

Symposium : Defining Marriage

CHILD SUPPORT AND THE MARRIAGE QUESTION

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The debate over same-sex marriage is developing against a wider backdrop of controversy over marriage generally that has received much less media attention. These larger issues are likely to affect many more people and to have a deeper impact on the legal status of marriage and its place in civil society. They also raise more complex questions about the role of state power in private life than are obvious in the question of gay marriage.

Over the last decade, discussions of family structure and welfare have expanded to new ground with government programs promoting fatherhood and marriage. The Clinton administration was particularly keen on fatherhood programs, though the effort was bipartisan, and many state and local governments controlled by both parties signed on. The Bush administration has continued the effort, even recruiting leading fatherhood advocates like Wade Horn and Don Eberly to key positions. Under Bush, the emphasis has shifted to marriage, but the substance is similar. Despite objections from their feminist and secularist wings (because some of the marriage program falls under the Faith Based Initiative), moderate liberals are going along.

Given incontrovertible data linking family breakdown and father absence with almost every major social pathology today, these government initiatives would appear justified. Yet the concern, ironically voiced mostly by liberals and feminists, as well as

libertarians, that they extend government authority into private life also rings plausible. We do not normally think of federal officials as family counselors.

Often, the trump justification is poverty, especially child poverty. Writing in *Crisis* magazine in November 2003, Wade Horn, Assistant Secretary of Health and Human Services (HHS) defended the administration's embrace of marriage-saving programs because they provide access by poor families to therapy long available to the middle class.

Despite the therapeutic claims, these programs are in fact less innovative than they appear and represent not so much a new role for government as an extension into new realms of government's most traditional role: law enforcement. Behind vague language about "encouraging good fathering" and "reconnecting fathers with their children," the most tangible component of the fatherhood promotion has been collecting child support. Yet child support is predicated not on connecting fathers with their children but on separating them.

The Clinton administration was given to especially strong language -- and measures -- against "deadbeat dads." "We will find you," Clinton would intone. "We will make you pay." "You can run," HHS Secretary Donna Shalala once announced, "but you can't hide." New measures like the Federal Case Registry and the Deadbeat Parents Punishment Act" created what Shalala described as "the strongest child support enforcement resource in the history of the program" and led to repeated "crackdowns."

Bush officials have toned down the rhetoric, though the measures continue. In July 2002, under a Clinton-initiated program called Save Our Children, HHS Secretary Tommy Thompson announced a "nationwide sweep" of parents he says disobeyed

government orders. The roundup was "reminiscent of the old West," in the words of the *Christian Science Monitor*. "Most Wanted lists go up, and posses of federal agents fan out across the nation in hot pursuit." In Utica, New York, the raids included agents from the "Violent Felonies Warrants Unit." "More notable than any one arrest," reported the *New York Times*, "is the message that the Bush administration is sending about its decision to pursue a more aggressive approach by using federal criminal prosecution." Government billboards in Maryland announce, "We're Looking for You, Child Support Violators." Governments do not warn bank robbers or drug dealers that they are being targeted. The idea that the criminal justice system exists less to apprehend individual lawbreakers than to "send a message" and spread fear among a target population of otherwise law-abiding citizens is, at the least, a disturbing one.

But especially odd is that, like the fatherhood promotion, even the administration's program to encourage "Healthy Marriages" seems to be mostly about collecting child support. In January 2003, HHS announced \$2.2 million in grants to faith-based groups to "promote fatherhood and healthy marriage." Yet only 25% of the funds were earmarked for marriage therapy; the rest deputized private groups to collect child support. The Marriage Coalition, a "faith-based organization" in Cleveland, received \$200,000 to assist child support enforcement. In May, HHS announced more grants "to support healthy marriage and parental relationships with the goals of improving the well-being of children." Here again, most of the money went to Michigan's enforcement agency and a church in Idaho involved in collections. A similar measure in Virginia was announced in July. These disbursements offer a foretaste of what will be dramatically expanded under a proposed \$1.5 billion program.

The apparent effort to disguise the purpose behind these grants is unusual. Recruiting churches as instruments of federal law enforcement is also an innovation that has not been scrutinized or discussed. Politics is naturally involved. In an election year, the administration clearly hopes its marriage promotion will placate conservatives who seek strong presidential backing for a constitutional amendment defining. But this does not fully account for programs that may have the opposite effect to that advertised.

