

## A Woman and Mother's Take on Declining Birth Rates

Declining birth rates are no mystery. This is simply the direct consequence of a society that has devalued the role of the wife and mother—and devalued the time-honored role of childbearing and homemaking for the female sex. This, of course, is only made all the worse by the recent change to gender-neutrality in the most absurd ways to erase everything unique about even being female, and everything, including the describing of pregnancy and women's bodily functions by using gender-neutral language: i.e., by calling a pregnant female a “pregnant person,” or a “birthing person” (because, after all, she may not even really be a mother, but just simply a surrogate!). This, of course, is only the tip of the iceberg of all the ways in which women and mothers are devalued in our modern society.

It has only been since the year 2007 that birth rates have declined drastically. It was that year that birth rates plunged by over 20% and never re-bounded.<sup>1</sup> This drastic reduction in the birth rate can't be blamed on the “Great Recession.” That only occurred at the tail-end of 2007—in December—and the beginning of 2008.<sup>2</sup> Furthermore, many—if not most—of those babies that were born in 2007 would have had to have been *conceived* in 2006, and most reductions in birth rates during an economic decline are typically only marginal, statistically speaking, and temporary.

Nor can declining birth rates be blamed on the usual factors of feminism, women's liberation, women's careers, birth control, abortion, or teen birth rates. Reliable birth control methods had already long been around since the 19<sup>th</sup> century.<sup>3</sup> The pill has been around since 1960. And—in the United States at least—abortion was far more readily available and accessible through the 1970s-1990s than what it started becoming in the early 2000s<sup>4</sup>—whenever birth rates started to plunge. (In fact, the trend over the last 50 years has been that, the harder abortion is to obtain, the lower the birth rates drop.<sup>5</sup>)

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<sup>1</sup> See, e.g., Anna North, You Can't Even Pay People to Have More Kids, Vox (November 27, 2023, 8:00 AM), <https://www.vox.com/23971366/declining-birth-rate-fertility-babies-children> (In the US, the birth rate has been falling since the Great Recession, dropping almost 23 percent between 2007 and 2022).

<sup>2</sup> The Great Recession began in December 2007. See Federal Reserve History, The Great Recession (November 22, 2013), <https://www.federalreservehistory.org/essays/great-recession-of-200709#:~:text=Lasting%20from%20December%202007%20to,long-est%20since%20World%20War%20II.&text=The%20Great%20Recession%20began%20in,notably%20severe%20in%20several%20respects>.

<sup>3</sup> Besides the vulcanization of rubber in 1844 (more efficient condoms), there weren't really any new “inventions” in birth control in the 19<sup>th</sup> century. However, access and use of birth control became widespread during this time-period as information about birth control spread and birth rates were halved. See e.g., Joanna N. Lahey, Birthing a Nation: The Effect of Fertility Control Access on the Nineteenth-Century Demographic Transition 74 J. Econ. Hist. 482 (2014) (discussing falling fertility rates and wider access to abortion and birth control in 19<sup>th</sup> century America).

<sup>4</sup> See e.g., Kimberly Kelly & Linda Grant, State Abortion and Nonmarital Birthrates in the Post-Welfare Reform Era: The Impact of Economic Incentives on Reproductive Behaviors of Teenage and Adult Women 21 Gender & Soc'y 878, 880 (2007) (“...states enacted 244 additional restrictions on access to abortion between 1996 and 2000.”). The rest, as they say, is history as it has only gotten more extreme since this time point.

<sup>5</sup> See, e.g., Brady E. Hamilton & Stephanie J. Ventura, Fertility and Abortion Rates in the United States 1960-2002 29 Int'l J. Andrology 34 (2006) (discussing fertility and abortion rates between 1960-2002. Legal abortion rates dropped by 22% after 1990.); Rachel K. Jones & Jenna Jerman, Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014 107 AJP 1904 (2017) (abortion rate declined 14% from 2011 and 2014). Typically, over the past 50 years abortion and birth rates fall together. The opposite, of

Even with women’s liberation, the pill, abortion, divorce, women’s careers and the sexual revolution, birth rates still remained well above replacement level—until 2007. We might still try to blame it on “teenage” birth rates, but even this doesn’t add up either, as teen birth rates have basically been steady at low levels since 1992<sup>6</sup>—well before the 2007 marker. Nor can it be blamed on the state of “child-care,”<sup>7</sup> bureaucracy, the cost of living, nor declining marriage rates or even older mothers, as births have dropped among *all* women of childbearing age—whether married or not and across all demographics—and show no signs of rebounding even with the passage of time (of nearly twenty years now).<sup>8</sup>

There is one thing, however, that *has* changed, and that would be the legal and cultural changes in the way that mothers—and motherhood—are treated. It is a bit difficult, especially coming from the perception of actually *being* a woman, to believe that women’s perceptions of their ability to actually be able to keep and raise their children—as well as make decisions in regards to their children, especially in the event of an unplanned pregnancy—has absolutely no statistically significant effect on women’s childbearing decisions or their willingness to bring children into this world. Of course, the media will whole-heartedly ignore the issue, and focus on the typical factors (Is it men’s fault? We just need better state-subsidized childcare<sup>9</sup> and parental leave! Dads just need to change more diapers!), and then claim that they can’t find a single policy factor one that could possibly be behind this drastically downward trend in birthrates.

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course, also appears to be true. If there really has been an overall increase in births over the past year (see *infra* note 14), there has also been a simultaneous increase in abortion rates. See e.g., Deidre McPhillips, US Abortions Reach Highest Level in Over a Decade, Sparked by Surge in Medication Abortion, CNN (March 19, 2024, 12:01 AM), <https://www.cnn.com/2024/03/18/health/abortion-data-gutmacher/index.html> (“Abortions are on the rise in the United States, despite bans that have taken effect in more than a dozen states.... There were more than 1 million abortions in the US in 2023, the highest rate in more than a decade and a 10% jump from 2020...”). What does seem to be clear is that women, as a group, cannot and will not be compelled to bear children against their will, and that using the power of the state to force them to do so clearly does not work.

<sup>6</sup> See, e.g., Chuck DeVore, The American Birth Rate is Plummeting, But Not in Some States (June 5, 2023, 6:00 AM), <https://www.foxnews.com/opinion/american-birth-rate-plummeting-not-some-states> (teen birth rate dropped by 78% since 1991). See also Kearney et. al, *infra* note 8.

<sup>7</sup> See *infra* note 9.

<sup>8</sup> See e.g., Melissa Kearney, Phillip Levine & Luke Pardue, The Mystery of the Declining U.S. Birth Rate, EconoFact (February 15, 2022), <https://econofact.org/the-mystery-of-the-declining-u-s-birth-rate> (“Births have fallen among women in their early 20s, late 20s, and teens (in fact, the teen birth rate in the U.S. has been falling steadily since the mid-1990s). Births have fallen among white women, Black women, and Hispanic women, with the largest declines among Hispanic women. Births have also fallen among women with and without college degrees and among both married and unmarried women.”).

<sup>9</sup> There is actually a connection between childcare and birth rates—but not in a direction favoring higher birth rates. On the contrary, states—and even countries—with the best “childcare” have seen the *largest* reduction in birth rates. In fact, the more “childcare,” the less children. Why? Perhaps because it takes the emphasis off of the importance of motherhood and the value of women’s traditional roles. See e.g., DeVore, *supra* note 6 (“But a national ranking of child care that compares cost as a share of income, availability and quality finds a modestly negative correlation to child care: of the seven states with the lowest natality, six of them are in the top 10 best states for child care.”); Ashley Ahn, South Korea Has the World’s Lowest Fertility Rate, A Struggle With Lessons for Us All, NPR (March 19, 2023, 7:00 AM), <https://www.npr.org/2023/03/19/1163341684/south-korea-fertility-rate> (South Korea has the lowest birth rate in the entire world, despite the fact that “the country’s child care policies are also among the best in the world.”)

But the fact is that few women are fooled anymore. Traditionally in our culture—and probably truthfully every culture in the entire world historically—motherhood was the highest of all honors and the most respected thing. Even well into the 1990s movies and TV shows—music even—uplifted mothers. The perception was always that mothers sacrificed and loved their children. Mothers would even go to the drastic length of kidnapping their children to keep them by their side if need be or even sacrifice their very own lives for their children. Promoted widely in the culture at large and in entertainment media was that the worst of all heartbreak to any woman was to be without her child or lose her child. Mothers were always portrayed to have a unique intuition and a special bond with their children that was irreplaceable. Even the single mother was heralded as a hero—a survivor who pushed through and worked damned hard to make the best out of the unfortunate circumstances she found herself thrust into.

Then enter the early and mid-2000s and suddenly a new theme—slowly, underneath everyone’s consciousness—began to arise: the theme of the evil, villainous mother that leaves while the poor oppressed dad left behind “does the best he can.” Now, instead of the sacrificing, loving and nurturing mother, TV shows, movies, and even children’s books now all have the common theme of the evil mother and the mother that leaves. The culture *itself* devalues the uniqueness of motherhood and the unique importance and irreplaceable role of the mother. Now a mother is easily replaceable by practically anyone, and certainly any situation—whether a single father, two homosexual men, grandparents, adoption, or even a foster home—is better for a child than simply being with its mother.

It goes deeper than the cultural to even reach the legal. As much as the culture and even the social sciences (psychology, for instance) devalue the role of the mother so now does our legal system. Traditionally, under our laws, a very compelling showing had to be made in order to separate a child from its mother. But such is not the case anymore. Those women (such as myself) who came of age around the year 2007—when the birth rates first plummeted downwards into oblivion—were the first generation to be raised under this new legal system—typically beginning in the 1990s—of gender-neutrality in custody law (the demolition of the maternal preference and the rise of “joint custody” and the father’s rights movement).

We witnessed first-hand our narcissistic fathers stalk our mothers through the family court system—and win—as children and teenagers. And while most of our peers who were mothers back in the early—and even to some extent mid—2000s did have custody of their children, slowly and surely this all began to change. And it wasn’t just high-profile celebrity cases (i.e., Britney Spears) where we began to see mothers lose their children and subsequently suffer because of it (which psychological trauma only caused these mothers to be deemed even more unfit). Everywhere around mothers suddenly started losing their children, at first perhaps just to fathers (who rarely had ever even wed the mother), but then to practically anyone—such as even the mothers’ own parents or other extended relatives who were suddenly threatening to take their children from them.

For a while, of course, even after it was no longer true, the myth persisted in the culture that only “bad” and “unfit” mothers lost their children, and, of course, women kept having babies and birth rates remained at “replacement” level. But I don’t think hardly anyone—outside from ranting men’s rights activists on the internet—and perhaps not even them—truly believes anymore that the courts even remotely favor the mother. And, to the extent that the myth of a maternal preference in the family courts does continue to exist, then it exists primarily because *women* must believe it. They stop believing it, they stop having babies. And if most children *are* still with their mothers, then perhaps that is because most people—fathers included—still continue to believe it to be right.

And I can testify to that myself. At 18, I wholeheartedly believed the myth when I got pregnant by my husband. I was madly in love with him. He was the only one I had ever loved or been with. This was right at that time—2007 era—when birth rates started plummeting, yet still long before homosexual marriage and the transgender rights movement or the “red pill” and rise of the “manosphere” and when most all children were with their mothers still. If I hadn’t believed the myth and believed that I would be somehow protected under the law, I would have never had even a single child. Once I learned the truth and reality directly afterwards, I adamantly refused to have another child ever again and promptly got sterilized as soon as possible at the age of 21.<sup>10</sup>

I know what I lived through as a child. Of course, I didn’t really remember much of it during my teenage years and I certainly didn’t *understand* it back then—but I certainly remember and understand it now. I remember my mother and how she told me that I would understand it one day—and I do. The memories of my childhood did come back eventually as I got older. Today I remember sitting holding on to my mother’s hand at the age of fourteen (yes, fourteen) pleading in court that I wanted to be with my mother only for a judge to tell me I had to return to my father. My father had gotten the other (a female) judge to recuse herself from the bench somehow (she supposedly was a lawyer at some point for my grandparents many years earlier, allegedly anyway). I remember my father saying that the female judge was a “man-hater” (she wasn’t, in fact she hated motherhood and all things feminine). My father then got the judge he wanted that would give him everything he wanted and dragged a whole entire courtroom full of people to testify to what utter and complete scum my mother allegedly was.

