

**PROTECTING OUR MOST PRECIOUS ASSET:
OUR YOUNGEST CITIZENS**

**A PLACE TO START:
THE AFFIRMATION OF PARENTHOOD**



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We no longer can afford to ignore the root causes of intergenerational poverty, crime, and welfare dependency in the United States. Based on the following facts, United Nations statistician Howard Friedman carefully documented the declining international status of the United States in his book *The Measure of a Nation: How to Regain America's Competitive Edge and Boost Our Global Standing*:

- Americans have the lowest life expectancy among all comparable nations.
- Americans are at least two times more likely to be murdered and four times more likely to be incarcerated than any other comparable country.
- The United States shows the greatest disparity between rich and poor among all comparable nations.
- The United States is at the top of the list of comparable nations for child abuse and neglect rates and at the bottom for academic achievement.

While our nation focuses on current unemployment, the national debt, and terrorism, the ailments that threaten the future of our society are being ignored. Especially dangerous is the decline in thriving families that will undermine the future prosperity and security of our nation. This decline in family well-being now deprives us of parents who can raise the next generation of productive citizens.

At some point in their lives, half of all children born in the United States will have lived in one-parent homes, mostly without fathers. Half of these children will live in poverty for a time and may well continue the cycle of family disadvantage. Without concerted action, every American taxpayer will continue to pay for the consequences. As it now stands:

- Parents who raise a child to become a productive citizen contribute \$1.4 million to our economy; parents who neglect and abuse a child who becomes a criminal or welfare dependent cost our economy \$2.8 million.
- Even though we know incompetent parents harm their babies, families, and society, we act as if we cannot intervene until their children have been damaged by abuse or neglect. Meanwhile, we continue to support these parents and their children at great cost with public and private funds.
- Adults who require custodians or guardians themselves because they are unable to care for themselves have parental rights and the custody of their offspring.
- Adolescents who are not adults and require legal and physical custodians, usually their parents, have parental rights and the custody of their offspring.
- The first weeks, months, and years of life are critical in child development. Babies simply cannot wait for dependent parents to mature or recover from disabilities if they are to have an opportunity to succeed in life.

All of this is happening in a nation that was founded with the dedication to provide an opportunity for everyone to succeed in life through an implicit Parenthood-Society Contract.

The Parenthood-Society Contract

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Declaration of Independence

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

U. S. Constitution

Our usual interpretations of our two founding documents acknowledge that the reference to "men" actually means men and women, but we do not think of "unalienable Rights" as including children, especially newborn babies. We also overlook the phrase "secure the Blessings of Liberty to ourselves and our Posterity."

In one sense, it is appropriate to exclude minors from liberties and responsibilities that are within the purview of adulthood. It also is important to recognize that "the pursuit of Happiness" actually refers to the opportunity to flourish in life, not to just pursue pleasure.

Still, the Declaration of Independence does include all human beings regardless of age, and the Constitution does explicitly refer to "our Posterity"—succeeding generations, which means our children. These commitments boil down to the right in the United States of every newborn baby to have an opportunity to flourish in life.

In the past, children have been treated as the personal property of their parents. Under Roman law, the *patria potestas* doctrine gave fathers life and death power over their children. To this day, the popular presumption is that children belong to their parents. In contrast, since The Enlightenment of the Eighteenth Century, parenthood in Western cultures has been seen as a contract between parents and society by philosophers and by evolving legal codes. Parents are awarded rights by society in exchange for discharging their responsibilities. John Locke in the Seventeenth Century and William Blackstone in the Eighteenth Century held that parental rights and powers arise from their duty to care for their offspring. Locke and Blackstone recognized that no society can survive unless its children grow up to be responsible, productive citizens and that children also have the right to be raised without unjustified interference by the state. Taken together, these rights are called the *right of family integrity*. Both Locke and Blackstone held that, if a choice is forced upon society, it is more important to protect the rights of children than to protect the rights of adults.