These measures might make sense assuming a serious problem of unpaid child support. Yet amid the near-hysteria that has been generated on the issue during the last two decades, the fact remains that no such problem has ever been demonstrated. While it is obligatory, when offering the mildest criticism of the child support system, to state that "some" fathers no doubt do fail to provide for their children, there is simply no scientific evidence that there is or ever has been a widespread problem of fathers abandoning their children and not paying child support.

Significantly, our awareness of this alleged problem has come entirely from government sources. No public outcry demanding action ever preceded the creation of enforcement machinery; nor has any public discussion ever been held in the media. In fact, no public perception of such a problem even existed until public officials began saying it did.

Moreover, no government or academic study has ever documented a child support problem. Prior to the creation of the federal Office of Child Support Enforcement (OCSE) and throughout its 28-year history, no study has ever been conducted on the reason for its existence. OCSE today maintains a vast army of almost 60,000 enforcement agents (thirteen times that of the Drug Enforcement Administration, which

has 4,600 agents worldwide). This does not include agents from the HHS Office of the Inspector General, which operates "10 multi-agency, multi-jurisdictional task forces serving all 50 states," and which conducted the roundups in 2002.

We often hear of astronomical figures -- currently anywhere from \$34 to \$100 billion -- of allegedly unpaid child support. Yet these figures are derived not from any compiled data (which do not exist) but entirely from Census Bureau surveys of custodial parents.

In his federally funded study, *Divorce Dads: Shattering the Myths* (1998), Sanford Braver found that fathers overwhelmingly do pay court-ordered support when they are employed, often at great personal sacrifice, and that unemployment (itself often divorce-related) is consistently "the single most important factor relating to nonpayment." Judi Bartfeld and Daniel Mayer report in the *Social Science Review* that as much as 95% of fathers having no employment problems for the previous five years pay regularly, and that 81% paid in full and on time.

This research undermines justifications for the multi-billion dollar criminal enforcement machinery. If these scholars are to be believed -- and no official has challenged their findings -- no justification exists for the huge army of enforcement agents and panoply of criminal punishments. Yet five years after Braver's book, no enforcement agency, public or private, has even acknowledged the suggestion that they may be whipping up hysteria against a non-existent problem, and ever-more draconian measures continue to be enacted. Bryce Christensen charges in *Society* that "the advocates of ever-more-aggressive measures for collecting child support have trampled

on the prerogatives of local government, have moved us a dangerous step closer to a police state, and have violated the rights of innocent and often impoverished fathers.”

How did such an anomaly come about? The current child support machinery grew directly out of the welfare state. In 1975, President Gerald Ford signed legislation creating OCSE, warning that it constituted a federal intrusion into the lives of families and the responsibilities of states. Contrary to what is often implied now, the justification was less to provide for abandoned children than to recover welfare costs.

Almost immediately the program expanded exponentially, increasing tenfold from 1978 to 1998. In 1984, legislation promoted by OCSE and private collection companies required states to adopt child support guidelines, again on the theory that it would help get single-mother families off welfare by making fathers pay more. No data indicated that the measures would have this effect. Because most unpaid child support is due to unemployment, and because “most non-custodial parents of AFDC (Aid to Families with Dependent Children) children do not earn enough to pay as much child support as their children are already receiving in AFDC benefits,” according to Irwin Garfinkel and Sarah McLanahan, higher child support guidelines could not help them.

In 1988, with no explanation (or clear constitutional authority), guidelines and criminal enforcement methods conceived to address the small minority of children in poverty were then extended dramatically, under pressure from OCSE and other interests, to all child support cases, including the vast majority not receiving welfare. Fifteen years on, HHS figures show that welfare cases account for 17% of all child support cases, and the proportion is shrinking. The remaining 83% of non-welfare cases consist largely middle-class fathers who generally pay reliably. These non-welfare cases currently

account for 92% of the money collected.

The 1988 law also made the guidelines presumptive and, effectively, compulsory. Yet at that point it was already well known among scholars and policymakers that, with the exception of the relatively small number of poor and unemployed fathers, no serious nonpayment problem existed. Not only was Braver presenting his research, but two federal studies, a pilot study commissioned by OCSE and another by the Congressional Research Service, were published with similar findings. A planned full-scale federal study was quashed by OCSE when the findings of the pilot threatened to undermine the agency's justification.