Of course, I refused to stay with my father and ran away. I was supposed to return to my father at a certain time as per court order. I remember standing in my maternal grandparent’s kitchen (my mother lived in a separate house on some lake property that they used to own when I was a child and teenager). My grandfather (I used to call him Papa back in the day) gave me some money so I could at least eat and I took off by myself, on foot, and ran away. Eventually, the preacher’s wife from the church my maternal grandparents attended found me and came and picked me up off of the city streets and, after talking to me for a long while, brought me to a local police station.

After talking with a couple of officers outside, the preacher’s wife then handed me over to them and they took me into custody, where I stayed for a couple of days. My father, of course, showed up at the jail. An officer came back to where I was at (locked up) with the other girls and told me that my father was there. I just shook my head and backed up, refusing to even see him. The police officers who were there didn’t try to even argue one bit that I needed to see him nor did they try to force me. The officer who had talked to me just nodded and returned back up front without saying a word.

I was close enough from the cell-block I was in to see the front of the building. I could see my father standing talking to one of the officers up front. I think my father actually even *argued* with them, but they wouldn’t let him back to see me because I refused nor would they hand me over. Ultimately, he couldn’t enforce my staying with him and I went to live with my mother. That pretty much ended all of that drama. Shortly after that I was out of school, working. My mother then moved away when I was 16, out of state. I would have gone with her but I had already met my husband, and I wanted to be close to him because, well, I was in love, so I technically stayed with my father after that. I stored my belongings there and would come home—sometimes—to sleep. However, I was out of school,

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<sup>10</sup> My personal story can be found in my book *Memoirs Revisited: The Diary*.

working full-time, had my own money and vehicle, so I was never there. Rather, I lived and stayed mostly with friends.

After I turned 18, I had my own place and shortly after married my husband. I've been with my husband ever since, and he's actually many times shielded me from my father (who doesn't understand the words "get lost" and "stay the hell away" —he apparently takes them for terms of endearment). Because of the vitriol that has come out of my father's mouth before (that mirrors what one would find on an MRA forum), my husband had had to even kick my father out and tell him to hit the road in our past—before we moved away from where we were born.

I have no relationship with my father today and haven't for many long years, pretty much since I myself became a mother and the sickening reality of everything that he did hit me. Nor does my mother or my own daughter. My childhood and the things my father pulled still have a mild traumatizing effect on me, even today, as a mother. On top of that, he failed to protect his own daughter, his own family, and didn't care about what kind of a world he was creating for both his daughter and granddaughter. I remember years ago seeing his face shine with terror at the thought that the very same legal system he leveraged to his own advantage might also be used to harm his daughter or granddaughter one day. So, he may have secured a "win" temporarily in the family courts, but in the end (if he's even still alive) he ended up with nothing. In fact, besides perhaps his own mother (who held on tight to her baby boy for sure), the only real relationship my father has ever had in his entire life was with my mother. He's pretty much ran away every woman he's ever (briefly) been with.

My parents divorced when I was only two/two-and-a-half years old or so, back sometime around 1991. My mother actually said one time, truthfully, that she had actually been considering going back to him after they separated. She had actually talked to him about the two of them getting back together—on the condition, of course, that he would get help for his drug problem. But then he went out of the blue and all of a sudden pursued custody of me, which was shocking to my mother, as she had me and was caring for me. My father certainly didn't want the burden of caring for me. In fact, he'd yell at my mother all of the time when they were married for her to "come get this baby!" I'm sure somebody probably advised him to pursue custody of me as a mere control tactic (which was the only reason for it, he even admitted it had nothing whatsoever to do with me). But there was no way in *hell* after doing that that he was ever going to get my mother back. Even to this very day she has made it clear that if my father ever showed up on her doorstep he would be escorted off by police. In my mother's case, of course, she did remarry and have more children—but not with my father. Never with my father. He secured his fate with her by doing what he did.

And does my father actually *understand* any of this or why his own daughter doesn't want anything to do with him? Doubtful. It's doubtful that he understands much of anything at all. The truth is, he has some severe psychological disorders. It's unlikely that he can really see why he lost not only a wife, but also a daughter and a granddaughter. Even my own husband has exclaimed that it's not even worth caring about, because even he can see that my father just doesn't have the mental capability to understand. Interesting though, I remember the entire time I was growing up how my father used to talk about wanting to have more children. Of course, ironically, he couldn't find any woman that *wanted* to (or could) actually have children with him.

But I still came of age thinking that only "bad" mothers lost their children. Feminine, soft, nurturing, I felt deeply and intimately and loved my ability to be pregnant with life inside of me. My thoughts were only on marriage, being feminine, nurturing, having and caring for children. I had my one and only child—my now grown daughter—with my husband and I might have very well happily

gotten pregnant again. Yet subsequent dramas and events in our early marriage showed me the truth of how our legal system treats mothers.

Though there is a larger story behind it all, I didn't *trust* my husband. I wasn't going to have additional children with him if I felt that there was even the *slightest* risk that I would somehow lose those children at some point or that I would be deprived of support (financially, socially, physically). I didn't feel my role secure, and I knew that the legal system no longer protected or favored mothers nor the feminine role. My husband financially supported me and I stayed with him (if I was in the workforce, I would have left him after everything that happened in our early years). I certainly did—and, yes, still do—love my husband, but whether I loved him or not, I would give him no more children ever again. There was a deep antagonism and distrust there that still honestly has never fully faded (and, yes, my husband knows that too). Intuitively, I felt nothing but a hostile legal and cultural climate—and I was not wrong. If I had known at 18 that the courts would not protect mothers, as well as all of the other things I only knew after the fact, I would have never had even a single child.

Of course, just like my mother told me, she would never take back who I am nor the fact that I'm here today for the world, but nonetheless she would have chosen a different course if she had been wiser. Likewise, I would never take back my daughter for the world either, but if I had known better at 18, I would have never become a mother at all—regardless of how in love I was.

So, from a woman's perspective, our ability to trust our men, our perception of our relationship quality (how many women have said the line: "We were happy then!" when regretting a relationship or having given children to a specific man), our perception of the unique value placed on our maternal roles, and our perception of whether or not we will actually be secure in our role as mothers to actually keep and raise those children are all *significant* factors.<sup>11</sup>

Of course, no woman can take back the relationships that she's already entered into, or the children that she's already had. But over time women *do* learn—when they come to see what the new reality is—and over time the birth rates (along with marriage and intimacy rates overall) drop. This is especially so now that women today are increasingly delaying having children, thus giving them more time to become wise to the ways of the world and the society around them.

Because why would *any* woman want to bear the burdens of pregnancy, childbirth, and postpartum and develop a strong and natural bond with her child—a bond that is unique to only mothers that men and fathers can neither know, understand, nor share in—if she *knows* that the end result will be that she will only lose that child? Or even if she simply perceives that the probability is simply *greater than not* that she will lose her child? Alternatively, why would any woman bear children

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<sup>11</sup> Evidence certainly backs up my own assertions and claims about the factors that influence women's childbearing decisions—when, how, and even whether or not we will bear children. Though the United States has attempted to punish and penalize women via anti-abortion legislation and pulling the economic purse strings, for instance, against unwed and single mothers since the 1990s via welfare reforms, economic factors are usually only minor considerations in women's childbearing decisions. Other factors are typically far more important. See e.g., Kelly & Grant, *supra* note 4: "...noneconomic considerations are more central in women's decision making about reproduction than economic factors.... [W]omen rely on a logic that is not primarily economic in deciding whether, and under what circumstances, they will bear children.... Prospects for financial support from a child's father and ability to support a child on one's own affect decisions, but so do noneconomic factors such as the desire for a child; expectations about future childbearing; health; moral and religious views; the desire to maintain (or end) an intimate relationship; and the responses of significant others in a woman's life." *Id.* at 878, 882, 898.

whenever she *knows* that the best she can ever hope for as soon as something goes sour in the relationship (if indeed there's even a real relationship in the first place) is to be locked for years on end into some kind of "co-parenting" arrangement with an ex she wants nothing to do with? Thus, once the myth of the maternal preference is gone, so too are the birth rates.

The more that states<sup>12</sup>—or even countries<sup>13</sup>—move away from the maternal preference to prefer joint-custody or other arrangements, the lower the birth rates drop. And undoubtedly a society that

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<sup>12</sup> See, e.g., Maria Cancian, Daniel R. Meyer et.al, Who Gets Custody Now? Dramatic Changes in Children's Living Arrangements After Divorce 51 *Demography* 1381(2014) ("between 1988 and 2008, the proportion of mothers granted sole physical custody fell substantially, the proportion of parents sharing custody increased dramatically..." in Wisconsin); Anja Steinbach & Lara Augustijn, Children's Well-being in Sole and Joint Physical Custody Families 36 *J. Fam. Psych.* 301 (2022) ("...the numbers of [joint physical custody] families are already quite high in some European countries (e.g., Sweden or the Netherlands) and some U.S. states (e.g., Wisconsin), with a proportion of about 30% or more of separated or divorced parents..."); Stephanie H. Murray, America Isn't Ready for the Two-Household Child, *The Atlantic* (December 8, 2023), <https://www.theatlantic.com/family/archive/2023/12/child-joint-custody-us-public-policy/676276/> ("...a 2022 study found that, nationally, the share of divorces resulting in joint custody jumped from 13 percent before 1985 to 34 percent in the early 2010s ... The same change appears to be happening in Europe: The prevalence of equal joint custody roughly doubled from the mid-2000s to 2021.").

It's extremely difficult to believe that this changing pattern of custody arrangements and changes in custody law have had absolutely no effect on birth rates, especially given that these changes have happened, and are happening, nearly perfectly in sync with declining birth rates.

<sup>13</sup> Interesting. Spain is in a crisis with a birth rate of less than 1.2 births per women. See, e.g., Spain's Birth Rate Drops to the Lowest Level Since Records Began Over 80 Years Ago: The Spanish birth rate has now dropped almost 25% in the last decade (February 21, 2024, 10:46 AM), <https://www.foxnews.com/world/spains-birth-rate-drops-lowest-level-since-records-began-over-80-years-ago> (Spain fertility rate drops 25% in only a decade). Of course, since 2007, fathers have had "paternity leave" and "joint physical custody" See, e.g., *Evolving Family Models in Spain: A new national framework for improved support and protection for families* (February 3, 2022), <https://www.oecd-ilibrary.org/sites/527d563b-en/index.html?itemId=/content/component/527d563b-en> ("In Spain, the increased availability of paternity leave and joint physical custody starting in 2007 appear to contribute to higher involvement by fathers ... a 2019 reform made for equal leave between mothers and fathers." Now, of course, Spain's birthrates are at critical levels. Can it seriously be believed that there is no connection between the "higher involvement of fathers"—as opposed to mothers—in childcare and the availability of shared custody and the drastic reduction in birth rates that have, again, happened right in sync with these policies?).

40% of children are in joint custody arrangements in Spain, see, e.g., *id.*, ("Despite its relatively recent introduction in 2005, joint physical custody is now granted in 37.5% of cases."). It typically takes about 10-15 years to see the results of these policies. The more fathers get involved in childcare—and the less they play the role of provider—and the more egalitarian the laws and policies become, the lower the birthrates. The same result has been seen in America. It only took about 10-15 years to see the results (drastically lowered birthrates below replacement level) of the 1990s joint-custody policies and fatherhood initiatives that attempted to get fathers to play a more "hands-on" "involved" and "nurturing" role. For a background on the origins of these fatherhood initiatives, see Carol Harrington, What is "Toxic Masculinity" and Why Does it Matter? 24 *Men & Masculinities* 345 (2020) (discussing 1990s policies that advocated for "engaged fatherhood as an antidote to toxic masculinity").

