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Stanley v. Illinois: An Introduction to the Rights of Unwed Fathers

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The family has long been the basic structure of society. "The rights to conceive and raise ... children has been deemed 'essential', and among "the basic civil rights of man" (Stanley 645). The courts avoid interfering in the rights of raising a family as much as possible. However, there is a point when the courts are justified in stepping in. While traditionally only the rights of the parents have been considered, the rights of the children have become increasingly important. The practice of family law in today's society is a constant battle in balancing the rights and obligations of all members of the family.

"The custody, care and nurture of the child resides first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder (Stanley 645)." Parents are given both responsibilities and rights concerning their children. While the definition of a parent may seem obvious in the biological sense, the legal definition is more complicated. Prior to the early 1970s, many states refused to acknowledge families where the parents were not married. For example, Illinois held that only married couples would be considered "legal" parents of their children,
The idea was that when the couple was married, they formed a "legal" alliance granting them both privileges and responsibilities. This presented a problem when it came to illegitimate children. As no legal contract was made, neither parent had any enforceable "responsibilities" concerning the child. The child became known as filius nullius, meaning "child of no one." In such matters, the state recognized that someone must be held responsible for the child. The natural mother gained this legal responsibility. The mother was easier to identify than the father was, and often the unwed father showed no concern for the child.

The unwed father was not included in the legal definition of "parent." However, where the putative father was identified, he was given responsibilities, but without rights. In the case of Wallace v Wallace, the court went to the extreme in stating that, "The father has the duties to his illegitimate child equal to the duties of a father of a legitimate child, but he has none of the rights enjoyed by the father of a child born in wedlock (Larson 1036)."

The courts were slowly beginning to realize the importance for the child to have a relationship with its father. In the case of Levy, a verdict was reached, stating that "the obligations and rights of parents ... affords illegitimate children a right equal with that of legitimate children to require support by their father (Larsen 1036)." One trial judge in New Jersey added to this growing belief by saying, "I think it is much better for the child to have the father ... to infuse into it at an early age the natural love and affection that it should have for a parent who is interested in its well-being." Despite the increased effort to improve the father-child relationship, unwed fathers were still denied any rights concerning their children.

The case of Stanley v Illinois was a landmark case for furthering the rights of unwed fathers. Illinois did not include unwed fathers in its statutory definition of parents. Thus, if the mother died, the children became wards of the state as there was no one with "any legal right or obligation with respect to the ... children (Brady 159)." Peter Stanley had his children removed from him under a similar situation. However, the decision of the United States Supreme Court held the Illinois statute to be unconstitutional. Stanley v Illinois was the beginning of a movement to increase the rights of unwed fathers.

Peter and Joan Stanley had lived together for eighteen years without being married. During those years, they had three children. Peter Stanley acknowledged the children to be his own and helped to support and raise them. When Joan Stanley died, the Circuit Court of Cook County took the children into custody (Leibowitz 176). At the dependency hearing, the trial judge found that Peter Stanley was a "legal stranger" to the children and thus had no right to a custody hearing. The children were placed in a court-appointed home. Stanley immediately petitioned the Illinois Supreme Court. He challenged the state statute that defined parents, claiming the statute denied equal protection to unwed fathers.

According to the law, the courts could not take custody of a child without first holding a neglect hearing to find the parents unfit. This was standard procedure when it came to a married, divorced, or adoptive couple. Even the unwed mother had this
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Stanley immediately petitioned the Illinois Supreme Court. He challenged the state statute that defined parents, claiming the statute denied equal protection to unwed fathers. According to the law, the courts could not take custody of a child without first holding a neglect hearing to find the parents unfit. This was standard procedure when it came to a married, divorced, or adoptive couple. Even the unwed mother had this
right. However, unwed fathers were denied that hearing. Stanley believed that by guaranteeing that hearing to everyone except unwed father, all unwed fathers were being denied equal protection of the law.

The court rejected Stanley's claim. It found that the fitness of the unwed father was irrelevant to such cases. In order to take custody of the children, the state only had to prove that the dead mother and the living father had never been married. The court upheld the statute holding that "the distinction between unwed mothers and unwed fathers was rationally related to the purposes and policy of the Juvenile Court Act (Leibowitz 196)." Stanley would not accept this decision. The United States Supreme Court granted a writ of certiorari and the case was heard on October 19, 1971. One year later, the Court delivered their 5-2 opinion reversing the decision of the Illinois Supreme Court.

The decision of the Court was explained in a judgement released on April 3, 1972. It was written in three parts. The first part introduced the main issues, the second discussed due process, and the third section discussed equal protection. The decision was followed by a dissenting opinion by two justices.

