

ing the lack of deference to the parent's wishes and the contravention of the traditional presumption that a fit parent will act in the best interests of a child.

***Liberty Interests of People with Mental Disabilities: Civil Commitment and Treatment.***—The recognition of liberty rights for people with mental disabilities who are involuntarily committed or who voluntarily seek commitment to public institutions is potentially a major development in substantive due process. The states, pursuant to their *parens patriae* power, have a substantial interest in institutionalizing persons in need of care, both for the protection of such people themselves and for the protection of others.<sup>680</sup> A state, however, “cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.”<sup>681</sup> Moreover, a person who is constitutionally confined “enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests.”<sup>682</sup> Influential lower court decisions have also found a significant right to treatment<sup>683</sup> or “habilitation,”<sup>684</sup> although the Supreme Court’s approach in this area has been tentative.

<sup>680</sup> These principles have no application to persons not held in custody by the state. *DeShaney v. Winnebago County Social Servs. Dep’t*, 489 U.S. 189 (1989) (no due process violation for failure of state to protect an abused child from his parent, even when the social service agency had been notified of possible abuse, and possibility had been substantiated through visits by social worker).

<sup>681</sup> *O’Connor v. Donaldson*, 422 U.S. 563, 576 (1975). See *Jackson v. Indiana*, 406 U.S. 715 (1972); *Vitek v. Jones*, 445 U.S. 480, 491–94 (1980).

<sup>682</sup> *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982). Thus, personal security constitutes a “historic liberty interest” protected substantively by the due process clause. *Ingraham v. Wright*, 430 U.S. 651, 673 (1977) (liberty interest in being free from undeserved corporal punishment in school); *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 18 (1979) (Justice Powell concurring) (“Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental actions”).

<sup>683</sup> In *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), the Court had said that “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” Reasoning that if commitment is for treatment and betterment of individuals, it must be accompanied by adequate treatment, several lower courts recognized a due process right. *E.g.*, *Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala), *enforced*, 334 F. Supp. 1341 (1971), *supplemented*, 334 F. Supp. 373 and 344 F. Supp. 387 (M.D. Ala. 1972), *aff’d in part, reserved in part, and remanded sub nom.* *Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir. 1974); *Donaldson v. O’Connor*, 493 F.2d 507 (5th Cir. 1974), *vacated on other grounds*, 422 U.S. 563 (1975).

<sup>684</sup> “The word ‘habilitation,’ . . . is commonly used to refer to programs for the mentally-retarded because mental retardation is . . . a learning disability and training impairment rather than an illness. [T]he principal focus of habilitation is upon training and development of needed skills.” *Youngberg v. Romeo*, 457 U.S. 307, 309 n.1 (1982) (quoting amicus brief for American Psychiatric Association; ellipses and brackets supplied by the Court).