

Waiting to Explode?

The Perilous State of Parental Rights in America

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(This article is available to download for your use under the topic "Parental Rights" at www.childandfamilyprotection.org.)

[Note from Roy Hanson: It is very important that you read this entire article. Every part of it is important in order to understand the imminent and very real threat to your family and every other family in America. Your help is needed in fighting what may be the battle of the century over the survival of families in America. As Winston Churchill said in 1935, "*Want of foresight, unwillingness to act when action would be simple and effective, lack of clear thinking, confusion of counsel until the emergency comes, until self-preservation strikes its jarring gong -- these are the features which constitute the endless repetition of history.*"]

“At this point, I feel really alone. You go to your home where you've made your life for the last twelve years and it's empty.” That's how a Paradise, California father named Joe described his situation to local KHSL-TV on November 3. That morning, Joe had kissed his wife and 9-month-old son goodbye, and headed off to work. When he returned home in the evening, his son was gone.

During the day Joe's wife, impaired by postpartum depression and mind-altering pesticide poisoning, had taken the little boy to a local golf course and left him there to be found by a stranger, who handed the boy over to police. When he found out that evening, Joe immediately phoned the authorities, expecting to answer some questions and pick up his precious little boy. Instead, his son was handed over to Child Services, while his wife was admitted to the Behavioral Health clinic for observation. Now Joe was completely alone.

There are no allegations that either Joe or his wife has committed any crime. The mother's actions were irrational and dangerous, but they were not intentional, and they did not include Joe. Neither could they have been anticipated. A doctor, a counselor, and a pastor had all seen Joe's wife in the days prior to the event, and thought she would recover without incident. There was no sign that Joe should be concerned.

But the incident was a spark, and Joe's world exploded.

On January 27, 1967, a single spark ignited the air inside the cockpit of Apollo I, killing all three astronauts aboard. The horrifying accident was the result of several factors; avoiding any one of them could have prevented the catastrophe. The cockpit had been filled with pure oxygen to an unprecedented pressure, a highly inflammable atmosphere. The hatch opened inward, designed to protect against the vacuum of space rather than to provide a quick escape. Bare wiring beneath the seat provided an easy flashpoint. All it took then was a spark.

Parental rights in America today face just such a deadly combination. Using the analogy of the Apollo I catastrophe, (1) our domestic laws and courts provide a dangerous atmosphere for families; (2) our Constitution, because it was designed to protect us only from federal tyranny rather than shielding us from both federal and international intrusions, is now the dangerous escape-proof hatch; and (3) the “faulty wiring” of failed social services and family law practices creates sparks every day. In such an environment, can parental rights long survive?

An Explosive Environment: Domestic Law

For almost 200 years, the United States recognized constitutionally protected parental rights. In 1937, the Supreme Court determined in *Palko v. Connecticut* that parental rights were implied in and protected by the U.S. Constitution. The High Court reinforced this in its landmark 1972 private education case, *Wisconsin v. Yoder*, asserting that the “primary role of parents in the upbringing of their children is now established beyond debate as an American tradition.” Ironically, what was “established beyond debate” in 1972 has been completely taken apart in the last 30-plus years. The viability of the traditional nuclear family is in great peril.

More recently, while the Supreme Court continued the tradition of upholding parental rights in *Troxel v. Granville* (2000), it did so with disagreement among the Justices over whether parental rights are *fundamental* rights. The distinction between rights that are *fundamental* and rights that are *not fundamental* is crucially important.

Under current Supreme Court doctrine, all rights are not equal. A *fundamental* right, according to the *Yoder* decision mentioned above, cannot be violated unless the state (1) has an interest “of the highest order” and (2) protects that interest by the “least restrictive means.” The freedom of speech, for instance, while a *fundamental* right, does not allow for yelling “Fire!” in a crowded theater. In that case, the government has an interest of the highest order - protecting the lives of those who could be unnecessarily trampled to death - which it protects by the least restrictive means. It is not, after all, illegal to use the word “fire” in a sentence; one simply cannot shout it in a crowded venue without cause. A *non-fundamental right*, on the other hand, can be restricted if the government simply shows reasonable cause. For example, your right to drive down Main Street may be preempted for a few hours to allow for the local Christmas parade.

In *Troxel v. Granville*, only four Justices held that parental rights are *fundamental rights* protected by the Constitution. These Justices included conservatives William Rehnquist and Sandra Day O'Connor, as well as the more-liberal Stephen Breyer and Ruth Bader-Ginsberg. Justice Clarence Thomas, concurring, held that parental rights are fundamental rights, but that they are not actually *in* the Constitution. Justice David Souter wrote in a separate concurring

opinion exactly the opposite: that parental rights are “generally protected” by the Constitution, but that they are not fundamental rights.