Promoted as a program to reduce government spending, child support enforcement has incurred a sharply mounting deficit. "The overall financial impact of the child support program on taxpayers is negative," the House Ways and Means Committee reported in 2003. Taxpayers lost \$2.7 billion in 2002.

These funds fill the coffers of state governments. "Most States make a profit on their child support program," according to the Committee, which notes that "States are free to spend this profit in any manner the State sees fit." In addition to penalties and interest, states profit through federal payments based on the amount collected, as well as receiving 66% of operating costs and 90% of computer costs. Federal outlays of almost \$3.5 billion in 2002 allowed Michigan to collect over \$200 million and California to collect some \$640 million.

These revenues effectively give state governments a substantial financial stake in encouraging divorce, single-parent homes, and fatherless children. They also create incentives for officials to set child support at punitive levels and to extract every dollar

they can out of those parents, using any means available. Federal "welfare and collection incentive funds to the states based on the gross amount of the total child support payments recovered from non-custodial parents," writes Georgia district attorney William Akins, create an "incentive to establish support obligations as high as possible without regard to appropriateness of amount." The impact of these payments was clearly demonstrated in 2002, when California governor Gray Davis vetoed a bill that would have relieved men who currently must pay for children whom DNA testing shows they did not father. Though Davis said he did it "for the children," he also confessed the bill would have put California "at risk of losing up to \$40 million in federal funds."

To collect these funds, states must channel payments – including current ones – through their criminal enforcement machinery, criminalizing divorced parents and allowing the government to claim its perennial crackdowns are increasing collections despite the federal program operating at a consistent loss. In 2000, Shalala announced that "the federal and state child support enforcement program broke new records in nationwide collections in fiscal year 1999, reaching \$15.5 billion, nearly doubling the amount collected in 1992." Yet little of this seems to involve arrearages built up by poor fathers. Rather, it seems to be an absolute increase, resulting entirely from a vastly expanded intake of middle-class fathers into the program.

In simple accounting terms, the Government Accounting Office (GAO), which accepts HHS figures for what is "legally owed but unpaid," found that as a percentage of what HHS claims is owed, child support collections actually decreased during this period. "In fiscal year 1996, collections represented 21% of the total amount due but dropped to 17% of the total due in fiscal year 2000," writes GAO. "As a result, the amount owed at

the end of the period is greater than the amount owed at the beginning of the period.”

But more telling and consequential is the financial profile of fathers inducted into the system through this increase.

The ambiguity is “collections.” When we hear of collections through criminal enforcement agencies we assume it involves arrearages or targets those who do not otherwise pay and whose compliance must be “enforced.” Yet in 1992 most child support was still being paid directly from one parent to the other, without accounting by the state. Criminal enforcement methods were limited mostly to the low-income welfare cases for which the machinery was originally created. Yet increasingly since then, all child support payments – including current ones – are being routed through enforcement programs by automatic wage withholding and other coercive measures which presume criminality. Welfare-related cases (where collection is difficult) have remained steady since 1994, while non-welfare cases (where compliance is high) continue to grow. The “increase” in collections was achieved not by collecting the alleged arrearages built up by poor, non-paying fathers already in the criminal collection system but by bringing more employed middle-class fathers, who pay, into it.

Since automatic wage garnishing has been mandatory for all new child support orders since 1992, the question arises as to how so many fathers supposedly manage to evade their payments. The principal method is by being unemployed. Braver’s study confirmed virtually every previous one showing “that the single most important factor relating to nonpayment is losing one’s job.” Unlike fathers in intact families, forcibly divorced fathers are punished for their unemployment or for failing to earn what government officials determine is enough money. The Dickensian irony of programs

whose ostensible purpose is to alleviate poverty instead criminalizing it is revealed by Judy Vick, program manager for the Nash County, North Carolina, enforcement agency: "They often do not have the wages available to take from them, so we have to take legal action."

