Father's Day Lament

by Phyllis Schlafly June 21, 2006

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On Father's Day we will again hear paeans of praise about the importance of fathers. This year, we will also hear extra rhetoric from those who argue that we need a federal Marriage Amendment because children need parents of both sexes, a father and a mother.

But the elephant in the parlor is the millions of children of divorced parents, who need their father just as much as children in intact marriages, if not more. Maintaining the father's love and authority is crucial when a child's life is turned upside down by divorce.

The silence of the pro-family movement and of the churches is deafening. Don't they care about the need for fathers of the 21.5 million children under age 21 who the U.S. Census Bureau reported in 2002 are living with only one of their parents?

The vast majority of those 21.5 million children are living without their fathers. Citing a principle called the "best interest of the child," family courts award sole or primary custody of most children of divorced parents to mothers, thereby reducing fathers to occasional visitation and zero authority.

Americans have always assumed that parents share decision-making authority because only parents can determine what is in the best interest of their own children. Chief Justice Warren Burger, writing in 1979 for the majority in Parham v. J.R., stated that ever since Blackstone (who wrote in 1765), the law "has recognized that natural bonds of affection lead parents to act in the best interests of their children."

As recently as 2000, the Supreme Court in Troxel v. Granville reaffirmed this principle and upheld the "presumption that fit parents act in the best interests of their children." The Troxel case rejected the argument that a judge could supersede a fit parent's judgment about his or her child's "best interest."

These principles are just as important when parents are separated or divorced, although the Supreme Court has never heard a divorce case. Exploiting this vacuum in higher authority, family courts have taken away from divorced parents the power to determine the best interest of their own children.

Family courts are the practical application of Hillary Clinton's slogan that "it takes a village (i.e., the government, the schools, the courts) to raise a child." But "best interest of the child" is a totally subjective concept since there is no societal consensus on what is best for every child.

Parents make hundreds of decisions, and whether the decision is big (such as which church they attend) or small (such as playing baseball or soccer), there is no objective way to say which is better. Even if there were some objective way to define "best interest," it would lead to all sorts of undesirable consequences.

Should we take children away from poor parents and give them to richer parents who could give them more material goods? Of course not; yet courts routinely allow one parent to move away in search of a higher-paying job, thereby depriving children of their other parent.

Many family court judges are uncomfortable with the awesome responsibility they have assumed, so they look for guidance from psychologists, psychiatrists, counselors, custody evaluators, parenting classes, and social workers. Having an opinion produced by a so-called expert is a device to make an arbitrary and subjective judgment appear objective.

A scholarly paper published in Scientific American Mind in October 2005 confirms what common sense should tell us, namely, that "it is legally, morally and scientifically wrong to make custody evaluators de facto decision makers, which they often are because judges typically accept an evaluator's recommendation. Parents should determine their children's lives after separation, just as when they are married . . . [because] parents, not judges or mental health professionals, are the best experts on their own children."

Putting the crucial decision about the custody of children of divorcing parents up to the subjective choice of judges and court-appointed non-parents is a sure prescription for conflict. The ugly, false and acrimonious allegations between spouses, which were supposed to be eliminated by the adoption of so-called no-fault divorce in the 1970s, have simply been transferred to the custody dispute in order to persuade the judge and the non-parent experts to make a favorable ruling.

This system has produced a tremendous divorce-custody-child-support industry, with well-paying work for lawyers and non-parents who pretend to be experts. It's in their financial interest to minimize the father's custody, visitation and authority so that he will keep paying and paying to win time with his own children.

Every successful civilization has placed the responsibility for rearing the next generation on children's own parents, both mother and father. Replacing that proven practice with the notion that a "village" should raise children, according to non-parents' subjective and misguided notions of what is in a child's "best interest," is a radical departure from the traditional rule that parents should possess shared responsibility for raising their own children.

A law requiring a presumption of equal shared custody after divorce would enable children to maintain strong ties with both parents at a time of family disruption, and it would eliminate much of the acrimonious conflict caused when one parent seeks a court ruling for sole or primary custody.