

The Killing Fields of Family Court

The History, Process and Origin of its tyranny

by

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I Status Quo for Fathers in Family Court

Under family court divorce actions, fathers face almost certain slaughter. Their rights, their children, and their money and possessions are ripped from them without them ever doing anything wrong or showing unfitness.

Divorce judgments confiscate the majority - if not all - of a father's possessions, assigns legal and physical custody of his children to the mother, then extorts a weekly pound of flesh from him under the euphemism of child support that can leave him near destitute and often sets him up for criminal sanctions for not paying what he can't!

A father who retains shared legal custody find it carries virtually no rights and can be taken from him at the whim of the mother. His assigned visitation does little more than prove to his children that their father has no right to parent them. The mother often uses it to wean them off him to outright alienating them from him.

The state, through unconstitutional family court procedures, now takes possession of children of fit parents under divorce or paternity suits, but then generally awards them to their mothers. This ameliorates and mitigates outrage from the public, serves anti-father abuse propaganda and abandonment, and fosters profiteering by the state, court affiliates, and mothers all at the enormous and cruel expense of fit and decent fathers.

Family court judges, having operationally unbounded discretion, ignore and laugh at constitutional law that protects a parent's right to his children. Because of this, it is the family court that is the lynchpin upon which the present father-plundering system relies and turns.

The federal government – seeking ever greater control of its citizens and their money – provides states with financial incentives to create and collect greater amounts of child support from fathers. States, in turn, reward its judiciary and family court affiliates for maintaining a system that destroys fathers, families, and freedom. Members of the Bar and other family court affiliates such as social workers and psychologists, along with immense state (DOR/CSE) and federal collection (IRS) bureaucracies - and of course mothers - support and profit from this slaughter.

Thomas Jefferson warned against an unaccountable judiciary - which is what we have now. The federal government, in concert with the judiciary, has created its own incentive to breakdown our family culture.

The social philosophy of John Locke espoused individual and property rights to be first and foremost preserved by government. Also, the protection of the innocent was one of the highest goals of Law. Lord Blackstone's maxim is well known - "Better that ten guilty persons escape than that one innocent suffers". This clearly shows that at one time the government would rather let the guilty go free than to cause harm to an innocent person. But the current family court system cares not about the rights of fit and innocent parents – and particularly of fathers. It routinely punishes them without them ever doing anything wrong.

And what's their excuse? They claim they're doing it all for the 'best interests of the children'. Of course they claim their right to determine the best interests over and above the natural right that fit parents have to that right. That's unconstitutional and morally wrong. But that's their excuse for usurping parents' rights to their children –and garnering all the profit and power it brings for doing so.

We'll treat the evolution of this excuse - 'best interest of the child' - presently.

But we should also realize that the U.S. has become a nation with the highest per capita incarceration rate. And that - in criminal and civil courts - plea bargaining and summary judgments have displaced the need to prove guilt or fault by jury trial.

Why? It's not for efficiency in truth and justice but because - as written by Judge William G. Young of the Federal District Court in Boston - "Those who have the temerity to "request a jury trial guaranteed them under the U.S. Constitution, face 'savage sentences' that can be five times as long as those meted out to defendants who plead guilty and cooperate with the government."¹. So we see that foregoing having to prove fault is based on scaring innocent parties into admitting guilt or fault. This produces high conviction efficiency and fame for prosecutors. With this sort of prosecuting efficiency, many more people can be prosecuted for reasons of profit and fame – without ever having to really prove guilt.

Likewise in family court those fathers who do not “cooperate” in accepting their slave status – denied of their rights, their children and then extorted - are shown the boot-heels of the state's police power. The courts can and will impute income to father that's more than he makes. He's set up for certain jail time when he falls behind in untenable child support payments. He'll have no jury to protect him when the family court judge jails him under contempt for not paying it all.

Today parents – but overwhelmingly fathers - are frog-marched out to the killing fields of our socialist-inspired “family” courts. We need to be aware of this and armed with truth and history so we can understand the true tyranny fathers face.

Never accept the lies the judiciary (and their cohorts in plunder) tells and enforces under the police powers of the state. History teaches us that tyrants always acquire greater power for

themselves at the expense of the people. Generally this same history records the fall of these tyrants and their tyranny, though unfortunately, most often at a fearful cost.

