effective restriction of what work he can choose, his liberty, and most importantly his right to parent his children. State and federal tax money also fund much of the procedures and ancillary agents used in extorting money from fathers. Because of all this money, a whole divorce and domestic violence industry (DDVI) involving 100's of billions of dollars has exploded over the last 30 years with a multitude of special interest groups feeding at the trough supplied by these constitutional violations. This persecution occurs and

grows because of the power of these government-benefitted special interest groups that include the favored class of custodial mothers; they are powerful enough to persecute fathers while controlling judicial appointments and propagandizing falsely about deadbeats and batterers to the unwary public.

Clearly, this powerful industry (DDVI) has a vested interest in undermining constitutional processes for the nonfavored class - noncustodial fathers. If full and equal rights for father prevailed - as it should, implying the guarantee that each parent will have the responsibility to care and maintain his children for half the time, more than 97% of this industry would go out of existence...and they know it!

A FIT FATHER'S RIGHT TO PARENT IS A CONSTITUTIONAL RIGHT & CANNOT BE IMPAIRED IN A CIVIL SUIT:

There are few issues on which the U.S. Supreme Court has spoken so consistently as that of parental rights as a fundamental constitutional right (under the 1st, 9th and 14th amendments), and the right of the parent to determine what the best interest of the child will be. This parental right is entitled to the substantive and procedural due process at the clear and convincing level of proof in a civil suit.

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 [a] fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997). It also includes a substantive component to the process 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). The level of scrutiny required for state actions that infringe upon fundamental rights is "strict scrutiny", which requires the state to show that the infringement serves a "compelling state interest" and that there is no constitutionally less offensive way for the state to satisfy this compelling interest.

The foundational Supreme Court case establishing fundamental right to parent, to engage in any profession you wish is *Meyer v. Nebraska* 262 U.S. 390 (1923). In it the supreme court said, "the problem for our determination is whether the statute [a law restricting who can teach a language] as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error of the 14th amendment." ... "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

In a civil case - as divorce or paternity is - one parent cannot deny another parent his fundamental rights. In *NY vs Sullivan* (1964), the Supreme Court ruled that in a civil case between two persons, the state cannot impair the fundamental rights of one person over the other at simply a request or rational reason. This means that each party must jointly enjoy his full fundamental rights.

In *Mass, Felton v. Felton* 383 Mass. 232 (1981) one party in divorce cannot impair or restrict a fundamental right - such as in which religion to raise a child. One fundamental right cannot reduce another. Lastly in *Doe* (Baby Richard case) the right of the baby's natural father overrides the

mother's desire to put their child up for adoption under the "best interest of child" since "best interest of child" is not a compelling interest that can override a fundamental right - as is the right to parent.

These three cases alone show that parents in divorce must share their rights equally and that the rights of one parent cannot impair the rights of the other. A 50/50 sharing or alternating parenting, unless parent's agree otherwise, is the only constitutional solution.

THE BEST INTEREST OF THE CHILD STANDARD IS A FRAUD

Historically the Supreme Court has upheld parental rights over a 'best interest of the child' standard repeatedly and emphatically as in these cases:

Meyers v. Nebraska (1923) supra, struck down a law that forbid children from learning certain foreign languages, because the right to parent one's child as they wish was fundamental. *Pierce v. Society of Sisters* 268 U.S. 510, (1925) the Supreme Court struck down a law demanding that children attend public schools. The decision rested on the "liberty of parents and guardians to direct the upbringing and education of their children." *Skinner v. Oklahoma* (1942), struck down an Oklahoma statute that demanded compulsory sterilization of persons convicted three times of felonies because "marriage and procreation are fundamental to the very existence and survival of the race." It was noted that the right to parent "touches a sensitive and important area of human rights." *Moore v. East Cleveland* (1977) struck down a state law that impaired the ability of extended family members to reside together, such as an aunt and nephew because residing together supported the right to family life as fundamental.

In the 1978 case of *Quillon v. Walcott*, the Supreme Court ruled: "If a state were to attempt to force the breakup of a natural family, over the objection of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest," the Due Process Clause would clearly be violated.

All of these cases involve the right of the parents versus third parties. In 2000, the United States Supreme Court ruled in *Troxel v. Granville* 530 U.S. 2000, that grandparent visitation cannot be imposed without a showing of great prejudice to the child. The court also ruled that the "best interest of the child" standard did not do enough to safeguard the fundamental parenting right. Noted the *Troxel* court, "The liberty interest at issue in this case—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." Continued the *Troxel* court, "In light of this extensive precedent, it 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." (thanks to Rinaldo Del Gallo - Fatherhood member for noting these cases)

In *Parham v. J.R. et al* 442 U.S. 584 (1979) declares that the "best interest of the child" resides in the fit parent - not in the state: "Our jurisprudence historically has reflected Western Civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is a "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 525 (1925). See also *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Surely, this includes the "high duty" to recognize symptoms

of illness and to seek medical advice. The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interest of their children. W. Blackston, Commentaries *447; J. Kent, Commentaries on American Law *190.

As the Court declared in *Troxel*: [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. The implication of this is that to be Constitutionally sound, a state custody law must contain a strong presumption of joint legal and physical custody of minor children upon the divorce of the parents.

Lastly, *Santosky v. Kramer* 455 U.S. 745 (1982) emphasizes that in order to restrict a fundamental right to parent to any extent, requires a showing of clear and convincing evidence that serious harm will come to the child. [The complete history of the Court's rulings on the nature of parental rights includes also: *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *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); and *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).]

Therefore determination of custody (physical and legal) must receive the strict scrutiny guaranteed by the Due Process Clause of the Fourteenth Amendment. This is true regardless of whether the interference with the right is permanent or temporary. The Court has held that the 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, (1976). And any impairment one or the other parent's right can only be sustained under clear and convincing evidence that serious harm would result to the child.

Also according to the 'equal protection clause' of the 14th Amendment, two fit parents under a divorce or separation must necessarily sustain all of their fundamental rights to the extent that the other does. This results with respect to 'right to parent' in a presumption of equal partition of time parenting their child. During one's parenting time, he or she can control all the minor and major decisions about the child (as parenting implies), i.e. education, religion, medical, etc., as well as the typical day to day decisions.

With regard to all the other rights of individuals, e.g. income, property acquisition, etc., those rights remain unaltered. This would mean that one parent must not be required by the state to pay any fraction of his income to the other parent.

With the assurance to each parent that his equal parental rights will not be infringed in divorce or paternity actions as long as he (or she) is fit, and that one parent will not be financially destroyed at the financial advantage of the other, then far fewer 'strategic disagreements and incommunications will occur; in fact fewer divorces will probably result.

Ofcourse, if both parents wish, they may contractually agree with each other to share or partition the care of their child as they see fit and which agreement should not be subject to state interference other than to enforce it. Why, because they, together and alone, as parents, embody the best interest of their children. Likewise, if the parents cannot come to terms on sharing their parenting duties, then an 'equal default' partitioning should be mandated by the court to best preserve the fundamental rights of both parents. END