Just like in Spain and other countries, after gender-neutral policies are introduced that wipe away the mother's traditional nurturing role, what shortly follows is a sharp decline in birth rates. I'd say the figures are way too extraordinary to be mere coincidence. There is no way that there is no connection between egalitarian laws and policies and low birth rates. Other European and Nordic countries who have introduced joint-custody and gender-neutral leave policies have seen the same predictable reduction in birth rates a little over a decade

realistically saw half of all children taken from their mothers, against the mother's will, either completely out of their custody or into these joint-custody arrangements—like the progressives and the men's and father's rights activists desire—would likely be a society where no children would even be born. And whatever marginal uptick in birthrates<sup>14</sup> that might be obtained via using the power of the

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later too. See Steinbach & Augustijn, *supra* note 12.; Henry Mance, Birth Rates are Falling in the Nordics. Are Family-Friendly Policies No Longer Enough? *Financial Times* (January 28, 2024), <https://www.ft.com/content/500c0fb7-a04a-4f87-9b93-bf65045b9401> (“Finland’s fertility rate has fallen nearly a third since 2010.... In Europe in 2023, the rate fell in “Hungary, Germany, Iceland, Ireland, all the ones who were really high or were paraded as examples.”); Darel E. Paul, The Failure of Feminist Natalism, *Compact* (January 26, 2024), <https://www.compactmag.com/article/the-failure-of-feminist-natalism/> (“Europe is living through a stunning fertility collapse.... For 2023, births in the Czech Republic are forecast to fall 11 percent from the previous year and a shocking 19 percent since 2021.... In neighboring Poland, 2023 births are likely to drop more than 10 percent from 2022 and nearly 18 percent from 2021, figures the country hasn’t experienced since World War II. To the west, births in Germany in 2023 will fall more than 7 percent following an equally grim 2022.... [The] data are broadly similar in Finland (down 13 percent since 2021), Denmark (10 percent), and the Netherlands (9 percent). Even in France, Europe’s recent fertility leader, 2023 births are down 7 percent from 2022 and 9 percent since 2021, declines not seen since the mid-1970s.... Since 2021, the number of births in Sweden is down more than 12 percent, and the fertility rate has fallen almost 14 percent.... Cohort fertility in Sweden has been in steady decline for a decade, and Swedish women born in 1982—aged 42 in 2024—thus far have the lowest cohort fertility in more than 70 years.... And among the gender-egalitarian family-friendly countries of Europe, Sweden is hardly the worst performer. Fertility and family formation are declining in Norway and Finland even more dramatically.... Sweden hasn’t experienced any notable reversals in gender equality. The country continues to be ranked as the most gender-equal country in the European Union, and it has neither pulled back on its generous family policies nor slashed daycare slots. The same is true across the Nordic countries, France, and the Netherlands. Yet the family is in sharper decline here than anywhere else in the Western world.”).

<sup>14</sup> Perhaps we can celebrate that anti-abortion laws led to a 2% uptick in Texas birth rates.... Or did they? See, e.g., Julian Gill, Teen Birth Rates in Texas Rise for First time in 15 Years Amid Abortion Ban, Report Finds, *January 22, 2024*, <https://www.houstonchronicle.com/news/houston-texas/health/article/texas-teen-birth-rate-sees-first-rise-15-years-18621083.php> (“2% increase in fertility across all racial groups ... while black and white women saw their fertility rates drop by 0.6% and 2%, respectively”). For *Hispanic*—and some Asian—women birth rates increased. But what is significant here is that births among white and black women only declined *further*—and significantly at that. This uptick in the birth rate all went nearly *exclusively* to Hispanic women—and in a year with an absolutely historically unprecedented rate of migrant encounters at the international border and immigration. (See e.g., Mike Schneider & The Associated Press, U.S. Population Increase in 2023 Was Driven by the Most Immigrants Since 2001—and Immigration Will Be ‘Main Source of Growth in the Future’, *Fortune* (December 20, 2023 3:27 A.M.), <https://fortune.com/2023/12/20/u-s-population-increase-in-2023-was-driven-by-the-most-immigrants-since-2001-and-immigration-will-be-the-main-source-of-growth-in-the-future/> (“The number of immigrants to the U.S. jumped to the highest level in two decades this year, driving the nation’s overall population growth.... The United States added 1.6 million people, more than two-thirds of which came from international migration.... After immigration declined in the latter half of last decade and dropped even lower amid pandemic-era restrictions, the number of immigrants last year bounced back to almost 1 million people.... The last time immigration surpassed 1.1 million people was in 2001...”).

Did abortion bans really lead to the above mentioned (miniscule) increase in births, especially when births among both black and white women continued to decline even more sharply regardless of the bans? See also *infra*, note 39. For an update on the national U.S. birth rate see Jennifer Calfas & Anthony DeBarros, U.S. Fertility Rate Falls to Record Low: Fewer Babies Were Born in the U.S. in 2023 than any year since 1979, *Wall Street Journal* (April 25, 2024, 12:01 AM), <https://www.wsj.com/us-news/america-birth-rate-decline-a111d21b>



state to literally compel women against their will to bear children that they otherwise would not have—along with all of the attendant social problems that inevitably result as a consequence—such tactics are unlikely to have much long-term success at reversing the current situation of declining birth rates.

No, only traditional gender roles and honoring and uplifting the role of the wife and mother in the home and in her child’s life can ever do that. Of course, the government will ignore this and continue on with the same tried-and-failed policy goals to try and get “people” to have more children—but it won’t work. In the end, it will have to come down to what it will take to get *women*—not *people*, but *women*—to actually desire, and be willing, to have children.

Of course, all that I speak of is not the case for feminist and egalitarian-minded women. These women are overjoyed that the law no longer favors mothers nor views the female sex as “naturally nurturing” or in need of some kind of chivalric protection from men or the law. They’ve worked for decades to get society and the law to stop viewing women in such a “stereotypical” way. Feminist women have long advocated that dad—or anyone else for that matter—should just go ahead and take the kids so that mom can focus more on a career.<sup>15</sup> They have no desire to be nurturing or stay with their babies because it holds them back from “equality” with men in the political and economic sphere and keeps them from moving up in their careers. Thus, the law and the culture are designed to accommodate these women at the expense of traditional, feminine women—whatever of them that are actually left—that want traditional patriarchal marriages and to keep, full-time raise, and stay in the home

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(“The total fertility rate fell to 1.62 births per woman in 2023, a 2% decline from a year earlier, federal data released Thursday showed. It is the lowest rate recorded since the government began tracking it in the 1930s.”); Alexander Tin, U.S. Birth Rate Drops to Record Low, Ending Pandemic Uptick, CBS News (April 25, 2024 12:01 AM), <https://www.cbsnews.com/news/us-birth-rate-drops-record-low-2023-after-pandemic-uptick/> (“The pace of babies born each year in the U.S. has slowed to a new record low.... At least 3,591,328 babies were born in the U.S. in 2023, down 2% from the 3,667,758 born in 2022. This is on par with annual declines seen before the pandemic, the report said, which averaged around 2% fewer babies each year.”).

<sup>15</sup> Far and apart from being against fathers or men, most feminists wanted the maternal preference to end because it would end gender roles and the gendered division of labor in households. See, e.g., Herbert Jacob, *Silent Revolution: The Transformation of Divorce Law in the United States* 136 (1988) (“Many feminists, such as those belonging to the National Organization for Women (NOW), generally favored the respite that joint custody promised them. On the other hand, conservative women, such as those supporting Phyllis Schlafly’s campaign against abortion, were loath to oppose fatherhood.... Most important, perhaps, was the ambivalence many feminists felt toward joint custody. One feminist objective was to promote shared parenting with fathers so that wives would be emancipated from sole responsibility for the drudgery of housework and could enter the labor market on a more equal footing. That led them to advocate the elimination of gender from custody laws.”).

Indeed, society has now 100% in all ways adopted the feminist perspective now that the unique and traditional role of women and mothers has been wholesale eliminated. Both feminists and antifeminists, “conservatives” and liberals, have worked tirelessly for decades against mothers and motherhood. Even “conservatives” like Schlafly who fought against the Equal Rights Amendment (ERA) were nonetheless vocal supporters of joint custody, showcasing sympathy towards men’s and father’s rights policy goals in contrast to the traditions of our culture and our laws. (See also *infra*, note 26). It’s probably not too much to say that violent convicted felons have more social and legal support than your simple, average, everyday mother or housewife.

with their babies.<sup>16</sup> The law and culture accommodate the feminist/progressive viewpoint on life that says that a mother's unique role in her child's life ends at childbirth.<sup>17</sup><sup>18</sup>

The law and the culture also play right into the hands of these men's and father's rights movements as nobody whatsoever would *ever* advocate for protecting mothers because to do so would send society straight "back to the 1950s." It would derail all the "progress" of feminism right back to its roots. It would be propping up "the patriarchy" and women's natural dependence on men.

It's my viewpoint, of course, that the "men's rights movement" has not truly, in and of itself, ever been successful. After all, these groups have been around advocating for the same policies since the 1960s. But lacking any true mainstream organization until the 1990s (at least) (male plaintiffs during the 1960s and 1970s were typically represented by mainstream civil rights organizations such as the American Civil Liberties Union (ACLU) and women's rights groups themselves) and clearly facing opposition from society, they were never truly successful until "women's liberation." Indeed, it is rather the feminist and *progressive* movement that has been successful—and their policies simply fall right into line with it. I don't believe that the "men's rights" movement could exist without the progressive movement. Likewise, the progressive movement today could never exist without them. It's my belief that feminism itself probably would have fizzled out and died back in the 1990s if it hadn't been for the newly formed progressive father's and men's rights agenda.

If men, of course, are concerned with their own rights, then the proper way to secure those rights is not to attack and degrade the primacy of the role of the mother. That only breeds more feminism, and more women that come to age *not* viewing their sexuality as precious. It only breeds more masculine women who don't know how to love, be loved, and nurture. It only breeds more distrust and division. It only breeds more women who are completely okay with having sex casually or cohabiting with their boyfriend, splitting everything—including care of children—50/50 like college roommates like it's no big deal. It only further degrades marriage and the traditional family. (No big deal ... let's just do this "co-parenting" thing together casual like.). Degrading the role of the mother as

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<sup>16</sup> See e.g., F. Carolyn Graglia, *Domestic Tranquility: A Brief Against Feminism* 295 (1998) ("The feminist quest for female fungibility with males has led the women's movement to support the invalidation of laws benefiting and protecting women ... The theory was that obliteration of all legal sex distinctions would ultimately be in the best interest of working women; those women, including homemakers, who wished to retain the benefits of protective legislation were never the women with whose rights the [ACLU Women's Rights Project] was concerned. In the area of divorce reform, one of the benefits women have lost is the maternal preference which favored awarding custody to the mother.... The one most grievously injured by this so-called reform grounded in feminism's commitment to sexual fungibility is the homemaker who is most devoted to her children.")

<sup>17</sup> See generally F. Carolyn Graglia, *A Nonfeminist's Perspectives of Mothers and Homemakers Under Chapter 2 of the ALI Principles of the Law of Family Dissolution* 3 *BYU L. Rev.* 993 (2001) (a review of the proposed (adopted) changes in the law and the effects on mothers and homemakers and the traditional family unit).

<sup>18</sup> Such a sentiment—that the unique role of the mother ends at childbirth—is also echoed throughout the antiabortion movement, which can often be found holding up signs at "pro-life" demonstrations advocating to "love them both" (the both referring to both the woman and the fetus), with sentimental pictures of pregnant women and an outline of an alleged fetus inside of a woman's body. After birth, however, the mother goes right back to being expendable and the focus turns right back to a focus on egalitarian and gender-neutral laws and policies which degrade and diminish the role of the mother and which strip her of her traditional bargaining power and legal protections to maintain the full care and custody of her child, as well as full decision-making power should her and the father not be married.

the primary caregiver in her child's life teaches women to *not* seek to be nurturing and feminine or place a high value on their sexuality, thus breeding even *more* feminism and keeping the cycle forever going.

