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Mandated Contraceptives: The Tragedy of the Sexless Law Student

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Leave it to radio personality Rush Limbaugh to turn a serious policy issue into a personal attack. But the moral character of Georgetown law student Sandra Fluke doesn't matter (except, presumably, to her). What should worry the rest of us is her apparent belief that we all are obligated to make sure that she can have sex for free.

Law school is typically a time of financial stringency. I know, since I also attended law school (though many years ago). I drove a 1966 Corvair, rented a room in a private home, and worked part-time. I don't remember the cost of contraception being a major issue then, but if it had been I wouldn't have expected "society" to pay for it.

Obviously Sandra Fluke lives in a different world. As, unfortunately, does President Barack Obama.

It should be obvious that, as Nobel Laureate Milton Friedman was fond of observing, "There ain't no such thing as a free lunch." Whether the pill, IUDs, condoms, or other, contraceptives must be developed, manufactured, and distributed. Someone has to cover that cost. Since contraceptives make sex easier for those who don't want babies, one normally would expect that those who want to have sex to pay for them. After all, you get the personal pleasure of the act. Your wallet -- and that of your partner -- should get stuck with the corresponding financial pain.

Nor does calling contraception "preventive care" make it so. Sex is a great thing. But even 20- and 30-somethings, like Ms. Fluke, can survive without it. (Shock, horror, disbelief, I know, but still true!) What is more "essential" -- getting a mammogram, colonoscopy, or chemotherapy, having bypass surgery or trauma care, or ... making sure you can have a good time essentially without risk (at least of an unwanted pregnancy)? If you answered the latter on my final exam, you would earn an "F."

Contraception also isn't what is normally thought of as an insurable "event." The purpose of insurance is to guard against the small chance of a big loss. You get insurance to cover the cost of treating a deadly disease or responding to a life-threatening accident, not to pay for bandages to cover a small cut or aspirin to ameliorate a headache. It especially makes no sense to insure against an event which you control -- like how often you have sex, and therefore how often you use contraception. Imagine auto "insurance" which covered the cost of every gas fill-up.

Of course, we've come to treat health "insurance" as prepaid medical expenses, with a predictably disastrous impact on medical expenses. Creating a third party payment system and reducing the marginal cost of care to patients -- now down to about 12 percent -- fuels demand, and thus prices and total costs. States already impose about 2000 different mandates nationwide. Now ObamaCare has empowered the federal government to decide what must be in every policy for every American. And even to declare which benefits must be "free."

But there is no "free" when it comes to insurance. Premiums pay for benefits. Bar co-pays and deductibles, and premiums must be even higher. Of course, if you're big into contraception you benefit from the mandate, because gays, the celibate and infertile, enthusiasts of "natural" planning, those theologically opposed to contraception or hoping to get pregnant, and anyone who has sex less often than you have to subsidize your sex life. What could be better than having fun at someone else's expense? Exactly why that is fair, however, let alone a vital new "right" to be enforced by Washington, is not as clear.

The administration says that the benefit will pay for itself. If so, there's obviously no need for a mandate. And the claim should be left to the economic marketplace, not the federal rulemaking process.

If this was merely one more special interest rip-off enforced by Washington it would be unexceptional. After all, the business of Congress and the White House is to transfer wealth for political gain. Try to give everyone something and enough people might be sufficiently confused by the smoke and mirrors to reelect you. As Public Choice economists long ago explained, concentrated interests tend to win out over the diffuse public interest, even though the public ultimately pays the bill. So it is with subsidizing the sex lives of law students.

What makes the contraception (as well as sterilization and abortifacient) mandate especially ominous is the direct assault on basic religious beliefs. Devout Catholics and some fundamentalist Protestants believe contraception to be wrong. I happen to be part of the majority who don't see such a problem, but that doesn't matter. People should be forced to violate their deepest moral convictions only for a good reason. Making it cheaper for people, including law students, to have sex is not one.

This has nothing to do with "theocracy," as some have claimed. No one is campaigning to ban contraception. Religious groups are simply asking those who want to use contraception (as well as get sterilized and buy abortifacients) to pay for it themselves.

That isn't a lot to ask in a big, diverse country. Especially since the "treatment" concerned is widely available and affordable.

Indeed, the extraordinary determination of contraception advocates to force the recalcitrant to pay suggests that the campaign is really about ideology, or even theology, only of a secular variant. Contraception should be part of the public ethos to which we are all bound. Imposing this radical secular mandate on traditional religious believers gives extreme secular, collectivist activists great pleasure, perhaps even more than sex itself. After all, what could provide more satisfaction than making those you despise pay for what they despise?

The administration's supposed "compromise" resolves nothing. Don't worry, the president says. Religious employers don't have to provide insurance covering contraception. But the insurance companies will have to provide the benefit anyway. Who, precisely, does he think will do the paying? Insurers either will roll the cost into their overall rate base or hike premiums on policies sold to all religious groups. Milton Friedman was right: there really ain't no such thing as a free lunch. Someone who taught at the University of Chicago, even at the law school rather than the economics department, like the president, should know that.

Sandra Fluke apparently wants to have sex freely and without risk. That's hardly a surprise, and she's certainly not alone in that desire. But it is still no reason to conscript the rest of us to pay.

It especially is insufficient reason to expect those with moral qualms about contraception to pay. Freedom of conscience is the foundation for all human liberty, inherent to the human person. It is not a privilege granted by the state. The Leviathan in Washington has become something quite different from the limited, constitutional government originally created to protect individual liberty. Nevertheless, Washington still has an obligation to respect religious beliefs -- especially the most unpopular ones, like in this case.