Americans instinctively revere the family as an institution that helps facilitate all other aspects of life. The family fosters attachments across generations, provides a nurturing environment in which to raise children, and is a means of transmitting values from one generation to the next. It is the foundation of our society and as such requires its support and monitoring.

Monitoring of families takes place now in the United States through the legal *parens patriae* ("parent of the people") doctrine that draws upon the Declaration of Independence and the Constitution and employs the inherent power and authority of the state to protect people who are legally unable to act on their own behalf. It gives state courts the ultimate power to terminate parental rights and is based on four presumptions:

- Children do not choose the families into which they are born.

- Childhood and adolescence are periods of dependency and require supervision.
- The family is of primary importance but the state should play a role in a child's education and intervene when parents fail to carry out their responsibilities.
- When parents disagree or fail to exercise their authority, the appropriate authority to determine a child's or an adolescent's interests is a public official.

The *parens patriae* doctrine empowers the state to compel parents and minors to act in ways that are beneficial to society. It never meant that the state would assume parenting functions. Instead, the state is responsible for protecting the best interests of children under the guidance of two principles:

- The well-being of society depends upon children being raised by parents who are willing and able to fulfill the responsibilities of parenthood.
- These responsibilities of parenthood are defined by child neglect and abuse statutes.

In practice, our national, state, county, and urban governments currently recognize the Parenthood-Society Contract and their responsibilities for "our Posterity." They support families raising children in a number of ways, including providing public assistance, public education, community resources, recreational facilities, and tax preferences. As a society, however, we need to do more than merely give out benefits. We need to ensure that parents and prospective parents fully comprehend the responsibilities of parenthood. We need to do a better job of ensuring that they possess the capacities and resources needed to meet those responsibilities.

In short, we need to expect greater accountability on the part of parents. The ability to conceive or to give birth says nothing about a parent's ability or willingness to be a responsible parent. We need, therefore, to set a minimum standard for parenthood based on our cultural expectation embodied in the Parenthood-Society Contract that all citizens, including newborn babies, will have an opportunity to succeed in life.

By producing our nation's Posterity—our future citizens—parents implicitly enter the Parenthood Society Contract in which they are expected to raise their children to become productive citizens in return for society's support in providing resources and environments suitable for childrearing. Because this Contract is not openly recognized and honored on both sides, we now have too many parents who are unwilling or unable to raise their children successfully. Even more importantly, as a society we fall short of providing the reliable resources and environments parents need to raise their children.

We too often rely upon uncoordinated professions and social services to intervene long after social problems arise and in ways that cannot deal with the underlying causes of intergenerational poverty, crime, and welfare dependency. What's more, these unconnected, crisis-recoil responses to problems generally do not apply practices that we know work to prevent problems in the first place.

If this fragmented approach was applied to public health, we would immunize only a fraction of our population and then treat only a fraction of the individuals who became infected and many of them too late to do much good. The result would be pandemics of diseases analogous to what we now see with our educational failures, endemic crime, and welfare dependency.

Our failure to expect more from the parents who raise our nation's children—to hold them more accountable—has disastrous consequences, including the following:

- Three million children are referred to child protective services every year.
- Eleven million children have been seriously damaged by abuse and/or neglect.
- Millions of children fall into the *cradle to prison pipeline* and thus experience rotten outcomes in life as described by the Children's Defense Fund.

For humanitarian and financial reasons...for our nation's prosperity...we must try to remove government from direct involvement in family lives by preventing the formation of, and reducing the number of, families that spawn our social problems. We must protect our nation's Posterity.

Setting a Minimum Standard for Parenthood **To Protect Our Nation's Posterity**

We need a paradigm that protects everyone's interests when a baby is born. This is especially the case with adolescent parents. Births to adolescents should evoke full consideration first of the interests of the babies, then of the adolescents, then of their relatives, and ultimately of society.