In 1991 Daniel Amneus—typically considered by many men's rights activists to be the father of the father's rights movement—posited in his book *The Garbage Generation* that female-headed households were the root of all evil; that crime and juvenile delinquency all stemmed from one problem alone: illegitimacy, father absence and single-mother families. The solution, he posited, was for men to attack women through the family court system and secure custody of children as a means of evading paying support to ex-wives or child-support for illegitimate children (so that, allegedly, they could then have a full paycheck to support “good” wives in marriage) and of compelling women to be chaste and to stay in marriages where they would then happily bear their husbands only legitimate children, as they would then lack the “incentives”—welfare, alimony, child support, custody—to divorce their husbands or bear illegitimate children.<sup>19</sup> Alright. This was in 1991. We now have over 30 years of history

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<sup>19</sup> The idea of relieving fathers of financial responsibility for illegitimate children and revoking unwed mothers' right to relief and welfare assistance so as to “dissuade” women from bringing illegitimate children into the world and protect men from promiscuous females who allegedly make false paternity claims and use illegitimate children to “secure financial rewards” is far from novel. The commissioners for the 1834 Poor Law Amendment Act in England adopted these views. Ultimately, however, even though the new poor law provisions were adopted, the provisions proved so untenable and aroused so much anger and backlash at all levels of society that within a decade the anti-woman provisions were repealed. The end result after this calamity was that the middleman (parish officers) was removed and the unwed mother of an illegitimate child was given an independent civil remedy—independent of the parish—to sue the father directly for support. See e.g., Thomas Nutt, *Illegitimacy, Paternal Financial Responsibility, and the 1834 Poor Law Commission Report: The Myth of the Old Poor Law and the Making of the New* 63 *Econ. Hist. Rev.* 335, 335-36, 338, 340 (2010) (“...the old poor law ... granted, in effect, an unmarried mother a right to relief on behalf of her child, whilst expecting the putative father to be financially responsible for the cost.... ...the 1834 Poor Law Amendment Act undermine[d] an unmarried mother's right to parochial welfare assistance, it also severely curtailed the ability of mothers and parishes to enforce paternal responsibility through recourse to the law.... It was claimed that the [old poor law] failed to indemnify parishes financially, and that it generated pernicious consequences such as illicit sexuality, forced marriages, and the subjection of men to false claims of paternity and unjust imprisonment.... The [Poor Law Commission] Report employed markedly gendered and discriminatory language. Men were portrayed as the victims of the system. False swearing to paternity was presented as rife, often involving the complicity of corrupt parochial officials who would 'encourage the woman to pick out a 'good man', who could easily be made to pay. It was even reported that 'from ignorance and wilful perjury combined nine bastards in ten are falsely sworn in Towns.'” ... “The Commissioners reiterated that 'the most effectual course of abating the remaining evils would be by an entire repeal of the statutory provisions under which proceedings can be taken by the parish against the putative father'. As knowledge and awareness of the system grew, the Commissioners claimed that the number of affiliation cases would diminish, and along with it the apparent incentive to unmarried women to become pregnant as a means of securing a husband or an income.” In the end, the new law did not reduce illegitimacy rates and caused widespread anger and hardship. When the Select Committee on the Administration of the Relief of the Poor reconvened in 1838— only four years later—they actually reported an *increase* in illegitimacy, even as unwed mothers found it harder to drag the father into court or get him to pay.). The foregoing might also be compared to the attacks on mothers and welfare in the 1990s which, as well, did absolutely nothing to curtail illegitimacy, but, in fact, were probably at least partly responsible for severely increasing its prevalence. See Kelly & Grant, *supra* note 4.; *infra* note 38.

to look back on in order to see the results of such thinking. Has weakening the mother-child bond and abolishing the maternal preference in family law in order to strengthen the family's supposed weakest link—supposedly, according to Amneus's thinking, that of the role of the father—really worked out as theorized?

Hardly. Instead of having the result of bringing back the traditional, patriarchal family, weakening the mother-child bond and abolishing the maternal preference rather only *annihilated* what little might have been left of traditional gender roles and the patriarchal family and played right into the hands of the progressive, egalitarian agenda that sought to destroy the patriarchal family unit in the first place.

Theorizing such as what Amneus infamously promoted was quickly picked up and utilized by “conservatives” and others in the 1990s who posited that it was the physically or emotionally absent father—the father with the “toxic” “authoritative” masculinity—that caused boys, in particular, to become juvenile delinquents and even mass murderers.<sup>20</sup> The solution was to create public policy goals that strengthened the role of the father from being a distant figure to being “hands-on” and nurturing (the traditional female role).<sup>21</sup> And all of this, of course, was being presented even to Congress in the form of fatherhood initiatives<sup>22</sup> even as “conservatives” were simultaneously cracking down on abortion and degrading “welfare mothers” as “breeding mules” and “sluts” at the very same time<sup>23</sup>

Amneus's theorizing also showed a severe cognitive dissonance. On the one hand, he seemed to believe that women were nothing more than egotistical creatures who were purely self-interested, while men always sought solely to do what was “best for their families,” while at the same time somehow believing that children meant *so* much to women that women would do anything—including even stay in marriages and relationships that they didn't want just to be near or keep them. Ignoring that line of thinking for the moment, would *any* woman really love, trust, or bear children for a man that would go and hold their shared children hostage just to try and force her to maintain a relationship with him? It didn't work on my mother, nor have I ever seen it work on any other woman either. And just how many fathers out there would want some man doing such a thing to their own daughter?

Starting about after the time my own child was born many years ago, I started to see all around me that as soon as a woman wanted to end a relationship—for whatever reason—justified or not—the first thing that would happen was that the man would instantly pull out the custody card on her to try to control her. The end result was never a happily ever after. It was never a reconciliation. Rather, the only result I have *ever* seen once a man does such a thing is that he drives the woman away forever. No man can expect to pull an insult like that on a woman and the mother of his child and expect to keep her love. Even if the woman technically stays, the man has likely only lost her love and trust and the relationship is likely to be only very turbulent with the woman keeping him at arm's length.

I believed that my husband had tried such a thing on me not long after we were married and the end result was that I got sterilized, refused to ever have another child with him, and our relationship was nothing if not full of distrust and strife. Yes, I stayed with him because I *did* truly love him (and still do). I stayed with him because he was my sole provider and he protected me (maybe this latter was the only reason I stayed, as love alone probably wouldn't have been enough if I had been independent and able to take care of myself and had been out working anyway). But I did not *trust* him

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<sup>20</sup> See Harrington, *supra* note 13.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See Kelly & Grant, *supra* note 4, at 880.

and my heart was distant from him. After all of the things that happened early in our marriage our relationship was nothing but strife and hardship. (The worst part, of course, is that he didn't ever understand and couldn't ever see why.)

Threatening a woman does not win her love nor affection. In my case, it was my husband's relatives who were trying to get him to divorce me and harm me. Years later when we finally talked about what had happened in our early days, I remember exclaiming to my husband matter-of-factly that if he had ever *actually* attempted, or ever even so much as threatened one single time, to ever take our daughter from me, I would have never let him touch me again for as long as I lived.<sup>24</sup> As it was, there *were* many times where I wouldn't let him touch me. That early suspicion, distrust, and belief that he had even considered attempting such a thing was the main reason. And I suspect even the most militant modern "anti-feminist" woman that believes in the "red pill," "men's rights," and male victimhood would feel much the same sentiment in her own personal and private life (would she be much of a woman if she didn't?).

Amneus admonished at the end of his work that children should be placed in the custody of fathers, and that it was the goal of the men's movement to draw women back in to the patriarchy by taking children from their mothers. Clearly, society has rejected the patriarchal part of this equation, but it has fully embraced the automatic equal custody goals that is the sole *raison d'être* of the men's movement (again, because it falls perfectly into line with the modern progressive goals of a gender-free society).<sup>25</sup> But I don't believe that even the most radical in the "manosphere" could ever truly state with a straight face that the loss of the maternal preference or that any one of the men's rights groups' tactics have truly drawn modern women back to patriarchy.

On the contrary, modern women are very aware of these men's groups. They see what they are, what they do, and what they advocate for and most are entirely put off by it. The father's rights groups' tactics have also led women's rights groups to decry a "family court crisis." Women then see this, see all around them that there is truth to these claims, see the way that modern men act, and are then led to believe even further how evil "the patriarchy" is and see this as a prime example of why feminism is not only still needed, but also a *good* thing.

Amneus's theorization was quickly picked up by those who looked to degrade the role of the mother and women's unique child-bearing functions. Ignoring the mother-child bond and putting the focus on fatherhood fueled straight into the egalitarian agenda of gender-role reversal and gender-neutrality in law and public policy.<sup>26</sup> It was here, in the 1990s, that the modern concept of antifeminism

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<sup>24</sup> His response to me was actually shocking. He only said "That's what scares me the most" when I said that I wouldn't have ever let him touch me again.

<sup>25</sup> It doesn't take more than a quick search to reveal a plethora of "scholarly" research articles touting the virtues of joint custody because it enhances women's earnings in the workforce. Thus, men's rights activists help enable feminism to keep on going and give it more fuel to keep on operating. They help the progressive movement and likewise the progressive movement helps them.

<sup>26</sup> Indeed, the traditional and truly "conservative" viewpoint in America—and probably in most every civilized society in the world—was that the nurturing love of a mother was absolutely essential. See, e.g., Jack Larkin, *The Reshaping of Everyday Life 1790-1840* 52-3 (1989) ("...a new conception of motherhood as a special and uniquely important form of women's work emerged in the Revolutionary years and was finding substantial acceptance in early nineteenth-century America. Ministers' sermons and other public pronouncements stressed the theme that motherhood was not just something natural, inevitable and to be taken for granted. Not only did

revolving around male victimhood first began. And, of course, little more than a decade later came the plummeting birth and even further reduction of marriage rates.<sup>27</sup> These young men that we see today—the ever-increasing and disturbing numbers of them prone to violent right-wing extremism,<sup>28</sup> the

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Evangelical preachers charge mothers with preparing their children for salvation, but others maintained that the safety of the Republic itself, or, at the very least, success in the rapidly changing social and economic order were at stake; they depended on the strength of character and self-control that virtuous mother-citizens alone could instill in their offspring.”). A freedom-valuing society that places an emphasis on the mother-child bond and women’s role in the home and in their children’s lives are signs of a developing and prosperous civilization. It is only a decaying and declining civilization that seeks to tear down the role of the housewife and mother. See also Jacob, *supra* note 15: “The ‘Cult of True Womanhood’ ascribed to mothers the ideals of piety, purity, submissiveness, and domesticity; motherhood was a woman’s ultimate accomplishment. It was thought that children were best cared for by mothers, who could shield them from immoral influences.... Some judges extolled the virtues of motherhood in superlatives, like the Wisconsin judge who wrote: ‘For a boy of such tender years nothing can be an adequate substitute for mother love—for that constant ministrations required during the period of nurture that only a mother can give because in her alone is duty swallowed up in desire; in her alone is service expressed in terms of love.’” *Id.* at 128-29 (quoting *Jenkins v. Jenkins*, 173 Wis. 592, 181 N.W. 826, 826 (1921)).