II History of state usurpation of parent's and other rights for profit – Parens patriae

“Parens patriæ” is a Latin phrase meaning ‘the country acts as parent to the child’. This notion was introduced into English law by Protestant King James I to Parliament in 1609. He claimed to rule not just by ‘divine right’ but as a “god” on earth. He could act in *parens patriæ*, by which he effectively ‘owned’ the children of the nation. He made these claims to bolster the legitimacy of the English monarchy in contradiction to the Pope, who also claimed to be ‘father’ to all. The concept of ‘king as god’ was distasteful even to many Protestants.

In 1625 King James’ son, Charles I inherited not only his father’s over-exalted claim but a troubled realm with an ongoing internal struggle against the emerging authority of the Parliament of England. This impasse had led the King’s ministers - servants of the Crown - to employ the ‘Kings’ Chancery Court’ to implement the King’s political will without the support of his subjects or Parliament. With this court the King implement his will without the benefit of due process (i.e. a fair legal process) of law to the litigants unlike the requirements of common law courts.

The chancery court was held in a palace room known as the “Star Chamber”. This term soon became synonymous with unlawful practice under supposedly legal procedures (referred to as ‘under color of law’). By 1642, the relationship between the King and ‘the ruled’ had degenerated into open civil war. Charles paid the price of his arbitrary practice of law by being beheaded in 1649.

Restoration of Charles’ son, Charles II, to the throne of England in 1661 required contingencies among which was to later include the Habeas Corpus Act of 1679. This provided a lawful demand for immediate release of a person after an emergency hearing fails to verify the legality of a jailing that person.

During these times, many of the American colonists fled the old world to escape the religious conflicts and persecution. They wished to live in a new world of peace and accord with the laws of God.

Additionally and concurrent to the slow death of the divine right of kings, philosophical and social writings – from Locke and Hobbes as examples – sought to understand how man is situated in the world and what laws he should obey. Such writings would strongly influence America’s founding fathers’ attitudes.

Phrases such as “the laws of nature and of nature’s God” derived from such writings. Implicit in these writings was the concept that God had imbued all his creation with fundamental or

inalienable rights. For man to best flourish, government should be in concert with those rights - and not imposing arbitrary laws to contravene them.

Court deliberations which sought consistency in laws and rights came to be known as the Common Law. It was described as the “Laws of Highest Reason” because it was the body of laws that recognized the immutable hand of God reflected in the ‘laws of nature’.

Eventually, America’s Founding Fathers complained of the arbitrariness of the laws and restrictions with which the British Empire dealt with the American colonies. The colonists - as the English citizens they were – made ‘Petitions for Redress of Grievances’ to the Crown. But these were continually ignored. The colonists recognized that they were being deprived of their ‘Rights of Englishmen’ earned in the late 1600’s – a century earlier.

It became clear to them that as far as the British were concerned, the American colonists were to be denied their rights in favor of colony-derived profits for the King and Parliament. The colonists clearly stated their grievances in their Declaration of Independence since England’s treatment of them had given them cause to revolt.

America adopted the English common law tradition (as opposed to European continental law). Under it, the courts incorporated the habeas corpus doctrine to such an extent as to allow it to be brought before every judge in every jurisdiction. If just one judge found a detention unlawful, the prisoner would be immediately released.

The same right of habeas corpus was granted to parents to rescue their children from being kidnapped by a parent who did not have a legal right to the child or by the state itself. Under the Common Law, the state would never presume a right to interfere with the parent-child relationship. The state simply enforced the natural and property rights of the parents to their children. Children are the heirs of their parents’ estate and fortune; and parents are the key to their children’s education and culture.

The marriage contract was recognized as crucial to the preservation of family and protection against destitution. The family also maintained society’s wealth and culture. As such, the common law upheld the marriage contract. So the state and its courts simply enforced the marriage contract. There was no room for judicial whim here.

Under the Common Law, married men had the sole natural right and sole property rights over their children. The state had no arbitrary powers over those rights, unless a parent failed to uphold his natural law obligations to sustain his child. The state simply implemented Common Law fiats with regard to custody. Those fiats also guaranteed an unmarried woman’s sole rights to her children and no claim on her children’s father(s). Neither was there a way to prove fatherhood nor did society desire to encourage the family disruption and destitution that mothers of out-of-wedlock children produce.

