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Sex May be Free, but Children are Not

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Abstract

A brief argument in favor of responsible sexual intimacy and taking parental responsibility for the children that are produced. A one-time act of making life – just like a one-time act of taking life – can trigger a lifetime of responsibilities.

Keywords: sex, marriage, non-marital children, parental responsibility, child care

Thirty-eight percent of all American children are now born out of wedlock, and it costs American taxpayers \$112 billion per year. Those are the sobering numbers just reported by the U.S. Census Bureau and by the Institute for American Values. The Census Bureau numbers break down as follows: 28% of all Caucasian, 50% of all Hispanic, and 71% of all African-American children were born to single mothers in 2007. Compared to children born and raised within marital households, non-marital children on average impose substantially higher costs on society for anti-poverty, criminal justice, and education programs and in lost tax revenues. According to the Institute for American Values, those costs exceeded \$1 trillion this past decade.

Happily, we no longer visit the sexual sins of fathers and mothers upon their illegitimate children. American states have removed most of the chronic legal disabilities that were historically imposed on an illegitimate child's rights to property, inheritance, jobs, education, civil benefits, and more. Most remaining forms of discrimination against illegitimate children are now struck down as violations of the equal protection clause of the Fourteenth Amendment.

But what the Fourteenth Amendment gives with its equal protection clause, it takes back with its due process clause. Due process privacy rights now spare adults from criminal liability for engaging in consensual sex outside of marriage. With the legal stigma of both illegitimacy and promiscuity eliminated, illegitimacy rates in the United States have soared – more than doubling since 1975 -- and the corresponding extra social costs have soared, too.

Rather than simply continuing to pass on the costs of sexual liberty to taxpayers, we need to get better about assigning responsibility where it is due: on both the mother and the father of the non-marital child. Historically, adulterers, fornicators, and other sexual criminals paid dearly for their crimes -- by fine, prison, whipping, or banishment, by execution in extreme cases. But those punishments often only exacerbated the plight of their illegitimate child, who in extreme cases was now left without a natural network of family resources and support. Today, adulterers and fornicators pay little if any for their consensual sex -- protected in part by new cultural norms and constitutional laws of sexual privacy. Even if one wanted to pursue a neo-Puritan or Talibanic path -- I, for one, do not! -- it is highly unlikely that a new criminalization of adultery or fornication could pass constitutional or cultural muster.

But the elimination of criminal punishment for extramarital sex should be coupled with a much firmer imposition of ongoing civil responsibility on couples whose sexual dalliances produce children. After all, the same due process clause that exonerates promiscuity also licenses contraception, which is widely and cheaply available now, indeed free in some quarters. Those who choose to have children out of wedlock notwithstanding these options need to pay for their children's support. And that support needs to be enough to ensure that these children will have a life comparable to that of children born within marriage. Fathers, in fact, need to pay a bigger share of those costs, given that mothers bear the heavier biological costs in bringing the child to term.

I am no fan of shotgun marriages or forced cohabitation of a couple suddenly confronted with the prospect of a new child. That often deepens the pain for everyone. I am, however, a fan of aggressive paternity and maternity suits, now amply aided by cheap genetic technology. I support firm laws that compel stiff payments of child support for non-custodial parents and that garnish the wages, put liens on the properties, and seek reformation of insurance contracts and testamentary instruments of those parents who choose to ignore their dependent minor children. I also support tort suits by illegitimate children who, as adults, seek compensatory and even punitive damages from their parents or their parents' estates in instances where these children have been cavalierly abandoned or notoriously abused as children. And I am a big fan of a much more ambitiously funded and amply facilitated adoption law that would give parents of illegitimate children another real option.

This is not grumpy conservatism but elementary liberalism. Every right has a corresponding duty, and the misuse of a right can trigger heavy ongoing responsibilities. There may be a right to bear arms in the United States, but there is a duty not to kill another except in proper self-defense. A single impulsive act of unjustly killing another may trigger a lifetime of responsibilities of paying back the victim's family and society. So it is with the right to have sex. Government has no business policing the consensual private sexual activities of adults. But a single impulsive act of conceiving a child should trigger a lifetime of responsibilities to care for that child. As with the taking of life, so with the making of life, there are no statutes of limitation on these responsibilities. Sex may be free, but children are not.

The state imposes child support obligations automatically if the child is born to a married couple; the father or mother will pay dearly if they ignore, abuse, or desert their child especially in its tender years. It should be no different for a child conceived out of wedlock. Ongoing support for that child should not just depend upon the voluntary good will of the father, or a successful paternity suit by the mother. Absent adoption by another, that child is the moral and fiscal responsibility of its father and mother until it reaches the age of majority. And the state needs to impose these costs automatically and hold parents of illegitimate children accountable if they fail to pay.

In the old days, this was accomplished by putting dead beat parents of illegitimate children under indentured servitude contracts managed by local justices of the peace. The parents worked for the state as many years as was necessary to repay the tax costs for their children's support. This is no solution for our day. Indentured servitude has long been outlawed as a species of slavery, and leaving enforcement of child support to local justices does not work given our modern means and rights to travel.

Modern technology offers a better way to hold irresponsible parents accountable to support their children, regardless of where they go. Birth certificates should carry more specific information about both the parents – not just their names and addresses as now, but their social security numbers, blood types, and genetic data as well. And a national registry of these birth certificates should be developed to ensure that parents can be found regardless of where they move. Having those more refined parental data available will enable an unsupported child, an abandoned parent, or, if necessary, a government official to track down a delinquent parent and hold that party to account in the case of delinquency. This might sound Orwellian at first blush. But is it really any more intrusive on our liberty than government reaching into all taxpayers' pockets to collect the extra \$112 billion a year needed to pay for our non-marital children?

The government must, of course, develop procedures and safeguards to ensure the privacy and proper use of these parental personal data. The government must also provide back-up support when parents cannot be found or cannot afford support for their children, despite their best efforts. No child in a nation with our wealth and values should be left uninsured, undernourished, or poorly educated. But we need a much better organized and advertised state and federal system of holding their parents financially accountable for the children they bring into the world. That will do much to deter irresponsible sex and to promote responsible childbearing within marriage.

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