By attempting to ascribe this role (as opposed to the traditional provider role) to fathers and fatherhood today, “conservatives” kowtow to men’s rights activism and subscribe to the progressive agenda of eliminating the importance of traditional gender roles and the importance of and value of the traditional, nurturing and dependent woman in keeping with the feminist, egalitarian, and otherwise progressive agenda. Even while claiming to be “antifeminist,” they exploit feminism to their advantage and keep it alive, keeping the vicious cycle going.; See e.g., Lise Gotell & Emily Dutton, *Sexual Violence in the ‘Manosphere’: Antifeminist Men’s Rights Discourses on Rape* 5 *Int’l J. Crime, Just. & Soc. Democracy* 65, 71 (2016) (“Until recently, the MRM has been largely synonymous with fathers’ rights activism....Throughout the 1980s, the 1990s and the early 2000s, MRM politics took a decidedly state-centered form, focused on feminism’s perceived attack on fatherhood through family law. During this time, groups sought to shape law reform and policy discourse on child custody, access and support.... the antifeminist MRM appropriated formal equality arguments, asserting men’s equal right to parent....[and] the push for presumptive joint custody....”).

There has never been a “feminist attack” on fatherhood, but it serves the progressive agenda well for such a myth to circulate and persist in the culture, even if for no other purpose than that it makes women believe that feminism has been good for them—that it has somehow given them rights they never had before, thus driving them away from patriarchy and traditional values and keeping feminism alive. It keeps *women* ignorant of the truth of our history and laws.

<sup>27</sup> See e.g., Erica Pandley, *America the Single*, *Axios* (February 25, 2023), <https://www.axios.com/2023/02/25/marriage-declining-single-dating-taxes-relationships> (U.S. marriage rate declined 60% over 50 years).

<sup>28</sup> Indeed, home-grown, right-wing extremism (of which many in the more toxic circles of the “manosphere” fall into) and domestic terrorism have become since the 1990s far more of a threat than foreign terrorism. See e.g., Steven Chermak, Matthew DeMichele et. al., *What NIJ Research Tells Us About Domestic Terrorism*, NIJ (January 4, 2024), <https://nij.ojp.gov/topics/articles/what-nij-research-tells-us-about-domestic-terrorism> (“Militant, nationalistic, white supremacist violent extremism has increased in the United States. In fact, the number of far-right attacks continues to outpace all other types of terrorism and domestic violent extremism. Since 1990, far-right extremists have committed far more ideologically motivated homicides than far-left or radical Islamist extremists.”); see also Dale J. Watson, *The Terrorist Threat Confronting the United States*, FBI (February 6, 2002), <https://archives.fbi.gov/archives/news/testimony/the-terrorist-threat-confronting-the-united-states> (“During the past decade we have witnessed dramatic changes in the nature of the terrorist threat. In the 1990s, right-wing extremism overtook left-wing terrorism as the most dangerous domestic terrorist threat to the

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country.... The overall level of terrorist-related acts in the United States declined in the early 1990s, when compared to figures for the 1970s and 1980s, but has increased steadily during the past five years.”); Joanna Walters & Alvin Chang, Far-Right Terror Poses Bigger Threat to US Than Islamist Extremism Post-9/11, *The Guardian* (September 8, 2021), <https://www.theguardian.com/us-news/2021/sep/08/post-911-domestic-terror> (“In the 20 years since 9/11, far-right extremists killed more people in the US than did American-based Islamist fundamentalists.”); Isaac Kfir, The Many Faces of Right-Wing Extremism, *ASPI Strategist* (September 6, 2019) [content accessed in Proquest] (“...the rise of nationalist, anti-immigrant, populist political parties, have put the spotlight on right-wing extremism. In the United States between 2008 and 2017, far-right extremists or white supremacists were responsible for 387 fatalities. Over the same period in the US, Salafi-jihadists were responsible for 100 fatalities ... Contemporary right-wing extremism is a cacophonous, dispersed, transnational network, composed of at least four main streams that developed primarily in the US. The network itself is essentially made up of individuals who feel they’re part of an ‘in group’ and see themselves as enlightened. They believe that they have shed their false consciousness by taking the ‘red pill.’”); see also Gavin Hart & Antoinette Raffaella Huber, *Five Things We Need to Learn About Incel Extremism: Issues, Challenges and Avenues for Fresh Research*, *Stud. Conflict & Terrorism* (2023) (discussing relationship between Incel ideology, violent extremism, and “extreme right-wing ideas.” “The origins of the Incel milieu are found in the men’s rights movement that has been notable since the latter part of the twentieth Century [sic] ... as MRA and PUA [pick-up artist] groups began to decline in popularity during the last decade, other groups such as Men Going Their Own Way (MGTOW) and the Incel community have gained in prominence. MGTOW maintain that society oppresses men and they advocate for separation from, or abandonment of, women.” *Id.* at 3-4).

Noteworthy on this subject is that, among the risk factors for radicalization, an absent father or father-figure (or even mother or mother-figure, for that matter), is not among them. The time-honored and traditional forms of socialization into society, however—marriage, military service, advanced education—are factors. See Chermak et.al, *supra*.

toxic red-pillers,<sup>29</sup> the incels,<sup>30</sup> the aggressive and the largely sexless and frustrated<sup>31</sup>—are the offspring of this new breed of nurturing and “engaged” fathers. Young men today have wholesale lost the ability to be successful with and attract women, to be able to relate to women.<sup>32</sup> They have lost all direction

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<sup>29</sup> Far from young men growing up less violent after the demise of the maternal preference and getting fathers to be more “engaged” (traditionally fathers played a customarily distant and stoic role compared to mothers even while still being important role models who taught and trained their children and headed and provided for their households) and active in children’s lives, young men today are far more prone to radicalism and extremism than of those of generations past. Even the MRA movement itself has largely stopped being about politics and has turned mainly to focus on issues of sex, rape, and violence, advocating for male victimization while simultaneously threatening and advocating violence against women, especially those perceived to be feminists. See e.g., Gotell, *supra* note 26: “...there is now relatively little MRA engagement in the realm of public policy.... While fathers used to be constructed as the principal ‘victims’ of feminism, MRA attention is increasingly shifting to young men and sexual politics.” *Id.* at 71-2.; see also Matteo Botto & Lucas Gottzén, *Swallowing and Spitting Out The Red Pill: Young Men, Vulnerability, and Radicalization Pathways in the Manosphere*, *J. Gender Stud.* (2023) (discussing the red pill and what leads young men into it. Vulnerability seems to play a major role. “When analysing the former redpillers’ stories, vulnerability emerged as a central theme in all phases of radicalization and deradicalization ... experiences of vulnerability may also work to draw young men into misogynist extremism.” *Id.* at 2. And sometimes this perceived failure and vulnerability, coupled with both a desire for and resentment of women, leads to violence in these communities: “Redpillers’ resentment at times includes advocating sexual and physical violence against women since they do not give men what they are entitled to.” *Id.* at 3).; Rachel Stevens, *The Danger of the Men’s Rights Movement*, *The Tower* (October 11, 2018), <https://cua-tower.com/2018/10/the-danger-of-the-mens-rights-movement/> (“...MRM or The [sic] “Men’s Rights Movement” is a loose coalition of activists, with no official leader, that has coddled a generation of misogynists. These individuals not only resist equality, but outright threaten women....[It] is fostering a disturbing amount of aggressive rhetoric and even physical violence against women as a result of men trying to get rid of their ‘suffering’. There have been recorded instances of men beating women in the name of MRM. I personally glanced through many Reddit pages of men detailing their attack on a woman and being proud of it.... A typical MRM member is a conservative, white male.... This movement is gaining numbers quickly and effectively. It is a scary notion that the MRM is recruiting younger men now.”).

<sup>30</sup> See *supra* note 28.; *infra* note 31.

<sup>31</sup> See e.g., EJ Dickson, *We Aren’t in the Throes of a ‘Sex Crisis’– But Men’s Rights Activists Think We Are*, *Rolling Stone* (April 2, 2019), <https://www.rollingstone.com/culture/culture-news/sex-drought-crisis-816294/> (“According to the report from the University of Chicago General Social Survey, 23% of adults — nearly a quarter of Americans surveyed — had not had sex in the past year, up significantly from 2008, when the percentage of American adults not having sex was at around 9%. And it’s primarily young men between the ages of 18 and 30 that are driving this trend: 28% of young men reported not having had sex in the past year, as opposed to 18% of young women.” The sexual frustration of today’s young men has been linked indeed to acts of extreme violence, especially coming from the incel community, which “...has been linked to a number of violent attacks against women.” *Id.*).

<sup>32</sup> Intimacy rates are at 30-year lows. Young men cannot succeed with women. By all accounts, 60% are single and 1 in 3 report not even having any sex. See e.g., Gregory Matos, *Why So Many Young Males are Single and Sexless*, *Psychology Today* (February 24, 2023), <https://www.psychologytoday.com/us/blog/the-state-of-our-unions/202302/why-are-so-many-young-men-single-and-sexless> (“Not only are more young men single but their opportunities for developing a relational and sexual repertoire have all but vanished, as levels of sexual intimacy across genders appear to have hit a 30-year low.” Of course, the researchers can’t *imagine* why this could be the case and blame it on “gender norms” that “[make] them so anxious about intimacy.” *Id.*) See also *supra* note 31.



and purpose. Besides, theorizing such as Amneus’s defeats its own argument, as the desire to get fathers to be more “engaged” and “involved” in children’s lives—and the public policy goals of ensuring that the father is identified—were part of the aims of rolling out the aggressive child support policies in the first place.<sup>33</sup> It’s a self-defeating cycle. Amneus and father’s rights activists insisted that “every child must have a father.” Well, now every father must pay (in theory anyway<sup>34</sup>), which has severe and profound effects—on both sides of the equation—on marriage and family formation.

This argument, of course, that “every child must have a father” does, however, lose some of its teeth and become a somewhat curious assertion in a world of legalized commercial surrogacy, children legally conceived via “anonymous” sperm donation, homosexual marriage (which most “conservatives” even now support<sup>35</sup>—something that would have been unthinkable even 25 years ago<sup>36</sup>)—and legal

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Well, if “gender norms” are really the reason for men failing to achieve success with women, we might very well ask ourselves why any of us are even here and alive today. After all, our grandfathers and great-grandfathers married at much higher rates, by all accounts had a *lot* more sex, and certainly fathered a lot more children (and back when there was only one way to do it, too) than what the average man today ever will. And if young men today are intimidated by traditional masculine expectations, then perhaps it is because they grew up under societal expectations of “equality” and egalitarianism where they never learned the traditional virtues of manhood such as leading, initiating, and providing.

<sup>33</sup> See generally Jacob, *supra* note 15.; Aizer & McLanahan, *infra* note 47.

<sup>34</sup> Regardless of how much money is funneled into the welfare system, the reality is that less than even a quarter of single mothers receive a single dime of support, and whatever amount they do receive is typically quite minimal and hardly adequate. See e.g., *Less Than 1 in 4 Single-Mother Families Receive Child Support*, AECF (March 16, 2023), <https://www.aecf.org/blog/less-than-1-in-4-single-mother-families-receive-child-support> (“According to 2020–2022 data in the KIDS COUNT® Data Center, just 23% of U.S. female-headed families reported receiving any amount of child support during the previous year a decrease from 26% in 2018–2020.... In 2020–2022, single-mother families were least likely to receive child support in Tennessee (12%) and Louisiana (13%) and most likely to receive it in Idaho (35%), Utah and New Hampshire (both 34%).”