Of the three dissenting Justices, Anthony Kennedy and John Paul Stevens claim that parental rights do not exist except in “balance against the State's...interests as *parens-patriae*,” (i.e. the state acts as the parent of minors) leaving the scope of parental rights at the discretion of government agents and courts. This usurpation of God-given parental rights is how liberal, judicial-activist judges will increasingly rule in the future if left unchecked.

Perhaps more significant, though, is the position of Justice Antonin Scalia, a conservative proponent of strict constructionism. By this philosophy, he believes that *no* rights are protected by the Court unless they appear in the text of the Constitution itself. While the Constitution by its silence prevents the federal government from violating parental rights, or any rights not expressly given to that government, that same silence leaves the Supreme Court unauthorized to step in and settle matters between citizens and the individual states. By Scalia's reasoning, it is not in the purview of the High Court to decide which implicit rights go to the states, and which to the people. An increasing number of conservative judges subscribe to the same philosophy, including new Chief Justice John Roberts and Justice Samuel Alito. With these two replacing Rehnquist and O'Connor, the *Troxel* case, if heard today, would have a very different and destructive outcome.

Yet, even the 6-3 win is hardly a victory for parental rights. The splintered nature of the decision has left ambiguity at the state and federal levels. Since its publication, *Troxel* has been cited in support of parental rights in California (*In Re: Rachel L*, 2008) and Nebraska (*Farnsworth v. Farnsworth*, 2008), but set aside by courts in Massachusetts (*Parker v. Hurley*, 2007) and elsewhere. Thus, **parental rights issues are being decided on a state-by-state basis until another case reaches the Supreme Court, now made up of judicial activists and strict constructionists. For parental rights, that equates to a high pressure, oxygen-rich environment waiting to explode - with tragic results for American families.**

A Backward Hatch: The Constitution and International Law

Meanwhile, we are locked into this atmosphere by the very thing that is meant to protect us from tyranny - the United States Constitution. Intended to limit the powers of government and prevent the abuses which the colonists suffered under England, the Constitution was not intended to entangle American families in today's complex international relationships. Two Constitutional phrases in particular, which were originally designed to protect us, are now locking us in to the encroaching dangers of international law.

First, Article VI of the Constitution states that “This Constitution ... and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby....” Often referred to as “The Supremacy Clause”, this section establishes that any international treaty ratified by our Senate immediately has the force of law, and over-throws every law that contradicts it except the text of the Constitution itself.

This was not an issue when the Constitution was written, because treaties were only used to establish alliances and to end wars. The clause provided that, if the U.S. signed a peace treaty with a former adversary, every state in the Union had to honor that peace.

Since the rise of the United Nations in 1945, however, the nature of international treaties has changed significantly. The United Nations Convention on the Rights of the Child, for instance, relegates all parents to mere caregivers of the “government's children”, assigned “responsibilities” and “duties”, but holding no rights where their own children are concerned. Were this treaty to be ratified by the Senate, the federal government would be required to oversee and authorized to intrude into every aspect of our children's lives, in order to ensure to the U.N. that children's rights are not violated.

Second, Article I, Section 8 of the Constitution asserts that “[t]he Congress shall have the Power...[t]o define and punish...[o]ffences against the Law of Nations.” Again, the wording was fine in its original context, giving Congress the authority to enforce international laws such as, for instance, those prohibiting piracy beyond our borders on international waters.

Today, however, this section is frequently used by activist judges to look beyond our own borders, deciding American cases by what is acceptable in other parts of the world. They find authority for their decisions not in the Constitution, but in Customary International Law (CIL), the modern equivalent of “the Law of Nations.” In *Roper v. Simmons* (2005), the Supreme Court admitted that it “has referred to the laws of other countries and to international authorities as instructive for its interpretation” of the Constitution.

Deadly Sparks: Any Excuse Will Do

With parental rights only tenuously upheld, is it any wonder parents all over the country are losing custody of their children, or the right to direct their up-bringing, for any and every possible reason? An on-line search for “Child Protective Services” will pull up long lists of articles stating that, “No charges have been filed, but the children were taken into protective custody.”

In Rhode Island, Diana Owen had her baby taken away by the hospital she turned to when her daughter was having breathing problems. Doctors accused her of "Munchausen by Proxy", a mental condition wherein parents seek attention for themselves by faking illness in their children, even though their own records and medical staff verified that the little girl's symptoms were real. Ironically, in Nebraska, Mary and Josue Anaya had their baby taken from them for the opposite reason; their convictions kept them from subjecting their son to a certain health test, so authorities came and took the newborn away.

When Sheila Sumey's parents grounded her at age 13 for sexual and drug-related activities, Sheila took her parents to court and became a ward of the state, much to their - and her - dismay.