The Common Law held that the state had the right to interfere only when the child needed “rescuing”. The parent had to first fail his responsibility to the child’s maintenance as his natural

obligation. The state would eventually, by statute, determine any punishment or penalty for a parent's failure to meet these natural law obligations.

Proprietary rights that parents had with regard to children are more properly termed a 'right of property'. This right of property does not imply that children are inanimate objects and could be done with as such - as abortionists wish. But the law does not hold children as equal with adults in light of responsibility under the law. The language of the common law held children under the age of majority as "infants". Even today, they are referred to as "minors".

Since children are by nature not responsible, they aren't held accountable to the law. Who must be responsible for them has rights to them. Property rights are the most cherished rights - or should be in a free society. As free persons, we own ourselves and our property; and - as parents - we own our children. Consistent with this ownership is the natural love for their children and the best wishes the best for them that fit parents have.

"Property Rights" mean different things based on the nature of the 'property'. But one aspect common to all concepts of property rights is the owner's right to exercise his free will over his 'property'. The parents' property right to their children allows them to control their children's actions. A parent tells the child what religion he'll participate in, what TV shows not to watch, when to go to bed, where they will live, and what to eat. The child's free will is constrained by the parent's free will.

In a socio-political model, John Locke's Constitutional Republic, the social compact was based on "natural rights" and the property rights of parents. He describes as *fundamental rights* those rights which the state is to protect for citizens - and not disregard.

The Common Law had rules of custody in divorce. Married men held absolute title to the custody of their children even during and following a divorce. Unmarried women who had "bastard" children had absolute control over their children. Having a child out-of-wedlock was frowned upon as irresponsible and undermined the culture. Only through wedlock was a father agreeing to be responsible to his children.

The right a parent had to his child was difficult for the state to sever. Even in custody cases where a parent leaves a child with a relative to establish himself elsewhere, the judicial function in a subsequent custody dispute would need to confirm if the parent intended to abandon the child permanently. This would be determined by asking questions such as: 'how long had the parent left the child', 'was there meaningful contact with the child during that time', and 'were there presents on events such as birthday's'. There was no judicial discretion - only clear legal determinations on whether the parent was "fit", or whether the parent had - of his own free-will - abandoned his natural right to his child.

As such the Common Law concept of "best interest of the child" could only be invoked by the state if the parent was unfit or had willfully abandoned the child. If so, only then could the child be 'rescued' by the State and the state (i.e. the court) could take ownership to determine who else should own the child.

Eventually, the courts could prosecute a parent for the criminal act of willful abandoning and not providing for a child. A court of law –with a jury – would be required, and could impose an appropriate remedy. This usually consisted of imposing child support on that parent without allowing the reciprocal natural right of custody of his child.

In 1839 the British government re-evaluated the concept of children under what were considered the ‘immutable laws of nature’! It devised what became known as the “Tender Years” doctrine. The Tender Years Doctrine was based on the age of the child and introduced the proposition at law of the ‘natural fact’ that infants need time to be weaned, and so enabled the law to modify ‘natural right’.

This new interpretation (of the immutable laws!) under a divorce stated that even while the father had a natural right to the children born in lawful wedlock, God would not rip a ‘child of tender years’ from its mother. But the tender years doctrine was not imposed if the mother had been the cause of the divorce,(e.g., she committed adultery).

The ‘tender years’ doctrine was not universally accepted by judges. But by their convention, judges were relieved of discretion on the matter. Strict rules were still based on the immutable laws of nature, that even under a new rationale, could still be enforced as a lawful order.

The American courts, well after the signing of the Constitution, briefly debated this rude and foreign alteration of a law passed off as a new immutable law of nature. Amazingly, they adopted it – and did so without the British caveat that the mother must not be the cause of the divorce!

What do we have today? Now, the state has formally abandoned the Tender Years doctrine and the rationale of “immutable laws of nature”. The state through its courts also usurps the parental rights of fit parents –which is an act of ownership – and then assigns ownership of the child according to its whim. So the family court (and thereby the state) assumes its roll as *parens patriæ*.