There is a minimum standard for the adoption of animals. The American Humane Association employs an interview process to ensure that each animal adopted is matched to the most compatible new owner. The applicant must be 18 years of age or older.

As a society we haven't carefully thought through how to protect everyone's interests. As a result, our responses are reactive rather than proactive. We automatically shift from advocating teen pregnancy prevention, such as the efficacious Colorado Family Planning Initiative, to supporting adolescent parents based on our perceived lack of alternatives. In fact, the reasons for preventing teen pregnancy do not disappear when a teenager becomes pregnant. Adolescent childbirth is an even greater public health crisis than adolescent pregnancy. Focusing only on the adolescent ignores the interests of the baby. Focusing only on the baby ignores the interests of the adolescent. In both situations, the interests of the family and society usually are ignored. It is ironic indeed that the American Humane Association restricts animal adoptions to adults while we automatically accord parental rights to minors.

The paradigm we need also would apply to childbirth by adults with legal guardians themselves and by adults who courts have determined to be unfit parents. For all of these dependent parents, parenthood is an undesirable life style.

As a society, we actively try to prevent undesirable lifestyles. We devote public resources to preventing domestic violence, child neglect and abuse, drug abuse, alcoholism, smoking, obesity, sexually transmitted diseases, and adolescent pregnancy. When individuals persist in such behaviors despite interventions, we take one of two courses:

- When harm involves only the individual, we care for them. For example, our health care systems help both smokers and nonsmokers.
- When behavior harms others, as with sexually transmitted diseases, public health and law enforcement systems intervene. Adolescent and dependent adult parenthood has

repercussions far beyond the parents. Its short- and long-term effects harm their babies, their families, and our society.

A possible paradigm for protecting the interests of all parties at childbirth would be to set a minimum standard for parenthood.

A Minimum Standard for Parenthood

As it now stands, parental rights are automatically awarded to anyone who conceives a child regardless of their ability to raise that child. Instead, Wisconsin Cares, Inc., proposes that a minimum standard for parenthood—which means assuming the legal and physical custody of a newborn baby—be set to prevent the formation of vulnerable families at childbirth. That standard would be:

A person who requires a legal and physical custodian or a guardian or who is adjudicated to be legally unfit to assume the responsibilities of parenthood cannot be the legal and physical custodian of a newborn child.

We propose that this standard be implemented by modifying the birth certificate so that it also becomes a parenthood certificate that formally affirms legal and physical custodianship of the child. This would be accomplished by including in the Birth Certificate Application a paragraph setting forth the minimum standards for parenthood commonly used by family courts, which are basically to:

- Provide sufficient income independently or with public assistance for the child's clothing, shelter, education, health care, social, and recreational activities,
- Provide the love, security, and emotional support necessary for the healthy development of the child,
- Foster the child's intellectual, social, and moral development, and
- Socialize the child by setting limits and encouraging civil behavior and by protecting the child from physical, emotional, and social harm.

The inclusion of these responsibilities in the Birth Certificate Application would offer an opportunity for all parents to affirm their awareness of the responsibilities of parenthood, to evaluate their capacities to meet them, and to obtain information about available parenting resources.

The Parenthood Affirmation Process

When a pregnancy is first diagnosed and the decision is made to continue to childbirth, adults who do not meet the above criterion as dependents are eligible for automatic certification and would simply be informed about the requirement to affirm awareness and understanding of the responsibilities of parenthood and of the availability of supportive resources. Dependent and high-risk parents would be identified at this first point of clinical contact by professionals who would note if the pregnant person is under the custody or guardianship of others and check databases for child abuse, child neglect, and relevant correctional records. Those minors and dependent adults who are ineligible for automatic certification would be contacted by a child welfare worker. They and their families would receive Parenthood Planning Counseling. All other prospective parents would automatically be recognized on the Birth Certificate Application as the custodians of their newborn babies by signing an affirmation of their awareness and

understanding of the responsibilities of parenthood.

