

Federal Judge Envisions 'Rape License' for 'Right to Rape'

Judge Richard Posner, a federal judge with the 7th Circuit Court of Appeals, recently become a hero to the pro-gay marriage left when, by way of a "legal analysis" free from the troublesome constraints of logic, case precedent, biology, tradition and reality in general, he managed to somehow divine a long-hidden constitutional "right" for two dudes to get "married."

"How can tradition be a reason for anything?" an incredulous Posner demanded last month of attorneys defending marriage-protection amendments in Wisconsin and Indiana.

It would seem that Posner's contempt for tradition extends to all things sexual, up to and including the puritanical presupposition that it's always wrong for a man to rape a woman. This idea, according to Posner in his 2011 book *Economic Analysis of the Law* (8th edition), is evidently an equally archaic tradition that, like the institution of natural marriage, needs a significant overhaul.

Posner's suggestion? Perhaps it's time the government begin issuing "rape licenses" (I kid you not) since—and based upon an exclusively utilitarian and morally relative cost-benefit analysis—the "right to rape," for some men at least, "exceeds the victim's physical and emotional pain."

On page 216, Posner, a Reagan appointee considered "conservative" in "progressive" circles, writes, "Rape bypasses the market in sexual relations (marital and otherwise) in the same way that theft bypasses markets in ordinary goods and services, and it should therefore be forbidden."

OK, while this is an oddly detached and clinical start to a

discussion on rape, it is, so far, not entirely unreasonable. Posner would have been well served to stop there. But, and much like those who are the subject of his rape analysis, he does not stop.

“But,” continues Posner—I didn’t know there were any “buts” when it comes to rape—“some rapists derive extra pleasure from the fact that the woman has not consented. For these rapists, there is no market substitute ... and it could be argued therefore that, for them, rape is not a purely coercive transfer and should not be punished if the pleasure to the rapist (as measured by what he would be willing to pay—though not to the victim—for the right to rape) exceeds the victim’s physical and emotional pain. There are practical objections [No, really? Practical objections to rape?] ... [b]ut the fact that any sort of rape license is even thinkable [what kind of bigoted rape-o-phobe would suggest otherwise?] ... is a limitation on the usefulness of that theory.

“What generates the possibility of a rape license,” he persists (hold off, fellas, they’re not available yet), “is the fact that the rapist’s utility is weighted the same as his victim’s utility. If it were given a zero weight in the calculus of costs and benefits, a rape license could not be efficient. The only persuasive basis for such a weighting, however, would be a moral principle different from efficiency.”

And herein lies the rub. We all know what Posner thinks about “moral principles.” He’s a moral relativist. There are no moral principles, most especially no “traditional” moral principles. I mean, “How can tradition be a reason for anything?”

But wait, there’s more. You gals trapped in one of those “traditional” marriages needn’t fret. Posner’s got you covered, too. “Marital rape?” C’mon, is there really such a thing?

"In a society that prizes premarital virginity and marital chastity [I know, sheesh, right?], the cardinal harm from rape is the destruction of those goods and is not inflicted by marital rape," he writes.

"The nature of the harm to the wife raped by her husband is a little obscure," he continues. "If she is beaten or threatened, these of course are real harms inflicted by an ordinary assault and battery. Especially since the goods of virginity and of chastity are not endangered, the fact of her having intercourse one more time with a man with whom she has had intercourse many times before seems peripheral to the harm actually inflicted but is critical to making the offense rape.

"Most of the reasons for not making marital rape a crime have lost force with time," he laments.

Of late a fanciful meme has taken root among the "progressive" left. It's one that imagines ours as a patriarchal "rape culture," which fosters an environment wherein women are systematically raped with impunity (especially on our nation's college campuses).

Apparently, the solution is for chicks to pierce and tattoo themselves, declare "slut pride" and parade nude in "slut walks" across the globe. But that's an outlier.

I finally get it. Posner is the "rape culture." I wonder how these mouth-frothing "marriage equality" lefties will react to his permissive approach to rape. In much the same way, I suppose, they reacted to myriad accusations of sexual harassment and assault lodged against Bill "depends-on-what-'is'-is" Clinton. With total silence and self-serving hypocrisy.

None of this should surprise anyone. Richard Posner is a faithful disciple of Alfred Kinsey, the anti-science, anti-morality left's sexual messiah. Kinsey was a bug doctor turned "sexologist." Though married to a woman who took part in his

many filmed “scientific” orgies, Kinsey was a promiscuous homosexual and sadomasochist. He managed to completely upend and twist the world’s perception of human sexuality in the 1950s and ’60s with his world famous “Kinsey Reports.”

Even today, most are completely unaware that during his tenure at Indiana University, Kinsey facilitated, with stopwatches and ledgers, the systematic sexual abuse of hundreds, if not thousands, of children and infants—all in the name of science. His research also “found” that rape doesn’t really hurt women. In his 1953 volume *Sexual Behavior in the Human Female* at page 122, Kinsey wrote, “Among the 4,441 females [reporting rape] on whom we have data, there was only one clear cut case of injury ... and very few instances of vaginal bleeding, which however, did not appear to do any appreciable damage.”

Starting to see what makes Posner click? “His Honor” is a dyed-in-the-wool Kinseyite.

Though Kinsey’s “research” has long since been completely debunked and discredited, the elitist left, to include Judge Posner, even still relies on it to push its own sexual anarchist worldview. Writing in his 1992 book, “Sex and Reason,” for instance, Posner gushed, “The two Kinsey reports remain the high-water mark of descriptive sexology.” He calls Kinsey the “central figure” in the “scholarly science” of sexology.

Raped? Well, suck it up, walk it off and congratulate yourself. You’ve reached Posner’s “high-water mark.”

Matt Barber is founder and editor-in chief of . He is an author, columnist, cultural analyst and an attorney concentrating in constitutional law. Having retired as an undefeated heavyweight professional boxer, Matt has taken his fight from the ring to the culture war. (Follow Matt on Twitter: @jmattbarber).