

Process Clause.⁶⁷⁴ And the concept of “family” may extend beyond the biological relationship to the situation of foster families, although the Court has acknowledged that such a claim raises complex and novel questions, and that the liberty interests may be limited.⁶⁷⁵ On the other hand, the Court has held that the presumption of legitimacy accorded to a child born to a married woman living with her husband is valid even to defeat the right of the child’s biological father to establish paternity and visitation rights.⁶⁷⁶

The Court has merely touched upon but not dealt definitively with the complex and novel questions raised by possible conflicts between parental rights and children’s rights.⁶⁷⁷ The Court has, however, imposed limits on the ability of a court to require that children be made available for visitation with grandparents and other third parties. In *Troxel v. Granville*,⁶⁷⁸ the Court evaluated a Washington State law that allowed “any person” to petition a court “at any time” to obtain visitation rights whenever visitation “may serve the best interests” of a child. Under this law, a child’s grandparents were awarded more visitation with a child than was desired by the sole surviving parent. A plurality of the Court, noting the “fundamental rights of parents to make decisions concerning the care, custody and control of their children,”⁶⁷⁹ reversed this decision, not-

⁶⁷⁴ *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (plurality opinion). The fifth vote, decisive to the invalidity of the ordinance, was on other grounds. *Id.* at 513.

⁶⁷⁵ *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977). As the Court noted, the rights of a natural family arise independently of statutory law, whereas the ties that develop between a foster parent and a foster child arise as a result of state-ordered arrangement. As these latter liberty interests arise from positive law, they are subject to the limited expectations and entitlements provided under those laws. Further, in some cases, such liberty interests may not be recognized without derogation of the substantive liberty interests of the natural parents. Although *Smith* does not define the nature of the interest of foster parents, it would appear to be quite limited and attenuated. *Id.* at 842–47. In a conflict between natural and foster families, a court is likely to defer to a typical state process which makes such decisions based on the best interests of the child. *See Quilloin v. Walcott*, 434 U.S. 246 (1978).

⁶⁷⁶ *Michael H. v. Gerald D.*, 491 U.S. 110 (1989). There was no opinion of the Court. A majority of Justices (Brennan, Marshall, Blackmun, Stevens, White) was willing to recognize that the biological father has a liberty interest in a relationship with his child, but Justice Stevens voted with the plurality (Scalia, Rehnquist, O’Connor, Kennedy) because he believed that the statute at issue adequately protected that interest.

⁶⁷⁷ The clearest conflict to date was presented by state law giving a veto to parents over their minor children’s right to have an abortion. *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Planned Parenthood v. Casey*, 503 U.S. 833 (1992). *See also Parham v. J. R.*, 442 U.S. 584 (1979) (parental role in commitment of child for treatment of mental illness).

⁶⁷⁸ 530 U.S. 57 (2000).

⁶⁷⁹ 530 U.S. at 66.