One of the main questions the Court considered in its decision was that of the state interest. If the state had a significant reason for creating the statute, it would have been allowed to remain intact. (An example of such state interest is the required age for a person to obtain a driver's license. In this case, the state interest of safety overrides the individual interest of driving prior to that age.) According to the Juvenile Court Act, the state's purpose was to "strengthen the minor's family ties whenever possible, removing him from custody ... only when his welfare or safety ... cannot be adequately safeguarded without removal" (Stanley 645). The Court found the statute to be contrary to its own state purpose.

The Supreme Court also took into consideration the presumptions that the state made concerning unwed fathers. The state held that a majority of unwed fathers were unfit to take care of their children and that an even larger number did not want to be involved with their children. The Supreme Court answered this assumption by saying, "It may be ... that most unmarried fathers are unsuitable and neglectful parents. But all unwed fathers are not in this category" (645). The Court continued by stating that while making such an assumption may have been more efficient, "the Constitution recognizes higher values than speed and efficiency" (645).

The decision of the Supreme Court was based mainly on due process. They found that unwed fathers had the right to a hearing before their children were taken into custody because the Illinois law gave that right to other parents. The Court then answered the question of equal protection based on this decision of due process. Since the state denied Stanley the right to a hearing, it had denied him equal protection under the law.

We conclude that, as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents ... the state denied Stanley the equal protections guaranteed by the Fourteenth Amendment. (645)
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Did the Court properly consider due process in this case? Peter Stanley was only claiming his right to equal protection had been denied, mentioning nothing about due process. The lower courts did not consider due process in their decisions. The Supreme Court seemed to justify their use of the due process clause by noting that the lower courts could have used it.

The Supreme Court could have ruled in favor of Stanley, looking at only the equal protection issue. This could be achieved by finding the “father's interest in the custody of his children is a fundamental right” outweighed the state interest (Brysh 303). Considering the classifications of sex and marital status “suspicious” would also bring about these measures (303). The decision of the Court to rely on the due process clause resulted in confusion for lower courts, as the equal protection section was not thoroughly explained.

Justices White, Brennan, and Stewart agreed with the decision in its entirety. Justice Douglas joined in parts one and two. Justices Powell and Rehnquist took no part in the consideration or decision of the case. Chief Justice Burger and Justice Blackmun disagreed with the majority opinion.

The disagreement had to do with the way the Court came to its decision. According to Cardinale v Louisiana, “the Court cannot pass on a question not raised in the courts below” (Leibowitz 176). In other words, the question of due process was not raised in the lower courts and they felt it was improper for them to consider it. They also believed Illinois had a right to recognize only those “father-child relationships that arise in the context of family units bound together by legal obligations arising from marriage” (Brady 159). The final dissenting opinion held that there was no reason to find that the Illinois statutory definition of “parents” violated the constitutional right of equal protection.

There are two ways to look at the facts of this case. The first is in considering the rights and obligations of the parents while the second deals with those of the child. The different viewpoints are nearly contrasting in this situation and each deal with different rights and responsibilities.

Several responsibilities must be considered when looking at the parents. The most obvious responsibilities lie in taking care of the child. However, there are also legal responsibilities to consider. In a marriage, a legal contract binds two people to certain obligations. When parents are married, it is easier to hold them to their responsibilities of their family. However, it is impractical to require a marriage before the rights and duties that go with a family can be instituted. Divorce and unwed parents are continually rising. While our society would greatly benefit from families bound by marriage, it would be impossible to enforce any restrictions trying to accomplish this.

It is also important to look at how these situations affect the child. It is widely held that children do better in a home with both parents. The lessons they learn about interacting with people from their parents are invaluable. However, in real life, an increasing number of children are being raised in single-parent homes. It is imperative to consider how the child might best be served under these conditions. The rights of illegitimate children must remain equal to the rights of legitimate children. The right to know and associate with both parents is included.
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“To the illegitimate child, the father is never putative” (Brady 159). For the sake of the child, the unwed father should be allowed to gain custody when the mother is not able. Where the mother has custody of the child, the father should have the right to be a part of that child’s life. The Court made a wise decision in extending more rights to the unwed fathers.

*Stanley v Illinois* opened the door to several controversial issues. It was a landmark case in the rights of the unwed father. It also brought up issues dealing with sex discrimination and the place of gender-based role divisions in our society. Most importantly, however, this case set a precedent to illegitimate children more rights in associating with their fathers.

**WORKS CITED**


Brady, Robert M. “Right of Unwed Father to a Fitness Hearing Prior to State Imposition of Wardship over His Illegitimate Children.” *Suffolk University Law Review* 7 (1972): 159


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