To effect its *parens patriæ*, the state bypasses ‘courts of law’ (that must follow written law on each issue) and rules through what are referred to as ‘courts of equity’. In equity rulings, judges can do as they will to effect whatever end they deem appropriate in their eyes.

American courts can act both as law and equity courts. But equity court should not be invoked if there is law that determines that matter at hand. Family court illegally claims equity jurisdiction in disregard of fundamental rights law. Equity jurisdiction operationally has unlimited discretion. This is not supposed to be the case, but there’s really no effective way to guard against it. An equity approach in courts naturally brings about the same result as England’s Star Chamber Chancery Court which was an equity court. You’ll remember the Chancery Court was abusive to established law but afforded judgments according to the whims of King James I.

Under the Family court, parents can’t rely on their natural (fundamental) right to parent unless they are proven unfit. Such fundamental law – though rooted in Constitutional law - is simply

ignored. Instead, parents must try to prove to the court who of the two would be the better custodian for the state's property - their child. The state ignores their fundamental parental rights and acts according to its whims. In this case there's plenty of state and federal incentives for courts and other to ignore fundamental rights of parents.

In fact, state usurpation of a fit parent's right to his child has no precedent in common law. It's a precedent only of the worse totalitarian regimes.

For nearly four hundred years, Criminal, Common Law, and Equity courts operated in a fairly consistent and predictable manner. By Lord Blackstone's definition, a court is a place where:

1. A plaintiff complains of an injury,
2. A defendant is accused of causing that injury, and
3. The facts are determined in a fair and impartial trial, with judgment imposed by jury, although a defendant usually had the option to be heard only by a judge.

However, under the "modern" "Family court" is a place where:

1. A Plaintiff asks the state for favors,
2. A Defendant asks the court for favors, and
3. A court that imposes its will, granting favors to one party –overwhelmingly the women, with no regard at all for the fundamental and property rights of the other party - men.

This is wrong because:

The family courts are not wholly equity courts; they are responsible first to uphold law – constitutional law - and to preserve all fundamental rights. Accordingly, the state –through the family court - cannot deprive a fit parent of his natural rights in a court of 'equity'.

We can summarize the transgressions of the family court now:

- Family courts are committing major due process violations by creating criminal rulings under 'equity' determinations – devoid of the protection of due process. They do this by ascribing Common Law desertion to 'equity' and 'Best Interest' determinations based on the 'state determining who is the 'better parent'. Although even this determination does not care about the better parent but caters to mothers under incentives and pressures from government and its affiliates.
- Family court creates and promotes invidious gender discrimination (ruling against fit father's rights to their children) as it perverts Common Law into 'equity law' in custody awards. It makes any determination it wants in violation of constitutional law – with unfettered discretion.
- The state – through the family court unlawfully increases its powers by taking custody from fit parents – overwhelmingly fathers.
- The state – through the family court - also violates property rights in deriving profit from the unlawful denying a fit father his child get Title IV monies.

- The state – through the family court – creates a class of non-custodial parent (overwhelmingly fathers) which is without precedent and in violation of Constitutional law and Common Law.
- It creates child support orders as it wishes – never before imposed – on fit and willing parents (overwhelmingly fathers).

In synopsis, the state

1. unjustly punishes fit fathers by taking their children, their property, and their income - enslaving them and jailing them for not conforming to its tyrannical demands
2. damages children by depriving them of their father and the psychological, social, and economic advantages that he - by nature - affords to them
3. destroys the family structure including all the intergenerational relations that together represents a community of survival, prosperity, culture, and ultimately the main bulwark against tyranny, and lastly
4. rewards itself with all its agents (politicians, lawyers, judges, social services, police,..) and its affiliates (mothers who deny fit fathers equal custody and extort money from them under the euphemism of child support, anti-father organizations and groups –feminist based or otherwise) at direct expense of fathers, children, and family.

The next issue to address is where does the state find justification to assign a fit parent to a noncustodial class and deny further fundamental rights of his. How can it set up a virtual police state tyrannizing fit fathers? Where do these powers come from and why does this tyrannical system continue to exist and grow?