The goal is to act *before* birth in determining who will have the legal and physical custody of a newborn baby when there are questions about a parent's capacity to assume that responsibility. When a dependent parent's baby is born, there are three reasonable outcomes:

- 1) Relatives continue custodianship of the dependent parent, co-sign the Parenthood Affirmation, and assume temporary or permanent custodianship of the newborn baby;
- 2) The dependent parents and their families make a voluntary adoption plan effective at childbirth; or
- 3) When relatives are unwilling or unable to assume custodianship of the dependent parent's baby, a Parenthood Planning Team is formed to file a Child in Need of Protective Services Petition for a court ordered involuntary adoption plan for the baby effective at birth. Adoption offers the most practical and reliable access to competent parents for newborn babies who do not have them.

Current law assumes that all parents, regardless of age or other dependency, are the legal and physical custodians of their children unless a court determines otherwise. However, by definition minor parents are dependent persons who require their own legal and physical custodians. While they cannot legally be responsible for their own lives, they now are regarded as the legal and physical custodians of their newborn babies unless a court awards custody to another person(s). As a result, grandparents often care for grandchildren without legal authority to make medical and other important decisions for the children. Wisconsin Statute §49.90 (called the grandparent liability law) provides that a parent has an obligation to maintain or support the child of a dependent person under the age of 18 even though they do not have custody of that child.

Similarly, adults with guardians and adults who are under the legal and physical custody of the state are the legal and physical custodians of their newborn child unless a court determines otherwise. Especially problematic are women who give birth while incarcerated. In each of these instances unnecessary burdens are created for child protection agencies and courts that can be ameliorated by Parenthood Planning Teams.

In addition, all states presume that parents are responsible for the well-being of their children, but do not require informing parents of their responsibilities, except in divorce or other child custody actions.

Policy Objectives

Every child will have a parent as legal custodian who understands, accepts, and can carry out the responsibilities of parenthood. To that end, we would:

- Apply the public health principle of primary prevention to social problems by preventing the formation of vulnerable families,
- Shift the focus from remediation to prevention,
- Stimulate thinking about the rights of newborn babies, and
- Develop a process for the affirmation of parenthood responsibilities.

Methods

These objectives would be met by ensuring that:

- Every newborn baby’s parent/custodian is fully aware of the responsibilities of parenthood and the consequences of failing to meet them.
- Whenever parents are in the custody of another, such as a minor or an incarcerated or legally incompetent adult, that fact creates a presumption that these parents cannot be the legal and physical custodians of their newborn babies.
- Provide Parenthood Planning Counseling for dependent parents and their families when the decision is made to continue the dependent person's pregnancy to childbirth.
- When a parent is not legally competent for any reason, a qualified custodian, such as the parent of the dependent parent (the grandparent of the newborn), if willing and able is permitted to assume legal custody of the newborn baby.

Proposed Legal Policies

To accomplish these objectives and apply these methods, we propose that the following policies regarding a person’s capacity to fully understand the responsibilities of parenthood be incorporated into existing statutes:

- 1) A person is legally presumed to be capable of fully understanding the responsibilities of parenthood if:
 - That person is the birth mother or father of the child and is legally competent to manage her or his own affairs (i.e. is not under the legal and physical custody or guardianship of another—usually that person’s parent or the state), or
 - That person is the legal and physical custodian (usually the parent) of the birth mother or father.
- 2) This presumption may be rebutted by:
 - A Termination of Parental Rights (TPR) action or any other legal determination of unfitness of a mother or father.

Proposed Legal Procedures

The legal procedures for applying these policies would be incorporated into the Birth Certificate Application process, which would be advanced in time to begin when a pregnancy is diagnosed and the decision is made to continue it to childbirth.

- Whenever any pregnant person chooses to continue her pregnancy to childbirth, she and the father, if known, would be informed of the responsibilities of parenthood as outlined in the birth certificate application and asked to acknowledge awareness and understanding of those responsibilities by signing the following Parenthood Affirmation:

I am aware of and understand the responsibilities of parenthood.