An ongoing study by University of Texas anthropologist Laura Lein and Rutgers University professor Kathryn Edin has found that "many of the absent fathers who state leaders want to track down and force to pay child support are so destitute that their lives focus on finding the next job, next meal or next night's shelter." "One of the things that really surprised me was how short a job was," Lein said in an interview with the *Houston Chronicle*. "People really talked about good jobs as jobs that lasted five or six days, or two weeks was really terrific." Their study concluded that the low-income and absentee fathers are often far worse off than their government-assisted families. "They struggle with irregular, low-wage employment. Many of them have faced periods of incarceration. They are affected by disability, illness and dependence on alcohol or other substances," the authors write. "But economically and emotionally marginal as many of these fathers are, they still represent a large proportion of low-income fathers who continue to make contributions to their children's households and to maintain at least some level of relationship with those children." Despite the stereotype, elsewhere promoted by government officials, of rich playboys squiring around their trophy wives in bright red Porsches, OCSE director Sherri Heller acknowledges that "about two-thirds of the debt and about two-thirds of the people who owe it earned less than \$10,000 last year. In other words, it appears that most of the debt is owed by extremely poor debtors."

Government claims of nonpayment also presuppose that the amounts claimed are

in fact "owed" and that the parents in question do have such an "obligation." This is questionable on two counts. First and most basically, financial debts must normally be incurred voluntarily. Accordingly, child support originated as -- and is generally still perceived to be -- an obligation incurred by the voluntary termination of a marriage involving children or by the production of children outside marriage. For centuries courts held, as one ruling stated, that "a father has the right at Common Law to maintain his children in his own home, and he cannot be compelled against his will to do so elsewhere, unless he has refused or failed to provide for them where he lives."

Yet the extension of coercive enforcement beyond welfare cases to include the involuntarily divorced defies this principle. Most non-welfare cases involve divorce rather than unwed parents, and divorces involving children are filed almost entirely by mothers. Braver found that mothers are the moving parties in some two-thirds of divorces, usually without legal grounds. Margaret Brinig of Iowa State University and Douglas Allen of Simon Frazier University found similar results and concluded that "who gets the children is by far the most important component in deciding who files for divorce."

These are cautious, scholarly estimates; others put the proportion much higher. Shere Hite, the popular researcher on female sexuality, found "91% of women who have divorced say they made the decision to divorce, not their husbands." Divorce attorney David Chambers reports in *Making Fathers Pay* that "the wife is the moving party in divorce actions seven times out of eight." Fathers' rights author Robert Seidenberg relates that "all the domestic relations lawyers I spoke with concurred that *in disputes involving child custody*, women initiate divorce *almost all the time*" (original emphasis).

The impact child support on this phenomenon is difficult to measure, but it would appear that federal funding is, at the least, destabilizing families by subsidizing middle-class divorce and fatherless homes. Promoted to help poor children whose mostly young and unmarried fathers had allegedly abandoned them, child support has become a financial incentive to divorce and a means to plunder middle-aged and middle-class fathers who have done no such thing and whose children are taken from them mostly through no fault or agreement of their own. The vast majority of fathers on child support orders -- and the overwhelming number added over the last fifteen years -- have done nothing, legally speaking, to incur the obligation imputed to them. An administrative regime justified as requiring men to take responsibility for offspring they have sired and then abandoned has been transformed into a mechanism, as attorney Jed Abraham puts it in *From Courtship to Courtroom*, whereby a legally unimpeachable father who is simply minding his own business "is forced to finance the filching of his own children."

Also seldom scrutinized is how the amounts supposedly owed are determined. The process of setting guidelines is highly politicized and dominated by groups involved in collection but largely excludes parents who pay the support. While current levels have been challenged by economists like R. Mark Rogers as far exceeding the cost of raising children, what may be more revealing than the economics are the politics by which these levels are set.

About half the states use child support guidelines devised by courts and executive branch enforcement agencies. Rather than being enacted by elected representatives with public input, the formulas are devised by the same judges and agents who enforce them, creating an obvious conflict of interest. This is more than a matter of administrative

regulations governing, say, water pollution or broadcast licenses. These guidelines are enforced at gunpoint and with summary incarcerations.

Even in states where guidelines are enacted legislatively, they often pass by unanimous vote, since not only do legislators avoid opposing any measure advertised as benefiting children, but they can divert the enforcement contracts to their own firms. This is generally considered legal, though in an extreme example four Arkansas senators were convicted on federal racketeering charges in March 2000 connected with contracts for child support enforcement.

