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Ryan Juden

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# THE IMPACT OF SUPREME COURT DECISIONS ON FAMILY LIFE

RYAN JUDEN

*Some decisions made by the Supreme Court could  
appear to destabilize the independence of  
and respect for families.*

**T**he Declaration of Independence states that all citizens have an unalienable right to life, liberty, and the pursuit of happiness. The Founding Fathers framed that document in order to protect people from heavy-handed governmental infringement in their lives. Later when the Constitution was written and ratified, it outlined exactly what restrictions government entities must accept when legislating about citizen choices. The underlying assumption in the documents developed during America's infancy was that citizens have the right to form and govern their own families. According to Dr. Mark E. Brandon, political science professor at the University of Michigan, "There is evidence that the creators of the Constitution imagined that the family would play an important role in preserving the republican forms of politics that the Constitution entrenched."<sup>1</sup> While Brandon argues that the Constitution should preserve the family, some decisions made by the Supreme Court could appear to destabilize the independence of and respect for families.

A century ago, in *Murphy v. Ramsey*,<sup>2</sup> the Court said that the two-parent family is "the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent minority which is the source of all social and political improvement." Professor Robert A. Burt stated that the Court still approves of "the paternalistic, authoritarian family of the Amish community," but "other kinds of families,

welfare families, non-marital families and informal groupings and communal arrangements that perform some of the functions of the families do not receive the same kind of judicial imprimatur.”<sup>3</sup>

The Founding Fathers were influenced by Aristotle’s views on government and family when they framed the Constitution. Aristotle asserted that the family was formed first and subsequently formed the government for assistance. This would suggest that government should be subordinate to the family rather than preeminent over it. As a result, the Constitution places the family above government, reserving the right to step into the family arena only when absolutely necessary for the health and safety of the individuals there. Aristotle said, “Hence it is evident that the State is a creation of [the family].”<sup>4</sup>

Although the Constitution does not directly define or answer questions regarding the family, it implies that the family has the basic privileges of life, liberty, and property, as mentioned in First, Fourth, Fifth, Ninth, and Fourteenth Amendments. These rights, which are referred to in many court cases as the “fundamental right of family integrity,”<sup>5</sup> show that the Framers assumed that the families and those that headed them had responsibility for the choices of the group as well as the individuals within it.

When cases dealing with family issues have been granted *certiorari* by the Supreme Court, the principle of judicial review has been applied. Because the Constitution states that none “shall make or enforce any law which shall abridge the privileges or immunities of citizens,” it is important that the process of deciding how cases are determined needs to respect that mandate. “Limits on government were built into the Bill of Rights in order to make the Constitution palatable to voting citizens who had lived with copious government intrusion in their lives. The Due Process clause in the Fourteenth Amendment provided heightened protection against government interference with certain fundamental rights and liberty interests.”<sup>6</sup> This amendment provides protection from certain kinds of government intervention, both federal and state.

As the Court uses of judicial review to evaluate their jurisdiction and decisions, they refer to decisions of the past. It is conceivable that the rights of families could be seriously altered in the future because of the decisions that are currently being made in that realm. That is why it

is imperative that citizens be active in monitoring decisions made by the Court. It is necessary that they actively participate in the legislative process. That way legislative processes can determine family policy in the United States, not judicial activism. Judicial activism of the last half-century shows how easily the law of the land could be altered.

The Supreme Court has the responsibility of deciding ultimately what the Constitution means and how its succinct statements of fundamental law are to be applied to ever-changing situations. For this reason, the meaning of the Constitution is subject to change because the members of the Court change over the years and because ideas or policies considered acceptable in one era are unacceptable in another time.<sup>7</sup>

In recent decisions some of the Justices on the Court have admitted that its power to use the Constitution as the basis for ruling specifically in family decisions is ambiguous. Justice Antonin Scalia claimed that he was disturbed that the Court is overstepping its bounds by propagating decisions on family issues. He wrote a dissenting opinion in *Troxel v. Granville* stating, “[The Supreme Court is] ushering in a new regime of judicially prescribed, and federally prescribed, family law.” His concern addressed “judicial vindication of parent rights under [a] Constitution that does not even mention them.”<sup>8</sup> Despite the Court’s apparent uncertainty of its jurisdiction in regard to families, it is consistently ruling in cases that influence them.

There are several cases in which the Court assumed jurisdiction and ruled in ways that had major impacts on society. One of the first major decisions in the family arena in the last fifty years was *Griswold v. Connecticut*. This case dealt with a state policy that prohibited the availability of certain types of contraception to individuals. The Court found that the State did not have the right to regulate contraceptives, citing that the Constitution provides for a certain degree of privacy. While the Court championed the family right to privacy in deciding *Griswold*, this case broadened judicial review in an area previously avoided.

In *Roe v. Wade*<sup>9</sup> the Court took the next and largest step toward altering previous assumptions about the family. The Court legalized the

accessibility of first trimester abortions to all and later abortions to those whose doctors claimed their life would be in danger if they remained pregnant. This outcome met with mixed public opinion at the time.<sup>10</sup> This decision was not only paramount in increasing government involvement in family policy, but it redefined the Court's earlier definition of the family given by Justice Douglas in *Griswold v. Connecticut*: "Marriage is the coming together, for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, a harmony in living, and a bilateral loyalty."<sup>11</sup>

In addition, *Roe v. Wade* stated that a mother did not need to inform the father of her child before obtaining an abortion. Eva Rubin points out, "When abortion is available, the decision to have an abortion is likely to evoke conflicts and opposing interests within the family structure."<sup>12</sup> Ruling that a father has no legal voice in the decision to abort has serious implications for the "harmony of living" or "bilateral loyalty" in marriage. Conversely it promotes conflict, opposing interests, and instability. Granted, those who are choosing to obtain abortions are not always married nor do they always have partners who intend to establish a family with the mother of their child. However, for those who are married, this decision shifted the parental paradigm by making the decision to abort between the mother and doctor, excluding the father. Therefore, the Court undermined its own definition of "a two-parent family as a sure foundation of a stable society."