When poverty strikes, poor single moms call Social Services for help with paying their bills, and are coerced into giving the government inappropriate authority over their children. Ethnicity

also plays a roll: African-American children are taken into foster care at a rate twice that of any other demographic, and reunited with their families at a rate of only half the average.

In Paradise, California, Joe has done nothing wrong, but he still waits on the court to decide when he can be a father again.

Repairing the Hatch: Amending the U.S. Constitution

The inflammable atmosphere of judicial activism and internationalist ideals will not just go away, and the sparks will continue as long as over-zealous bureaucrats and power-hungry judges rule our juvenile and family courts. But we can do something to save our children and the future of our nation. To keep with the analogy, we can turn our escape hatch around. We can amend the Constitution, so that it protects us not only from federal intrusions, but from international risks as well.

Some oppose Constitutional amendments as a matter of course, hesitant to change a powerful document that has worked so well for more than two centuries. In this case, however, change is coming not from the Amendment, but from the failure to pass it. Without the Parental Rights Amendment, Customary International Law will radically alter the way we, the people, and our government relate to one another. Only *with* the Amendment can parental rights, as have been upheld by the Supreme Court all these years, hope to be maintained as *fundamental* rights.

The Amendment has been introduced in the U.S. House of Representatives as H. J. Res. 97, and says:

SECTION 1

The liberty of parents to direct the upbringing and education of their children is a fundamental right.

SECTION 2

Neither the United States nor any State shall infringe upon this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.

SECTION 3

No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.

The proposed first section uses language already defined by the Supreme Court to establish parental rights as *fundamental*. This affords them the same protection as other basic rights, such as freedom of religion, of the press, and of speech, as we described above.

The proposed second section reinforces the first, but leaves room for government officials to step in when in fact a “highest order” interest does exist, such as in cases of true child abuse or neglect. This section provides that criminals cannot prey on innocent children without punishment, but protects parents' due process rights when they are accused of a crime.

Removing children based on shoddy allegations in anonymous phone calls would come to an end.

The proposed third section would defend against the threat of International Law, whether explicitly rendered by treaty, or implicitly applied through CIL court decisions. This sentence would protect American families from somebody else's laws which may disagree with our American values of liberty and justice.

Where We Are and Where We Are Going

The mission has already begun. The Amendment is already in the Judiciary Committee of the House of Representatives. The groundwork has been laid to support a massive grassroots mobilization to get this “hatchway” turned around.

But we need your help if American parents like Joe, Diana Owens, the Anayas, and the Sumeys are to be able to keep their children.

In the coming months, ParentalRights.org will launch a major petition drive called “10 and 2” (“Ten and Two”). Participants (10 and 2 Representatives) will be asked to get ten friends to sign a petition in the form of three post cards, and to ask for a \$1 donation to ParentalRights.org (PRO). The 10 and 2 Representative is then asked to recruit two more people to do the same thing. The cards will be held in reserve until the appropriate time, when we plan to mail them all to Congress at once - one each to the signer's Congressman and both Senators. Our aim is to reach more than 4 million participants - 10,000 for each Congressional district - and to send enough cards to shut down the Capitol post office. We want the Congress to know that parents in America are willing to stand together to save our children by preserving our parental rights. We have put this plan in place to be sure we get that message across.

An amendment requires two-thirds approval in each house of Congress, followed by ratification in three-fourths of the states. That's 67 Senators, 290 Congressmen, and 37 states. Many claim that the process takes seven-to-ten years, but we don't believe we have that long. Thus, we plan to move this bill aggressively through Congress within about a year.

Your Help Is Critical -- Starting Now

Right now, we urge you to become a 10 and 2 Representative. Visit the website at ParentalRights.org to sign up and get the pages you need to get started right away, and to track our success as others join when the larger “official” launch takes place. As a 10 and 2 Representative, you will help put the pressure on Congress now, and become part of a vital network with which we will work in the various states later on.

We also need sponsors to fund this monumental effort. Donations are gratefully welcome on-line at <http://www.parentalrights.org/contribute>, or by mail to: ParentalRights.org, P.O. Box 1090 Purcellville, VA 20134. Because PRO is a 501(c)4 non-profit organization specifically seeking to change federal law, direct donations cannot be tax deductible, but they are vital to our success. Tax-deductible donations, however, can be made to the special fund set up for PRO by

the Home School Foundation, a 501(c)3 organization, by visiting <https://secure.hslda.org/HSF/support.asp> and checking the box for the ParentalRights.org Fund.

Today in Paradise, California, Joe continues to wait for a judge to decide if an innocent man can have his baby back. "I would move mountains for my son," Joe vows through his tears. But, to continue with our Apollo I analogy, he is still strapped in -- in a dangerous atmosphere. We have to rescue him and all American families.

Together, we can effect the repairs our nation needs to protect our children by empowering parents -- through the Parental Rights Amendment. The time is now - before the "window of opportunity" is gone.

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