

Interrogating Marriage: Law's Way for Bastards and Their Mothers
October 2, 2007

Why does the title of this discussion inextricably link the way of bastards with their mothers? How and why are the paths of mother and child linked in ways that father and child are not? Does improving the status of the illegitimate child always result in better circumstances for the mother, and vice versa?

Linda Kelly discusses at length the ways in which the idea of woman as a “natural mother” has become a predominant social perception and legal assumption. In what ways, both historical and contemporary, does this role serve to empower or entrap women? Given its cross-cultural and enduring appeal, is there any validity to the idea of the “natural mother”?

It seems that much of the legislation surrounding parental relationships to children born out of wedlock could, at least partially, attributed to a degree of paternity uncertainty that does not exist between mother and child. Is this a valid conclusion? To what extent is marriage a means of ensuring that paternity is attributed correctly, and is it effective in this purpose? What potential do modern technologies such as genetic testing have to alter this purpose of marriage as a legal construct?

An extension: if marriage *is* (or at least attempts to be) a means of ensuring paternity, what implications does this definition have for same-sex marriages, where (given the current limits of science) only one partner can be genetically related to the child?

Hypothetically, if someday science would allow genetic offspring to be born from a same-sex couple, do we think that would dramatically alter the debate over such unions?

Kelly writes: “However, despite this relief, the particular requirements of VAWA [Violence Against Women Act] reveal persistent, and familiar, attitudes towards women. If a VAWA applicant fails to personify a stereotypical image of a battered woman, her application will be denied” (7). Yet, how does Kelly further these stereotypical images in her own writing? What challenge does this embody for our own research and work? How can we analyze issues of hierarchy and power without using the tools (language, perspective, access) that the hierarchy itself has provided us?

Davis writes that “policymakers have, of course, sometimes carved out narrow exceptions for pregnancy and other sex-specific biological characteristics where equality of results would be undermined by an artificially sex-blind approach” (2). Are these biologically-based “narrow exceptions” truly the best way to legislate for equality? How might a more gestalt approach differ conceptually?

Davis alternately frames parenthood as a right and an obligation in regards to wrongful death cases, custody, adoption surrender, domicile assignment, etc. How does this mirror one of the overarching course questions of marriage as a right? Do the positive connotations (i.e., of both as rights for which to be strived) always accompany each other, and does the opposite hold as well?

Kiernan's work seems to suggest a fair amount of normalization regarding unmarried parenthood, so that it is far from the socially deviant practice it once was. However, the language and perceptions of unmarried parenthood still carry the connotation of deviancy, as shown particularly in the work of Davis (i.e., the terms illegitimate and bastard, the presumption that paternal identity is unknown or removed, etc.) How has social progress to improve the status of children born to unmarried parents neglected to change the terms of the debate?

How might class and race strongly impact the historical progress of the illegitimate child? If "the preferred treatment of non-marital children was, for whites, adoption by another family and, for African Americans, care by the birth mother's extended family" (Davis 7) and "illegitimacy had been used as a proxy for race in implementing public policy" (13), then how are efforts to legislate the status of the illegitimate child really efforts control these distinctly-affected populations? How are illegitimacy classifications *not* immutable in the ways that class and race are, and should this affect the protections they are afforded?

(How) can Davis's idea of "male coverture" be simultaneously burdensome and empowering for women?

Following Kiernan's research, only 27% of respondents considered an unmarried cohabitating childless couple to be a family. How might we hypothesize this perception would be different for couples to whom marriage is not a legal option? Particularly, would same-sex cohabitating couples be more likely to be viewed as a family than heterosexual cohabitating couples because the option of marriage is not as accessible to them? Or, would they be less likely to be viewed as a family purely on the basis of their sexuality?

If – even in Scandinavia – the rights of unmarried fathers lag behind the rights of married fathers, can we expect equality in this regard before paternity is legally established? Would it, in fact, be equality if paternity is not first established?

Kiernan writes: "There are also cues that unmarried parenthood may be more closely associated with impoverishment than empowerment" (52). How does this alter our perceptions of the European policies? How might it provide guidance for the American model, where unmarried parenthood has rarely, if at all, been presumed to be associated with empowerment? Although Seltzer suggests that some individuals choose cohabitation and unmarried parenthood over marriage because they "seek a different type of relationship, one with greater gender equality," how might their attempts at such equality be challenged given American policy?

The oft-cited statistic that "marriages preceded by cohabitation are more likely to end in separation or divorce than marriages in which couples did not live together previously" (Seltzer 1252) does not seem to be a deterrent for couples who chose to cohabit. How does this speak to cohabitation as a means to marriage verses a conclusive state? Does increased acceptance of cohabitation make marriage more or less desirable?

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