Even without a formal role, enforcement officials are often involved in setting guidelines. The enforcement agency usually creates and controls the review body, as attested in Minnesota by Jo Michelle Beld of St. Olaf College and others who have served on such panels. Virginia's guidelines are enacted legislatively, but its 1999 review was conducted by a commission that included one part-time representative of paying parents and 10 employed full-time by agencies and organizations that benefit from divorce.” When the non-custodial parents' representative in 2001 pointed out this fact in a *Washington Times* column, he was dismissed from the panel for his unacceptable “opinions.” Assistant district attorney William Akins writes that in Georgia, “The commissions appointed to review the guidelines have been composed, in large part, of individuals who are unqualified to assess the economic validity of the guidelines, or who arguably have an interest in maintaining the status quo, or both.” Georgia illustrates both the process and the predictable results. According to Akins, writing in the *Georgia Bar Journal*, the method of formulating guidelines “violates both substantive due process and equal protection guarantees of the Constitutions of the United States and the State of

Georgia.”

In 2002, a Georgia superior court agreed in a case involving a non-custodial mother, declaring that state’s guidelines unconstitutional on “numerous” grounds. “The guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child” and create “a windfall to the obligee.” Characterizing the guidelines as “contrary both to public policy and common sense,” the court noted that they bear no connection to any understanding of the cost of raising children. “The custodial parent does not contribute to child costs at the same rate as the non-custodial parent and, often, not at all,” the court notes. “The presumptive award leaves the non-custodial parent in poverty while the custodial parent enjoys a notably higher standard of living.” The court also described the constitutional implications: “The guidelines interfere with a non-custodial parent’s constitutional right to raise one’s children without “unnecessary” government interference. The guidelines are so excessive as to force non-custodial parents to frequently work extra jobs for basic needs – detracting from parenting without state justification. Low-income obligors are frequently forced to work in a cash economy to survive as a result of child support obligations that if paid push the obligor below the poverty level. This is the result of automatic withholding of child support with payroll jobs and use of guidelines that presumptively push minimum wage obligors below the poverty level. As these workers are forced to “disappear” into unofficial society, these obligors are deprived of the constitutional right to raise their children without unnecessary government intrusion.”

A Wisconsin court likewise found that state’s guidelines would “result in a figure so far beyond the child’s needs as to be irrational.” A Tennessee court struck down a

portion of that state's guidelines on grounds of equal protection. Ironically, the Tennessee Department of Human Services, which jails fathers for violating court orders, announced they would not abide by the court's ruling. All these decisions have been overturned on appeal.

Professor Beld, writing in the October issue of *PS: Political Science and Politics*, has described extensive conflicts of interest within the review process: how the livelihoods of child support officials depend on broken homes, how these same enforcement officials set the amounts they collect, and how "high child support orders, in combination with other child support enforcement policies, have a negative effect on contact between non-custodial parents and their children." Beld, who serves as a consultant to the Minnesota enforcement agency, presents a revealing glimpse of how the child support operation blurs the separation of powers through "complex connections" and open "collaboration" between the three branches of government. "Legislation, administration, and adjudication are inextricably linked in family policies like child support." Beld's experience is reflected in a 1999 decision of the Minnesota Supreme Court, which held that state's administrative process was unconstitutional because it violated the separation of powers by usurping judicial power to an administrative agency and "by permitting child support officers to practice law."

The legal side of child support enforcement is as troubling as the political. A father charged with "civil contempt" connected with child support may be exempted from due process of law and may even be presumed guilty until proven innocent. "The burden of proof may be shifted to the defendant," according to a legal analysis by the National Conference of State Legislatures (NCSL), which approves such procedures. The father

can also be charged with criminal contempt for which in theory he must be duly tried, but this is not always the case. “The lines between civil and criminal contempt are often blurred in failure to pay child support cases,” NCSL continues. “Not all child support contempt proceedings classified as criminal are entitled to a jury trial.” Further, “even indigent obligors are not necessarily entitled to a lawyer.” Thus a father who has lost his children through literally “no fault” of his own can be arrested and required to prove his innocence without a formal charge, without counsel, and without a jury of his peers (2001).