<sup>35</sup> It’s almost mind-blowing how fast Republicans will rush to protect what they never would have dreamed of even a generation ago, even while simultaneously crying foul on anything that might protect women (which they would have done in a heartbeat only a couple of generations ago). See e.g., the 2022 Respect For Marriage Act: James Esseks, *Here’s What You Need to Know About the Respect for Marriage Act*, ACLU (July 21, 2022), <https://www.aclu.org/news/lgbtq-rights/what-you-need-to-know-about-the-respect-for-marriage-act> (“The bill passed the House in July with a large, bipartisan vote of 267-157, making it the most pro-LGBTQ vote in Congressional history. Forty-seven House Republicans voted yes, even in this supremely partisan and bitterly divided Congress...”). And as for, for instance, the “Women’s Health Protection Act” that would have protected women specifically? See e.g., Natasha Korecki, Sahil Kapur & Peter Nicholas, ‘Major Hurdles’: The Reality Check Behind Biden’s Big Abortion Promise, NBC News (April 9, 2024 1:01 PM), <https://www.nbcnews.com/politics/joe-biden/biden-big-abortion-promise-fact-check-roe-v-wade-rcna146668> (“Also in 2022, the Women’s Health Protection Act won 49 Democratic votes in the Senate; the lone defector was Manchin. It failed 49-51, *with all Republicans voting to block it*”) (emphasis added); Amy B. Wang & Eugene Scott, *House Passes Bills to Codify Abortion Rights and Ensure Access*, The Washington Post (July 15, 2022 1:42 PM), <https://www.washingtonpost.com/politics/2022/07/15/house-abortion-roe-v-wade/> (“The House on Friday passed legislation that would protect access to reproductive health care, including the ability to travel across state lines for an abortion, as part of Democrats’ efforts to minimize the consequences of the Supreme Court overturning *Roe v. Wade* last month. One bill, the Women’s Health Protection Act, would enshrine the protections of *Roe v. Wade* into law.... *All Republicans and Rep. Henry Cuellar (D-Tex.) voted against the measure.*”) (emphasis added).

<sup>36</sup> See e.g., Geoffrey R. Stone, *Sex and the Constitution: Sex, Religion, and Law from America’s Origins to the Twenty-First Century* 463-68 (2017) (discussing the “bombshells across America” after a 1993 Hawaii

birth certificates with two same-sex parents as a federal constitutional right.<sup>37</sup> And, surely, research can always be pulled out to demonstrate how children still fare just fine even when raised by same-sex couples (and, just as surely, someone will come along and “prove” just the opposite with competing research.)

So, what is it really about? An “antifeminist” backlash that sought—and seeks—to degrade and attack women and mothers. Yes, single mothers *do* often live in poverty—and poverty most certainly does correlate with crime, as well as a whole host of other negative life outcomes—but that should rather make them an object deserving of sympathy from society rather than hatred and scorn. It should lead society and the law to not only limit divorces to exceptional cases, but, in the case of unmarried parents, to also impose an ultimatum on the male party to the sexual transaction to either marry and assume the responsibilities of patriarch and provider or pay up. In patriarchal societies, impregnating a woman comes with a duty, and if men do not fulfill that duty via marriage, then they must pay some other way.

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Supreme Court decision that declared that “the law restricting marriage to a man and a woman implicated Hawaii’s constitutional guarantee forbidding discrimination on the basis of sex.” The backlash was severe and immediate. Hawaii in 1998 amended its state constitution in response, overruling the court’s decision, and even other very liberal states, such as the notoriously liberal California, amended their state constitutions as well to expressly declare marriage to be between one man and one woman. California—which many alive and over the age of 30 today probably well remember—adopted its Proposition 8 in the year 2008, overruling a California state supreme court decision that struck down California’s Defense of Marriage Act. The 2004 act declared that “...only marriage between a man and a woman’ could be valid in California.” Whether religion is or ever was the primary motivation driving beliefs about marriage, the reality was that Americans in general even as late as the 1990s opposed same-sex marriage by overwhelming odds of 68 to 27%.

<sup>37</sup> See e.g., *Pavan v. Smith*, 137 S. Ct. 2075, 2077 (2017) (“As this Court explained in *Obergefell v. Hodges* ... the Constitution entitles same-sex couples to civil marriage ‘on the same terms and conditions as opposite-sex couples.’ ... In the decision below, the Arkansas Supreme Court considered the effect of that holding on the State’s rules governing the issuance of birth certificates. When a married woman gives birth in Arkansas, state law generally requires the name of the mother’s male spouse to appear on the child’s birth certificate—regardless of his biological relationship to the child. According to the court below, however, Arkansas need not extend that rule to similarly situated same-sex couples: The State need not, in other words, issue birth certificates including the female spouses of women who give birth in the State. Because that differential treatment infringes *Obergefell*’s commitment to provide same-sex couples ‘the constellation of benefits that the States have linked to marriage,’ we reverse the state court’s judgment.” What is most ironic of all is the defense that this “conservative” and “ruby red” state put up for refusing to issue a birth certificate including the names of both of the same-sex spouses: “[T]he State defends its birth-certificate law on the ground that *being named on a child’s birth certificate is not a benefit that attends marriage. Instead, the State insists, a birth certificate is simply a device for recording biological parentage—regardless of whether the child’s parents are married.*” *Id.* at 2078) (emphasis added)).

This “conservative” argument that biological parentage is more important than the legal ties created through marriage does more injury and insult to traditional family values (that they claim to love so much) and more damage to the institution of marriage (that they allegedly wish to save) than what legalized same-sex marriage ever has or ever could. It also contradicts the state’s own laws and flies in the face of the traditional family values—now clearly long gone—deeply rooted in the historical traditions and values of our culture. See e.g., *Michael H. v. Gerald D.* 491 US 110 (1989) (rights claims of husband supersede those of biological father); *Michelle W. v. Ronald W.* 39 Cal.3d 354 (1985) (same); *Lehr v. Robertson*, 463 US 248 (1983) (same); *Quilloin v. Walcott*, 434 US 246 (1978) (same).

Perhaps because only women can bear the children, and because women—allegedly—can now survive completely without men, it is only “fair” or “equitable” to focus on fathers, fathers, fathers. Men, men, men. Abandoning, punishing, and harming women and mothers because women, and women alone, possess the womb. Again, egalitarianism—a way to “equal things out” simply because men cannot bear children. But is it equitable to women or fair to *women*? In the end society will only get more of the same. In the end the “antifeminists” and men’s and father’s rights activists—along with the progressives—simply kill their own civilization.

Is public policy to revolve around the whims of men, or doing what is in the best interest of the home and family unit? Continuing forward with that same agenda will only inevitably lead to even more illegitimacy,<sup>38</sup> a further reduction in marriage and intimacy rates, and, ultimately, birth rates so low that civilization cannot sustain itself. As it is, if illegitimacy and immigration<sup>39</sup>—along with a booming surrogacy business—were removed from the picture overnight, there likely wouldn’t hardly be any babies even born at all in America.

No matter how men might feel about it (angry, jealous, grateful, amazed, unconcerned, stricken with a case of womb-envy, whatever...) the fact of life is that only *women* can bear the children. Only *women* were given the womb to be able to carry and bring life into this world, and should women become either unwilling, uninterested, or unable to do so, civilization simply cannot go on—regardless of whether or not marriage rates can ever rebound. And, for sure, if the projections are correct that 45% of all women in their childbearing years will be both single and childless by the end of the decade<sup>40</sup>, then, certainly, modern women *have* indeed become unwilling. There is clearly something about

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<sup>38</sup> In fact, since the time of all these “fatherhood initiatives,” the decline of the maternal preference, and the de-emphasis on the mother-child bond illegitimacy rates have only increased. In 1990, the rates were only 28% overall. In 2016 they were a whopping 40%, pretty much where they have been since the early 2000s and where they have more or less remained. See e.g., Dramatic increase in the proportion of births outside of marriage in the United States from 1990 to 2016, Child Trends, <https://www.childtrends.org/publications/dramatic-increase-in-percentage-of-births-outside-marriage-among-whites-hispanics-and-women-with-higher-education-levels>. By the end of the 1990s illegitimacy rates had already gone up to 32.5%. See infra note 45. And this is so despite all of the 1990s-era attacks on welfare that sought to reduce “out-of-wedlock births.” See e.g., Heather Boonstra, Welfare Law and the Drive to Reduce ‘Illegitimacy,’ Guttmacher (December 2000), [https://www.guttmacher.org/sites/default/files/article\\_files/gr030607.pdf](https://www.guttmacher.org/sites/default/files/article_files/gr030607.pdf)

<sup>39</sup> Approximately ¼ of all births in the United States are to immigrant women. See e.g., The Economist, Immigrants Boost America’s Birth Rate (August 30, 2017), <https://www.economist.com/graphic-detail/2017/08/30/immigrants-boost-americas-birth-rate> (“...things would have been worse if it weren’t for immigrants. They make up 13% of the population but nearly a quarter of births in 2015 were to immigrant women.”); Health Care for Immigrants, ACOG (February 2023), <https://www.acog.org/clinical/clinical-guidance/committee-statement/articles/2023/01/health-care-for-immigrants> (“Among children born in the United States, 23% are born to immigrant women and 6% are born to undocumented immigrants.”)

<sup>40</sup> See e.g., Rise of the SHEconomy, Morgan Stanley (September 23, 2019), <https://www.morganstanley.com/ideas/womens-impact-on-the-economy#:~:text=Based%20on%20Census%20Bureau%20historical,up%20from%2041%25%20in%202018.&text=What's%20driving%20this%20trend%3F,in%20their%2050s%20and%2060s> (“Based on Census Bureau historical data and Morgan Stanley forecasts, 45% of prime working age women (ages 25-44) will be single by 2030—the largest share in history—up from 41% in 2018. Single women are expected to grow +1.2% annually from 2018-2030 compared with +0.8% for the overall U.S. population...more women are delaying marriage, choosing to stay single or divorcing in their 50s and 60s. Women are also delaying childbirth or having fewer children than in the past.”).

the modern state of men, marriage, and childbearing that women *are* rejecting—and no amount of gender-neutral laws and policies, government incentives, equalized “parental” leave, subsidized “child-care” or cute pictures of dads with kids spread all over the media is ever going to be successful at reversing that. (Ironically, absolutely nobody has *actually* claimed that it will. In fact, all admit that these policies don’t work and that birth rates still continue to decline regardless.)

And I think maybe that we can look to a real modern-world example here. South Korea, for instance, has miraculously achieved the bragging point of having an illegitimacy rate of a mere paltry 2.5%! (Lower than 19<sup>th</sup> century England or America!) Of course, now South Korea can claim for itself yet another bragging right: with a fertility rate of far below even one child per woman, South Korea now has the lowest fertility rate in the *entire world*.<sup>41</sup> The fertility rate is so low that the South Korean government is now declaring it to be a national emergency.<sup>42</sup>

I think that the South Korea situation can showcase a few things. First, that low illegitimacy rates are indeed more than possible in modern economies. But, second, that policies that prohibit or discourage women from having children outside of marriage will not lead women to go and have those same children within marriage. Rather, it will mostly only mean that they won’t have them at all. (It’s likely that taking the aforementioned illegitimacy, surrogacy, and immigration out of the picture would lead to America’s birth rates dropping to just as low or even lower than South Korea’s.)

As well, I think it shows that the fault for illegitimacy and dropping marriage rates doesn’t lie with evil, promiscuous and feminist “man-hating” women looking to deny men and fathers their “rights.” Any woman could easily resort to completely legal anonymous sperm donation if that was her aim and raise the child with her lesbian lover or however or with whomever she wanted, just the same as a man could hire a surrogate, use an egg donor, and ditch the woman once she was done birthing the child. The fault and blame—if there should be any—<sup>43</sup>does not lie with *women*. Rather, there are

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Well, when society has devalued the traditional female nurturing role and the role of the mother, what other outcome is to be expected? Modern women have been taught that there is nothing inherently different or unique about their sexuality compared to male sexuality, and that there is nothing inherently unique about their role in their children’s daily lives as compared to a father’s. The end result is a (hypothetical) temporary boom to the economy at the cost of the ultimate decline of a once-great civilization and the way of life of an entire people.

<sup>41</sup> See Ahn, *supra* note 9. South Korea’s illegitimacy rate is a mere 2.5% due to the stigma against having children outside of marriage.; See also Justin McCurry, South Korea’s fertility rate sinks to record low despite \$270bn in incentives, *The Guardian* (February 28, 2024), <https://www.theguardian.com/world/2024/feb/28/south-korea-fertility-rate-2023-fall-record-low-incentives> (fertility rates sink again in South Korea to a mere .72 children per women, despite the government spending billions to encourage “families” to have more children).

