

The Supreme Court's First Assault on Marriage

This year, the Supreme Court will render judgment on the institution of marriage. Though most of us don't realize it, the Court first did so 41 years ago in *Eisenstadt v. Baird*, a decision that gravely wounded marriage and set the nation on a course of gradual debilitation by ruling that states could not limit the sale of contraceptives exclusively to married people.

In its forthcoming decision, the Court may give **marriage** the legal *coup de grâce*. Or it may surprise us, redeem itself, and use the occasion to correct the drift of legal thought on sexuality, marriage and the rights of children. All three are inextricably linked.

In *Eisenstadt*, the Court overturned Massachusetts state law and pulled new sexual rights for singles out of a hat—but gave no standing to children born of pre- or extra-marital sex. The Court played God by redefining the purpose of sexuality.

In the process, it unleashed the destructive power of sex detached from marriage. The Court could see rights to contraceptives in the “shadow” of the Constitution but could not see what a blind man could: the right of every child to married parents.

Having set chaos in motion in *Eisenstadt*, the Supreme Court quickly built the garbage bin for dumping sexual debris in *Roe v. Wade*, which gave a green light to the killing of 55 million unborn children, the overwhelming majority of whom were conceived by those unmarried singles with new access to contraceptives.

Eisenstadt also denied the community its natural rights—demands of the social order—that parents take care of

their children in marriage. Since then, the community has been paying to raise children born outside of wedlock. The cost comes in the form of welfare, food stamps, Medicaid, supplementary education, costlier child and adult health bills, more prisons, addiction centers and mental health services. The list goes on and on, now cumulatively and possibly to the tune of *trillions* of dollars.

When two unmarried people have a child, their commitment to each other becomes more difficult to turn into marriage. The vast majority will break up within the following five years, even if they currently cohabit, leaving the commons to make up the difference—which it can only partially achieve, at best.

Post-*Eisenstadt*, many social policies were quickly abused as many young women learned how to game the system. Policies such as welfare payments, food stamps and housing, all designed to help the family and society by subsidizing a mother's physical needs on a per-child basis, ultimately undermine these families by not requiring marriage as a condition of support.

Tragically, at this point in our history, almost all of these children and grandchildren cannot conceive of any other family life except single parenthood combined with serial cohabitation. Instead of intact, married families, we have matriarchal lines of poverty and strain, with men and fathers cast outside, somewhere.

With *Eisenstadt*, the Court dismissed marriage as the basic institution for begetting and raising children, and in a couple of pages of writing, rendered obsolete the experience of millennia. Prior to that time, those who intended to raise children together were expected by tradition, common sense and culture to marry first. The law protected these expectations.

The Court also seemed totally unaware that society's fundamental institutions—family, education, marketplace, government and religion—are interdependent. This

interdependence plays out in the raising of children. They grow quickly to become the actors in each of these realms, and if they come from broken families, they generally bring lessened capacities to these tasks in their own lives, and to the institutions involved in the functioning of society.

Thus, in a well-ordered society, sex and marriage go together exclusively, because the union of male and female sexual expression must be undertaken in a union that binds them in advance of the coordinated labors needed to raise the children they may bring into the world. To achieve this, a functioning society demands that each citizen channel his sexual capacities in ways appropriate to these two tasks (procreation and child-raising). That is, it demands marriage.

The core strength needed to do this is chastity, a virtue always necessary but expressed differently at different stages in life—when single, when courting and when married. Functional societies foster chastity and sanction its violation. But in *Eisenstadt*, the Supreme Court threw chastity out the window by endorsing premarital sex at a constitutional level.

Another aspect of the decision casts the Court in an even worse light. The main architect of the legal strategy to bring this matter to the Supreme Court, and the chief shepherd and *amicus curiae* for these new political rights for singles, was Planned Parenthood. Most have not perceived this connection, but Planned Parenthood needed this decision to pursue *its vision* of family planning. It already had funding from Congress, but it needed the Court's decision to distribute contraceptives to singles. This it quickly did, and in the process gained vast amounts of money, both directly from program funding and indirectly from grants given by foundations tied to the contraception industry. The fruits of its work are today most visible in the old inner cities: multigenerational single-parent families, all beneficiaries of "family" planning.

We are coming up on fourth-generation fatherless families begotten since *Eisenstadt*, as many inner-city families start when a 16-year-old girl becomes a mother. These families produce boys who have little chance of becoming men. Indeed, each successive generation is less capable than the one preceding it. Worse still, as Andrew Cherlin of Johns Hopkins University uncovered in his research, the current norm in their home is a new man in the mother's bed every 18 months.

The effect of this on the men, the women and most especially on the children, is at times too awful to contemplate. The fruits are poverty, sexual chaos, sexual abuse, lack of identity with a father, the incapacity to be a man capable not only of marrying, but also of caring for himself or a wife or a family, and the incapacity of the woman to be a wife.

For the children of these multigenerational poor families, the results are grim: unprecedented levels of abuse, both physical and sexual, and ill health, disease and abandonment of children by their biological parents. It is a pity that the Supreme Court cannot be presented with a massive class-action lawsuit by the inner-city poor, because they can easily point to its decision as a main culprit in their poverty and suffering.

In America, the chaos from *Eisenstadt* must eventually be checked. If not by the Supreme Court and Congress, then by whatever government will follow after the collapse of our present order. Sexual license and republican liberty cannot live together. One of them will supplant the other. Either we become a sexually restrained people—a form of self-control needed for institutions that depend on liberty—or, as we become more and more sexually unrestrained, we will need the all-helping state to do what we won't be able to do for ourselves and our children.

Today, only 45 percent of American 17-year-olds live in an intact married family with both birth parents. Fifty-five

percent do not: Their parents have rejected them and walked away from each other—whether at their birth, after cohabiting or through **divorce**—and the price they pay comes in the form of lifelong reduced personal capacities.

Given that our most recent out-of-wedlock birth rate is around 42 percent, and given the cyclical nature of family brokenness, the *Index of Family Belonging* is guaranteed to deteriorate each year for at least the next seventeen, unless a national miracle happens. This would be something on the order of a Great Awakening: not only an awakening to God, but also to the dignity and duties of being male and female, husband and wife, father and mother, and to the child's inalienable right to the marriage of his biological parents.

With *Eisenstadt v. Baird*, the Supreme Court rejected the experience of millennia and set in motion the gradual weakening of America. Future generations may rank this as the single most destructive decision in the history of the Court. Will the forthcoming decisions in *Hollingsworth v. Perry* and *United States v. Windsor* be ones that rank right alongside it, by delivering a legal *coup de grâce* to marriage? Or will this Court be known for beginning the restoration of sexual and family sanity by preserving and protecting the core of society?

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