Recent examples seem to vindicate Christensen's charge of "police state" methods. In December, under pressure from the American Civil Liberties Union (ACLU), a Montgomery County, Pennsylvania, judge freed some 100 prisoners who had been incarcerated without due process for allegedly failing to pay child support. The action follows others in late 2002, when a judge in Lawrence County was forced to free 37 child support prisoners. ACLU lawyer Malia Brink says courts across Pennsylvania routinely jail fathers for civil contempt with no notice of their hearings and no opportunity to obtain legal representation. Fathers relate that hearings typically last between 30 seconds and two minutes, during which they are sentenced to months in prison. Lawrence County was apparently jailing fathers with no hearings at all. Nothing indicates that Pennsylvania is unusual. After a decade of nationwide mobilization against "deadbeat dads," similar numbers in each of the America's 3,500 counties are by no means unlikely.

While it is tempting to conclude that justice finally prevailed in these cases, this is not necessarily so. The incarceration itself costs many their jobs and thus their ability to

pay future child support. As a result, they will be returned to the penal system, from which they are unlikely ever to escape. Permanently insolvent, they are farmed out to trash companies and similar concerns, where they work 14-16 hour days. Most of their earnings are confiscated for child support, the costs of their incarceration, and mandatory drug testing.

Child supports seems to be driving radical innovations in the criminal justice system nationwide. In Illinois, Judge Robert Spence wants to create special courts specifically to collect child support. (Special courts specifically for fathers already exist in the US and Canada, mostly to prosecute domestic violence.) A recent report by the Associated Press on the growth of federal police power illustrated the trend primarily with child support cases. The AP cites a father earning \$40,000 annually who was said to have accrued a \$331,000 arrearage over eight years. The AP did not pursue the fact (not unusual) that the arrearage comprised his entire salary and then some.

In Michigan, one of the demonstration states where the child support system is already receiving federal money for marriage promotion, Attorney General Mike Cox recently announced the "PayKids" initiative, featuring billboards displaying handcuffs and parents behind bars. Consistent with the presumption of guilt that seems to be inherent in such programs, even General Motors made headlines when it announced it was withholding bonuses from all employees until it could determine which owed child support. Critics insist that Michigan vastly over-calculates the amount fathers should pay, and Michigan's enforcement methods have also been the subject of federal legal challenges. Attorney Michael Tindall relates in *Michigan Lawyers Weekly* how he was arrested without warning when he knew his payments were current. In a sworn response

to a federal suit, the Wayne County enforcement agency admitted that Tindall's account had been increased without a valid court order. "There was no order from a judge.... In court, they admitted that they do this all the time." The federal court ruled that Michigan violated Tindall's due process rights under the Fourteenth Amendment and ordered them to correct the situation. Yet according to the *Weekly*, not only did Michigan not correct the problem, they continued to defy the federal court by not reversing their error and even initiated another round of enforcement using the same illegal procedures to collect the same arrearage they had admitted was erroneous. Tindall's subsequent suit alleges the courts manipulated the records of court proceedings to cover up their actions. Allegations that hearing tapes and transcripts are routinely doctored in family courts are widespread throughout the US, and the Washington-based Center for Individual Rights recently documented some falsifications.

In December, as some Michigan newspapers were sympathetically relating Cox's new crackdown, others were reporting (with no indication of any connection) how Michigan was set to lose \$208 million in federal funds if it did not meet federal guidelines for centralizing its collection system. Ironically, to comply the state promised to accelerate and automate the very measures, such as bench warrants, that the federal court had ruled were in violation of the Fourteenth Amendment.

Michigan also illustrates how the child support system erodes traditional protections for personal privacy and freedom, sometimes in unexpected ways. In December, the Secretary of State announced that drivers must divulge their social security numbers, a requirement mandated by the 1996 welfare reform law to facilitate child support collection. Beth Givens of Privacy Rights Clearinghouse, said the social

security number "is the key piece of data that thieves want in order to impersonate someone for credit-related purposes... Violent criminals and gangs are moving over to identity theft."

Using child support enforcement as a vehicle to promote marriage would seem at first glance to be an odd combination. One might suspect the aim is to make the child support system more publicly palatable. Yet it would be a mistake to dismiss the therapeutic element as mere window dressing. Horn and others who designed these programs have spent a decade promoting fatherhood and marriage, and no one doubts their good intentions. Horn misses no opportunity to recall that "child support enforcement alone is not sufficient to deal with the current crisis of fatherlessness," and that "we also should endeavor to prevent family breakup from happening in the first place."