III Socialistic Perversion of Family Court into the State’s engine of tyranny against fathers, family and freedom

In the 1920s, Lenin needed fewer peasants but a great many more workers for the industrialization of Soviet Russia. He also needed greater control over the Russian people to force them into the Marxist-Leninist mold. The Soviet state contrived no-fault divorce to destabilize the village peasant family in order to provide additional workers for the factories. This family destabilization would free up females as workers for the state. To accomplish this destabilization, the State’s police power would decide who got custody of children in divorce. And to entice women to divorce, the state uniformly gave the children to women, along with a percentage of the father’s income.

The American system apparently unwittingly adopted this process under what is called the Wisconsin Model. It was a thinly veiled version of the Soviet divorce system, right down to the percentage allotted for child support.

However, with regard to child support percentage, the Soviet salaries or wage didn't have taxes taken out or housing cost. The state provided a salary for food, clothes, and discretionary spending; things like housing were provided by the state. As a result, taking twenty-five percent of a Soviet wage is vastly less severe than taking twenty-five percent (or more) of an American gross wage which included taxed monies. Family law is another instance where the use of an alien law did not account for all the variables of a dynamic, democratic society – not to mention gross constitutional violations.

So why would America import the Marxist/Leninist philosophy of state power over natural rights, and even more alarmingly, over Constitutional rights?

The answer - as it was for King James, King Charles, and for King George III - is power and money.

Feminist beginnings were tied closely to communistic principles. Certainly, freeing women from the supposedly patriarchal structure and guaranteeing them a sort of free love has always been part of their scheme. So choosing divorce and reaping the children, money and income from the father was quite acceptable to them. They certainly were in favor – and still are – of the present family court custody process.

Also, Family Law divorce litigation accounts for 40% of the total combined revenues of all lawyers and of the court systems. There's a lot of 'family' money for all to grab and divide among themselves even when no one has done anything wrong! Additionally, a parent's connection to his or her children is important; they'll fight for them at great legal expense. Fathers especially must fight at enormous and debilitating financial and emotional expense – and they do.

Without the anchor of respect for God given natural rights governments always degenerate into a totalitarian regime. The vast human slaughter that took place under the ungodly communist regimes of China and Russia attest to this.

So too, as the absolute anchors of fundamental rights provided in our Constitution are exorcised from judicial deliberations, tyranny rises. Any excuse will do to overreach constitutional protections of all litigants; best interest of child and safety of women are the common excuses now. The state determines what it (and its power factions) think is best – for themselves; it disregards its first charge - the protection of individuals and their property – i.e. people's fundamental rights.

Our constitution established a limit on state powers - not a grant to choose unlimited powers. The state's, the courts', and the judges' intrusions into the family and the destruction of the fathers and fatherhood - as it's carried out - constitute treason. Their elimination of a parent's (i.e. generally a father's) right to trial by a jury of his peers in family court proceedings is essential to keeping judicial control from the people.

The present family court destruction of fathers and families continues to exist because the court

almost assuredly transfers ownership of the child wholly to the mother. Women's power and privileges have been infused in much of our governmental systems and thinking by enormous social programs over the last 50 years.

The illegal privilege that women have usurped in court determinations and government programs under VAWA (Violence Against Women Act) and 'women's equality legislation' has helped to vilify decent men and fathers. Court impositions on fathers of illegal restraining orders and unjust and often untenable child support orders have criminalized decent and fit fathers. These actions, along with enormous anti-father propaganda of feminist-backed politicians and programs, keep the general public unaware of the tyranny that fathers now face.

Having covertly taken away the rights of citizens, the state now claims that child support or custody determinations did not have the right to a trial by jury as they actually did before and at the signing of the Constitution – a clear example of historical revisionism. Thus, by perverting Common Law notions and practices based on natural rights, the state now imposes what has proven to be a Marxist/Leninist philosophy of no-fault-divorce and custody determination. It claims that it's a state's right to not have a trial by jury. It ignores due process of law, natural rights, and constitutional rights through its perversions of law and legal rationale.

A Question for the reader:

So How Are We To Stop The Killing Fields Of Family Court – And Guarantee The Fundamental Rights Of Both Parents?

That's for all to start thinking about. It may entail a fearful cost. But fathers, family, children and freedom are paying a fearful cost now.

1 "Cases Keep Flowing In, But The Jury Pool Is Idle" , Adam Liptak , The New York Times, <http://www.lexisone.com/news/nlibrary/n043007d.html>