Another effect of *Roe v. Wade*, intended by the Court or not, is the implicit discouragement for people to form stable, enduring families. Rubin agrees with this statement by stating, "By separating sex from its normal consequences, [they] discourage family formation."<sup>13</sup> This decision not only affects the family directly, but it affects the traditional reinforcements of the family, such as religion and community, that have historically promoted and protected the American family.

There has always been a unique relationship between the family, community, and religion. For most people, religion is a supportive institution that helps to strengthen the family. In *Doe v. Santa Fe Independent School District*, the Court ruled against public prayer at football games.<sup>14</sup> The impact of this decision confines the use of

religion in ways that were traditional at the time of the birth of our nation. Although the Court accepts the principle that God gives us unalienable rights contained in the Constitution, the Court denies that the Creator should be thanked and honored for these rights in public and in prayer. Mauro and Ringel claim that this decision blasts a hole in separation of church and state." Another impact of it is that it severely limits the use of religion and principles taught at church that parents depend upon in order to strengthen their families.<sup>15</sup>

In the case of the *Boy Scouts of America v. Dale*, the Court voted in a narrow 5–4 decision that States could not force Boy Scouts to accept homosexuals as leaders of young men.<sup>16</sup> Since this case was decided by a split vote, it is likely that there could be future challenges on this case. The Boy Scout program provides an environment in which young men are taught morality along with basic skills and patriotism. The Scout Oath includes the principle of morality. Through campouts, merit badges, community service projects, and other activities, Scouts make friends and learn together how to live in ways that reinforce traditional values. Although Scouting programs are not perfect, their goal is to help children learn how to become future leaders in society.

In *Troxel v. Granville*, previously discussed, the Court ruled 6–3 that the Washington State law stating that "any person who requested visitation had a right to visit children" violated fundamental parental rights. Troxel sought a guarantee that grandparents would have the right to visit their grandchildren, even if that was against the wishes of the parents.<sup>17</sup> "The Court ruled that grandparents are not included in the nuclear family and are therefore not entitled to visitation rights."<sup>18</sup> This is an issue of family independence. The decision in *Troxel v. Granville* verifies parental rights to determine what happens to their children. By accepting this case, the Court expressed a willingness to adjudicate within family law. Others have a dim view of that judicial oversight. Governor John Engler of Michigan wrote, "It is essential that Washington acknowledge the limits of government. It has never been, nor will it ever be, a substitute for the family."<sup>19</sup>

Justice Sandra Day O'Connor wrote the majority opinion in the *Troxel* case. She stated, "The demographic changes of the past century make it difficult to speak of an average family."<sup>20</sup> She also wrote, "There

will normally be no reason for the State to inject itself into the private realm of the family."<sup>21</sup> In another case, Justice O'Connor contradicted that statement by conceding, "The Court as a federal entity has the right to inject itself in the family."<sup>22</sup> However, there are very few reasons for the government to inject itself into the family, including decisions regarding parent's fundamental right to make decisions concerning the care, custody, and control of their children as long as basic care and concern are exhibited.

Current trends suggest that the Court will continue to exercise judicial authority over the family. As a result, government policies regarding the family may be determined judicially rather than legislatively. Future cases with impacts on family policy that are scheduled to be tried the Supreme Court include marriage between members of the same gender, abortion pills, and partial birth abortion. In my opinion, the Court should exercise greater restraint when ruling on cases that affect the family. They should respect the traditional family pattern that has created centuries of stability in civilizations and uphold the assumptions of the Founding Fathers.

## Notes

1. Mark E. Brandon, "Family at the birth of American Constitutional Order," *Texas Law Review* 77 (April 1999): 1195.

2. *Murphy v. Ramsey* (114 U.S. 50, 1885).

3. Robert A. Burt, "The constitution of the family," *Supreme Court Review* (1979): 329.

4. Aristotle, *The Politics*, 1253a2.

5. *Bennett v. Jeffreys*, 40 N.Y.2d 543, 356 N.E. 2d 277, 387 N.Y.S. 2d 821 (1976).

6. *Washington v. Glucksberg*, 521 U.S. 702, 720, 138 L. Ed. 2d 772, 117 S. Ct. 2258.

7. Martin Guggenheim, Alexander Dylan Lowe, and Diane Curtis, *The Rights of Families* (Evanston, IL: SIU University Press, 1996), 87.

8. Linda Greenhouse, "Justices deny grandparents visiting rights," *New York Times* (June 6, 2000): 1A.

9. *Roe et al. v. Wade*, District Attorney of Dallas County, 160 N. J. 562, 734 A. 2d 1196, No. 70-18 410 U.S. 113; 93 S. Ct. 705; 1973 U.S. LEXIS 159; 35 L. Ed. 2d 147, January 22, 1973.

10. [www.galuppoll.com](http://www.galuppoll.com).

11. *Griswold v. Connecticut*, 381 U.S. at 486 (1965).