(name of parent)

(co-signer when applicable)

A person who requires a legal and physical custodian or a guardian or who has been adjudicated to be legally unfit to assume the responsibilities of parenthood would not be qualified to sign this affirmation alone and would require a qualified co-signer. (Non-marital fathers may now voluntarily, or be required to legally, acknowledge

- their financial support obligations. That acknowledgment would include an awareness of their other parental responsibilities as well.) By signing awareness of the responsibilities of parenthood, a qualified person would be presumed to be accepting the responsibilities of parenthood as the legal and physical custodian of the newborn baby. If qualified persons decline signing that section of the birth certificate application, the person administering the form would note on the application that those parents had been informed of their responsibilities and had declined to sign the application. This would trigger the mandatory reporting of a child suspected to be in need of protective services as required in Wisconsin State Statute 48.13.
- At the time dependent persons' pregnancies are diagnosed and the decision is made to continue to childbirth, Parenthood Planning Counseling would be required for the dependent persons and their families. This process would have three potential outcomes as previously described:
 - The custodians or guardians of the dependent parents would co-sign the Parenthood Affirmation and continue the custody of the dependent parents and assume the custody of the newborn babies if they are willing and able to do so and meet the standards of kinship care, which they may or may not actually need to assume. The qualified custodian(s) or guardian would be the legal and physical custodian of the newborn child until the mother or father attains legal age or a dependent adult becomes self-sufficient.
 - The dependent parents and their families would make a voluntary adoption plan effective at birth.
 - If at the time the pregnancy is diagnosed it is evident there is no qualified person(s), who is willing and able to assume the newborn's custody, the unborn child will be presumed to be without a legal parent at birth. A Child in Need of Protection action will then take the necessary steps for the state to assume legal and physical custody of the newborn child, and an adoption plan will be made effective at the birth of the baby.

A Feasible Plan

Parenthood Affirmation is not:

- Eugenic—The Parenthood Affirmation does not affect conception except as it causes people to think more seriously about conceiving a child.
- Racist—Weighting toward minority groups is coincidental, not targeted. Most minority parents are competent parents.
- Discriminating against the poor—Weighting toward the disadvantaged is coincidental. Most parents living in poverty are competent.
- Elitist—Wealthy persons can be unfit parents.
- Unconstitutional—There is no Constitutional basis for parental rights other than as inferred from the Fourth Amendment's protection of the privacy of the home and the Fourteenth Amendment's due process clause. In fact, there is a Constitutional basis for children's rights to have an opportunity to succeed in life. The Parenthood Affirmation would explicitly and officially affirm parental rights with attendant responsibilities in the Birth Certificate.
- Impractical—The Parenthood Affirmation can easily be incorporated in the Birth Certificate Application and become a Certification of Parenthood.

- Costly—Parenthood Planning Counseling would incur the cost of increasing the number of professionals needed to implement it. However, the immediate savings in the costs of health care; long-term educational, mental health, and social services; and correctional processes and facilities would enormously offset those costs.

Conclusion

Setting a minimum standard for parenthood and certifying that it has been met would indicate that our society places a high value on protecting its Posterity and economic prosperity by ensuring that all children have parents who can raise them to become productive citizens. It would signal that we recognize parenthood as a valued career for which we have established a minimum standard. It would help to ensure that every newborn does have an opportunity to become a productive citizen. It would reduce early childhood adversity and curtail the cradle to prison pipeline.

Without creating a new bureaucracy, we can provide Parenthood Planning Counseling for pregnant dependent persons and their families through family planning, prenatal care, child welfare, home visitation, and coordinated services/wraparound programs that already exist. We can follow the counseling model already required for federal Adolescent Family Life Demonstration Projects.

Only through ensuring that all newborn babies have parents who are capable of raising them can we fulfill the Parenthood-Society Contract and ensure the future prosperity of our nation.