The larger question is how law enforcement agents can save marriages. If the fatherhood programs provide any indication, even the therapeutic elements may not as benign as they appear. Intermingling law enforcement with psychotherapy is something with which the modern world has already experimented, and the potential problems have never been addressed by Horn (a psychologist originally) or anyone else. His therapeutic language is easily appropriated by those with less detached motives. "Child support is more than money," declares the National Child Support Enforcement Association. "Child support also is love, emotional support, and responsibility." This too sounds unexceptionable. Less reassuring is the specter of police agents taking it upon themselves to define and enforce a parent's love and emotional support of his own children. Massachusetts officials have used federal money to draw up a list of "Five

Principles of Fatherhood," including: "give affection to my children" and "demonstrate respect at all times to the mother of my children." One cannot help but wonder if the state will bring penalties to bear on fathers who fail to show sufficient affection and respect.

The *Washington Times* reports on a child support program where penal officers inculcate "life skills and relationship" therapy, and fathers must express self-criticism in front of government officials. One program requires fathers to "deal with their feelings about the custodial parent and their children" by writing "their own obituaries as they would be written by their children." "This exercise is very moving," says director Gerry Hamilton. "This helps non-custodial fathers understand why contact with their children is so important."

The question also arises of how far child support enforcement programs actually undermine marriage, since as we have seen, child support acts as a subsidy on divorce. Christensen points to "evidence of the linkage between aggressive child-support policies and the erosion of wedlock" and suggests that child support policies have "actually reduced the likelihood that a growing number of children will enjoy the tremendous economic, social, and psychological benefits" of intact families.

If this is correct, the combination of child support enforcement with marriage therapy would seem to be at cross purposes. Indeed, each seems to create a problem for the other to solve. Federal child support enforcement funds subsidize divorce and fatherless homes, while other federal funds hire therapists to repair the marriages whose material basis has been undermined by the coerced child support. In such circumstances, more marriages may simply mean more divorces, necessitating further expansion of child support operations. What we are witnessing here his may be a textbook example of

government programs creating problems for other government programs to solve, in this case using children to do it.

Placing marriage therapists on the government payroll may also give them a stake in perpetuating the problem they ostensibly exist to solve, a common phenomenon in bureaucratic politics. In her recent book, *Stolen Vows: The Illusion of No-Fault Divorce and the Rise of the American Divorce Industry*, Judy Parejko describes how government-funded marriage therapists may in fact work to undermine marriages. In one striking episode, Parejko claims she was locked out of her office as a court-affiliated mediator for trying to reconcile couples.

Because Healthy Marriages falls under the Faith Based Initiative, it also raises questions about the separation of church and state. Ironically in this instance, it seems to be less a matter of the government supporting religion, as liberals complain, than of government employing religious groups as extensions of federal law enforcement. Deputizing religious groups as police agents has been underway at least since 1999, when OCSE announced “cooperative agreements” with the YMCA of America and the United Methodist Church “to link the 2,200 YMCAs in the United States with the child support offices in their communities.”

Ironically, the effect of these programs is that the Bush administration seems to be implementing Hillary Clinton's vision that "it takes a village" to raise a child. "The policy is designed to mobilize the entire community – including clerical, political, medical, business, and judicial leaders – to support children by strengthening marriage," in the words of the Michigan child support agency, echoing language from HHS. Again, this has a certain surface appeal, though on closer examination, bearing in mind the

purpose of this agency and the federal funding it receives, it would appear to be mobilizing the community to act as police.

This is not far-fetched. The GAO reports that virtually anyone can now become a child support bounty hunter, giving the general population a financial stake in divorce and fatherless children. “Any of thousands of attorneys and collection agencies can collect child support,” the agency reports, and “about 100 other government agencies and thousands of court-appointed guardians can collect child support.” Firms now use the Internet to recruit private citizens as enforcement agents, turning the population at large into plainclothes police.

All this suggests that government policy toward marriage and families has dimensions more complex and implications more far-reaching than the question of whether the state should recognize unconventional unions. While social conservatives are probably right that same-sex marriage will do little to strengthen marriage as an institution, and may further undermine it, it is not precisely clear how it would erode an institution that already retains little integrity in law. It is also not clear that programs to strengthen marriage proposed by the Bush administration are likely to have the desired effect and may even be counterproductive. At the very least, it would appear that a broader dialogue is in order about the politics of marriage erosion and family breakdown generally and in particular the role in that process of government institutions and programs -- both those that are detrimental to the family and those that claim to be helping.

SUGGESTED FURTHER READINGS

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