<sup>42</sup> See e.g., South Korea to China: Why is East Asia Producing So Few Babies? *Al Jazeera* (March 15, 2024), [https://www-aljazeera-com.cdn.ampproject.org/v/s/www.aljazeera.com/amp/news/2024/3/15/south-korea-to-china-why-is-east-asia-producing-so-few-babies?amp\\_gsa=1&amp\\_js\\_v=a9&usqp=mq331AQIUAKwASCAAgM%3D#amp\\_tf=From%20%251%24s&aoh=17147443047635&referrer=https%3A%2F%2Fwww.google.com&ampshare=https%3A%2F%2Fwww.aljazeera.com%2Fnews%2F2024%2F3%2F15%2Fsouth-korea-to-china-why-is-east-asia-producing-so-few-babies](https://www-aljazeera-com.cdn.ampproject.org/v/s/www.aljazeera.com/amp/news/2024/3/15/south-korea-to-china-why-is-east-asia-producing-so-few-babies?amp_gsa=1&amp_js_v=a9&usqp=mq331AQIUAKwASCAAgM%3D#amp_tf=From%20%251%24s&aoh=17147443047635&referrer=https%3A%2F%2Fwww.google.com&ampshare=https%3A%2F%2Fwww.aljazeera.com%2Fnews%2F2024%2F3%2F15%2Fsouth-korea-to-china-why-is-east-asia-producing-so-few-babies) (“South Korea’s low birthrate has been declared a national emergency despite its government’s efforts to incentivise people into parenthood by paying 2 million won (\$1,510) on the birth of each child as well as providing a host of other benefits to parents.”).

<sup>43</sup> Indeed, it’s a bit curious why—other than for statistical purposes—we should continue to even talk about or decry “out of wedlock births” at all whenever both society and the law, all the way up to the highest

other cultural and legal factors at work that have created the current situation and attacking women or the role of the mother is not going to bring back patriarchy, marriage, or stable families (much less birth rates). On the contrary, there is a reason why feminists of the 1970s insisted that the housewife must go,<sup>44</sup> because when the housewife and the nurturing role of the mother go, so too does marriage and the patriarchal family—as well as civilization as we and our ancestors knew it.

The side of the equation that is never talked about is the role of the unwed *father* in illegitimacy and marriage rates (issues very relevant to the entire discussion of fertility rates and family formation). Yes, the so-called “sexual revolution” did make it more acceptable for women to have “free” sex and bear illegitimate children, for individuals to divorce, etc.... But the youth rebellion and sexual revolution had already begun to rage in the 1960s. Yet it wasn’t until the revolution of unwed father’s constitutional rights in the 1970s that illegitimacy rates shot up.<sup>45</sup> Yet this revolution wasn’t complete and

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levels, has made it firmly clear that there are no “illegitimate children,” the “nuclear” two-parent family of a husband and wife raising their biological children is no longer either privileged nor the norm, and when our culture and our laws do not acknowledge any difference between “legitimate” and “illegitimate” children, their rights and status, nor the responsibilities and rights of their parents at all. See *infra*, note 45.

<sup>44</sup> See Graglia *supra* note 16, at 97 (“Housewives, not men, were the prey in feminism’s sights when Kate Millett decreed in 1969 that the family must go.”)

<sup>45</sup> See e.g., Robert J. Willis, A Theory of Out-of-Wedlock Childbearing 107 *J. Pol. Econ.* S33, S33-34 (1999) (“In 1960, marriage was a virtual precondition for childbearing in the United States and Western Europe in the sense that more than 90 percent of all births occurred to married couples in all countries. Even among African Americans, the subgroup that most deviated from this norm, the large majority of births occurred within marriage in 1960. In the United States, the fraction of out-of-wedlock births has grown steadily since then, reaching a rate of 32.4 percent in 1997.”). For a background on the constitutional cases revolving around illegitimacy, see Serena Mayeri, Marital Supremacy and the Constitution of the Nonmarital Family 103 *Cal. L. Rev.* 1277 (2015). (The first illegitimacy cases began as “hapless child” welfare cases in 1967, only to morph to focus on father’s rights, a legacy that still lingers with America today even while the extremely few benefits or rights women ever gained have largely been washed away. This was the start of the phenomenon of placing emphasis on “the child” as a neutral political symbol. But, as the author states, “...the ‘unwed fathers’ cases tread cautiously in questioning the state’s ability to privilege marriage or to distinguish between unmarried parents on the basis of sex. Indeed, the specter of equal rights for unmarried mothers and fathers cast a long shadow over challenges to sex discrimination and marital supremacy in the 1970s and beyond ... marriage has ceased to be obligatory and permanent and no longer dictates sex and gender roles.” *Id.* at 1349, 1351.) See also David D. Meyer, Parenthood in a Time of Transition: Tensions between Legal, Biological, and Social Conceptions of Parenthood 54 *Am. J. Compar. L.* 125, 128-29, 132 (2006) (“Unwed fathers ... are no longer categorically disregarded by the law. Rules governing custody disputes have moved towards greater, though not perfect, gender equality ... Before the 1970s, unmarried fathers had only the most tenuous legal rights concerning their children ... unwed fathers typically were not permitted to wrest custody from the mother, nor were they legally entitled to object if the mother decided to place the children for adoption by new parents ... the Uniform Parentage Act, now formally adopted in nearly half the states and embraced in modified form in many more, was first promulgated in 1973 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Its guiding principle is full equality for all children in their legal relationship with both parents, whatever their parents’ marital status. The Act emphasizes that the right in question belongs to the child, whereas traditional paternity acts had viewed the action as the right of the mother ... In the years from 1970 until ... 2000, the percentage of men between the ages of 25 and 29 years of age who had never married rose from 19 percent to 52 percent, while that of women climbed from 10 percent to 39 percent. During that same period, the number of unmarried couples living together roughly

the maternal preference was still largely intact, thus illegitimacy rates still remained hovering above 20% percent<sup>46</sup> and birth rates still remained above replacement level. Then along came the 1990s with the next wave of father's rights, gender-neutral laws and policies, the emphasis on fatherhood, the attack on unwed "welfare" mothers, and the full-scale abandonment of the maternal preference, with the long stream of unwed father's constitutional rights cases largely won and done, and the illegitimacy rates since that time period have shot up to around 40% and have basically remained flat at that level ever since while birth and marriage rates have only plummeted.

Undoubtedly since the 1970s there has been greatly reduced incentives for *men* not to father children outside of marriage. There is no solid evidence that the availability of welfare or child support to unmarried mothers causes women to *willingly* "choose" to bear illegitimate children.<sup>47</sup> This is, rather, a mere projection of male anxieties. Besides, if any woman wanted to "get paid" for having a child, there's already a robust, desperate, and growing market for that (in the United States at least) in the form of paid commercial surrogacy—with a guaranteed payout assured by a legal contract and no need to involve a father or take responsibility for the resulting child whatsoever. And, further, if financial incentives really worked to get women to bear children (whether inside or outside of marriage), then why aren't women going out and having more children on account of all these government incentives that are trying to raise the birth rate? With childbearing, the same as with sex, the overwhelming majority of women simply do not respond—at least not outside of desperation—to financial incentives. (If the government came and told me personally tomorrow that I'd get no strings attached welfare payments if I'd go and have a child I'd tell them just precisely where they could stick it.)

On the contrary, centuries of human experience in fact militate *against* this viewpoint that women are en masse choosing to go out and bear children outside of marriage just for welfare or

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doubled each decade, increasingly [sic] overall by about 1000 per cent. The linkage between marriage and childbearing, long taken for granted by most Americans, has weakened substantially ... The traditional ideal of a 'nuclear family,' made up of a married couple raising their children, is fading, down from 40 percent of all households in 1970 to less than a quarter by 2000. It is probably not too much to say that '[t]he domestic unit in early 21st century America [has become] a crazy quilt of one-parent households, blended families, singles, unmarried partnerships and same-sex unions.'"

<sup>46</sup> See supra note 38.

<sup>47</sup> See e.g., Daniel Tannenbaum, *The Effect of Child Support on Selection into Marriage and Fertility* 38 J. Lab. Econ. 611, 615 (2020) ("Several studies find that child support laws have led to a decline in total nonmarital births."); Steven Goldsmith, *Tough Child Support Laws May Deter Single Men From Becoming Fathers*, Study Finds, UW News (June 13, 2005), <https://www.washington.edu/news/2005/06/13/tough-child-support-laws-may-deter-single-men-from-becoming-fathers-study-finds/> ("States that are strict in enforcing child support have up to 20 percent fewer unmarried births than states that are lax about getting unmarried dads to pay.... "The better the enforcement of child support, the more the cost of childbearing shifts from unmarried women to their partners...." 'This may make men more reluctant to become unwed fathers.'"); Anna Aizer & Sara MLanahan, *The Impact of Child Support Enforcement on Fertility, Parental Investments, and Child Well-Being* 41 J. Hum. Res. 29, 30, 32, 44 (2005) ("[S]tricter enforcement does not provide single women who are likely to rely on welfare with incentives to have children. In contrast, stricter enforcement provides men with clear disincentives to have children, especially if their payments go to the state rather than to the mother of their child.... [S]tricter child support enforcement reduces fertility, especially among mothers who are less likely to invest in their children, regardless of actual child support receipt.... The empirical evidence with respect to the impact of child support enforcement on fertility suggests that the incentive effects of stricter CSE for men outweigh those for women: states with stricter child support enforcement have witnessed a decline in out-of-wedlock births.").

support.<sup>48</sup> As well, much research demonstrates that making the unwed father pay *reduces* out-of-wedlock births, as opposed to increasing them, thereby wholly negating this theory.<sup>49</sup> (The availability of child support may very well influence an unwed pregnant woman’s decision to have an abortion, however, giving further credibility to the theory that women’s sense of security factors heavily in their decisions of whether or not to bear children.<sup>50</sup>)

Welfare and support from the father have been around for hundreds of years for mothers of illegitimate children in both English and American society.<sup>51</sup> Indeed, all American states—with the exception of Texas<sup>52</sup>—had long had laws before the 1970s granting to unwed mothers a private right to pursue the father for support. The only thing that has changed is that the process has been streamlined since 1977<sup>53</sup> when illegitimacy-based classifications were being struck from the law and declared “un-constitutional,” giving to unwed fathers rights that they only marginally—in limited circumstances—had before.

But if the law now gives to the unwed father equal parental rights outside of marriage—something that was not available traditionally—then what incentive do men have to marry and be providers? What penalty does the male party to the sexual transaction bear for evading marriage and fathering illegitimate children? Does he forfeit anything if he knows equal parental rights and equal custody weigh in his favor outside of the responsibilities of marriage and providing for a wife? And, indeed, as a mere example, policies that seek to establish paternity on-the-spot in hospitals as soon as a child is born *have* in fact been found to reduce the probability that the parents will marry (again, increasing illegitimacy rates, not decreasing them).<sup>54</sup>

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<sup>48</sup> See supra note 19.

<sup>49</sup> See supra note 47.

<sup>50</sup> See e.g., Tannenbaum, supra note 47: “...full set of child support laws reduced the abortion rate by 1 to 2 per 1,000 women.” Id. at 614.

<sup>51</sup> See e.g., Tannenbaum, supra note 47: “For centuries, governments and church parishes have attempted to reduce their welfare rolls by locating absent fathers and getting them to financially contribute—a notable early example is the 1576 Poor Law of England.” Id. at 616.

<sup>52</sup> See e.g., *G----- v P.* 466 S.W.2d 41, 41-42 (1971) (“At common law, the father is under no legal obligation for the support and maintenance of his illegitimate children.... At the present time there is no Texas statute imposing on the father the duty to support and maintain an illegitimate child.... **At the present time all but two states have such legislation.**”) (emphasis added); *Gomez v Perez* 409 US 535, 536-37 (1973) (“The Court of Civil Appeals has held in this case that nowhere in this elaborate statutory scheme does the State recognize any enforceable duty on the part of the biological father to support his illegitimate children and that, absent a statutory duty to support, the controlling law is the Texas common-law rule that illegitimate children, unlike legitimate children, have no legal right to support from their fathers.... It is also true that fathers may set up illegitimacy as a defense to prosecutions for criminal nonsupport of their children.”); *Mayeri*, supra note 45 at 1313, n.222 (“Texas was an outlier in this regard; by the late 1960s, other holdouts had enacted or revised their support statutes to include ‘natural fathers.’”); *Davis Adm’r v Herrington* 13 S.W. 215 Ark. 5, 7 (1890) (“The statutory liability of the father of an illegitimate child to contribute to its support is a sufficient consideration for his voluntary promise to do so.... the statute in this State confers upon the mother of a bastard child the right to compel the father to contribute to the support of their offspring by affiliating it upon him.... His promise to pay her for the maintenance is, therefore, based not only upon a moral obligation but also a legal liability which she may cast upon him....”); *Fiege v Boehm* 210 Md. 352 (1956).

<sup>53</sup> See Tannenbaum, supra note 47, at 616.

<sup>54</sup> See e.g., Tannenbaum, supra note 47: “Several studies find that child support laws have led to a decline in total nonmarital births. ...on the other hand ... adoption of in-hospital paternity establishment programs

Again, the emphasis needs to be on women being nurturing. The emphasis needs to be on *motherhood*, not fatherhood, and giving to *women* the bargaining power to draw men into marriage to be stable providers for legitimate families. For hundreds of years the availability of welfare and child support did not cause the high numbers of illegitimacy rates or low marriage rates that we see today and have seen since the 1970s. Indeed, rates of out-of-wedlock *pregnancy* have remained virtually unchanged throughout both English and American history. It is only out-of-wedlock *births* that have shot up.<sup>55</sup> And this can only be so because marriage was expected (the “shotgun wedding”), the sexual bargaining power was with the female, and homemaking, motherhood, and traditional patriarchal family values were not only valued and honored by the culture but also protected by law. Women had security.<sup>56</sup> Put the emphasis on protecting female sexuality and encouraging *mothers* to be the primary

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reduces postbirth parental marriage and hence *increases* nonmarital parentage.” Id. at 615 (emphasis in original). The former imposes a penalty on the unwed father and reduces illegitimacy, the latter gives him de facto equal rights on the spot without having to exert any effort or resume any responsibility on his part. Because the father’s identity and rights are automatically established as a streamlined procedure outside of marriage without any effort on the unwed father’s part, then where is the room for bargaining between the parents to induce marriage? He doesn’t even have to go out of his way any—except perhaps by getting dressed and showing up at the hospital. It makes out-of-wedlock birth just as normalized, acceptable, and legitimate as childbirth within marriage. To even the most ignorant and ill-informed, it makes illegitimacy equal to legitimacy. (Not to mention being a degradation, insult, and slap in the face to women—which is precisely what the men’s rights activists have always wanted it to be.)

<sup>55</sup> See e.g., Larkin, *supra* note 26 at xvi, 193-94 (“Courting couples acted with a freedom that would surprise those nostalgic for the ‘good old days’ of sexual restraint.... In late eighteenth-century America, pregnancy was frequently the prelude to marriage.... In the 1780s and 1790s, nearly one-third of rural New England’s brides were already with child.... For many couples, sexual relations were part of serious courtship.... Pregnancies usually simply accelerated a marriage that would have taken place in any case, but community and parental pressure worked strongly to assure it.”); Tannenbaum, *supra* note 47 at 612 (“...the decline of marriages following an out-of-wedlock pregnancy explains, in an accounting sense, the majority of the increase in out-of-wedlock births between 1965 and 1990.”); Stone, *supra* note 36 at 49 (“Premarital sex was common in England throughout this era [sixteenth through eighteenth centuries]. Such behavior was often premised on a promise by the man to marry the woman, especially if she became pregnant. With such an understanding, sexual relations were generally regarded as ‘within’ marriage and therefore not a violation of community norms. The typical promise was expressed by a dung-carrier to his lover, who ‘kissed his hand and clapt [it] into her hand and swore by his faith that if he got her with child he would marry her.’ As a consequence of this custom, half of all brides were pregnant upon marriage.”).

<sup>56</sup> Our ancestors knew this whenever they put the sexual bargaining power in the hands of the female. The Supreme Court of Texas, for instance, put it eloquently in *In Interest of TET*, 603 S.W.2d 793, 795, 797 (Tex. 1980):

There is a rational basis for the state, which has an interest in securing stable homes and supportive families for children, to distinguish between the father who has accepted the legal and moral commitment to the family and the father who has not done so. The biological father may be a sperm donor or a rapist or someone ... who has simply engaged in a single hit and run sexual adventure....

The State has a valid objective in requiring the biological father to establish his "status" as a parent. Otherwise, we would recognize a sperm donor, a rapist, a "hit and run" lover, an adulterer and the like in the same legal status as a father who had accepted the legal and moral commitment to his family....



caretakers and nurturers of their children. Women will then become more feminine. Marriage and birth rates then increase as women become nurturing and draw men into marriage to provide and create stable and prosperous families.

There is, of course, a more serious side to these fatherhood initiatives and gender-neutral policies that seek to get men to be more “engaged” in parenting, housework, and traditional female roles and thereby displacing the time-honored role of the mother and homemaker. Perhaps society could continue forward with this so long as we perceive that our way of life will always be here and persist. But what would happen if—I’m just going to focus on the United States here, though this applies to Europe too—we were ever involved in another major war? And I’m not talking here about some proxy war or “operation” in some foreign land that your average American couldn’t—without GPS assistance—point their way to on a map to save their overweight hides. I mean a full-scale war such as the kind that realistically has not been seen since World War II—especially if it touched on our own soil? What

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[T]he State has a legitimate interest in protecting the children who are born as a result of premarital sexual activity. The mother, by virtue of her pregnancy, is automatically responsible for the child. She has the physical burdens and responsibilities of the pregnancy. She can choose to abort the child or she may carry it full term. The State has a substantial interest in encouraging the unwed mother to properly care for the child by assuring her that her wishes as to the disposition of the child will not, absent her consent or a finding of the child's best interest, be subject to the absolute veto of the biological father. This statute is substantially related to the achievement of that interest.

On the other hand, the biological father is not automatically responsible for the child. He may not have an interest in legitimating the child. He may not promptly disclose his interest in the child. In most situations, he can wait until after the child is born before committing himself. While the mother who is unmarried and pregnant is trying to figure out what she will do with the child, the father is totally free from any responsibility with respect to the child. To classify him as a parent simply because he is the biological father would give him a powerful club with which he could substantially reduce the options available to the unmarried mother. All must agree that an unmarried fourteen-year-old high school freshman has a serious problem when she discovers she is pregnant and she needs all the options that the State can properly make available to her.

This argument by the Texas Supreme Court back in 1980 should only be all the more relevant now that abortion is no longer available to so many women who find themselves dealing with unplanned pregnancies outside of marriage, or on account of “hit and run” lovers, or boyfriends who abandon them, or cohabiting relationships, etc.... Of course, in this particular case, the ACLU came along to represent the plaintiff unwed father before the Supreme Court of the United States, arguing that “...substantive due process and equal protection required that unmarried fathers be permitted to legitimate their children over the mother's objection, veto an adoption, and obtain custody unless they were proven unfit...” The ACLU also argued about the harm done to women because they were “inevitably locked into the childcare role, unable to share childrearing responsibilities equally with men.” Serena Mayeri, *Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality* 125 Yale L.J. 2292, 2355, 2356 (2016).

Again, the degradation of the role of women and mothers. But how many women and mothers *really* feel the way the ACLU asserted? And for those that do feel that way, is this actually a *good* thing? And it's not like the unwed father in this case even suggested that he had any interest whatsoever in actually engaging in child care. On the contrary, he openly flaunted that “...various female relatives - his mother, sister, or grandmother- would care for the baby if he were to obtain parental rights and custody.... More recently [he] had married a ‘full-time homemaker’ who allegedly was eager to raise the child.” *Id.* at 2356-2357.

then when we've got all of our men—depleted testosterone levels and all—engaged in childcare, part-time responsible for children, and showing their sensitive and nurturing side? These modern sensitive, nurturing, and egalitarian-minded men would be worse than just simply useless. And, no, women cannot be expected to fill this gap. Birth rates are already severely low and could only be expected to plummet even more drastically in wartime. Again, it comes back down to the simple fact of life that only women, and women alone, can bear the children. No society can realistically afford to devalue that role, and, in the end, gender-neutral policies will no more encourage women to bear children than they will boost faltering military recruitment rates. Only appeals to traditional femininity and masculinity, respectively, can do that.

In conclusion, though there are certainly without question many factors that come into play on this issue, our declining birth rates can without doubt be traced back to modern society's devaluing of the role of the mother and everything exclusively feminine in favor of careers and progressive policies. This society has repeatedly told women that what we do in childbearing doesn't count. It's only "biology" and doesn't matter. Our bodies, our sexuality, and our sexual and childbearing functions have been demeaned, debased, devalued, and exploited by the modern culture to an absolutely unprecedented degree. This civilization has *repeatedly* told women for *decades* now that any unpaid labor women do at home is nothing but meaningless and oppressive drudgery without any redeeming social or political value and that the only thing that counts is contributing to the GDP. A severe form of myopia that doesn't see the long-term value and necessity in women's unpaid labor and personal sacrifices in childbearing to society and the economy.

A man who dies in battle is given honor and a medal and is considered to have done his duty to his country. A woman who dies in childbirth—while a sad and lamentable thing to be sure—is given no medal and no honor. A woman who bears a child is given no pension, no economic nor any form of social security, no unique status nor unique rights. She isn't even guaranteed to so much as even keep that child (in fact, it's almost guaranteed that in the long run she won't). She is not hailed as a hero for having done an invaluable duty to contribute to the future of civilization. If she had been in uniform and hit by a stray bullet she'd be hailed as a hero, "trailblazing" new paths for women, but if she bears a child she has done nothing of any value that's worth protecting and honoring. This society has repeatedly told women that childbearing *doesn't count*, that women don't fulfill their civic duty to society whenever they bear children, and that women will only *really* be doing their civic duty to their respective countries only when they're subject to a military draft ... and yet now countries around the world are panicking because women aren't bearing enough children. Hypocritical much? If women stopped having babies tomorrow there'd be no country to fight *for*—let alone soldiers to even so much as go and fight in war. There'd be no workers in the workforce to prop up the economy, there wouldn't even be a civilization.

But let's break down the hypocrisy a little bit further. So, basically, women are supposed to do their "civic duty" to bear at least two children each (plus a little extra just in case!) to replace both parents—the sex that gives birth and the one that doesn't—giving up their own bodily autonomy and dignity and risking disfigurement, injury, illness and even death itself, just to keep the population afloat, yet at the same time women are not doing their "civic duty" unless they're subject to a military draft just like the boys?

Ha. I've only got one thing to say: \*\*\*middle finger\*\*\*.

Is it any wonder why women don't want to bear children? Women have been told for decades that childbearing doesn't count, yet somehow now civilizations the world over desperately need women—as women are the only ones with the biological capability to do it—to have babies. Best of luck with that. I mean, I thought women's reproductive capabilities were only pure biology and weren't important enough to matter or warrant any differential treatment between the sexes nor any special protection for women as the child-bearers and the more weaker and nurturing sex? I mean, I thought what women, and women alone, do wasn't special or important?

In the end, only by valuing women for their uniqueness and valuing and protecting women's traditional roles in the home and in their children's lives is any civilization going to keep their birth rates afloat. It is unlikely that anti-abortion laws or attempts at limiting access to birth control in order to force women to bear children will have much any lasting meaningful or positive effects. And to whatever extent that they might, perhaps these policies will also come with other long-term unintended consequences that favor women. For instance, legislatures and courts might just slowly start seeing once again that those children born should simply stay with their mothers—who were given no choice but to bear them—and that fathers should pay up. This is, after all, *precisely* what happened the last time that abortion was banned and birth control began to be limited in the 19<sup>th</sup> century. And history *does* always have a funny way of repeating itself.