

Exhibit “8”

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Incest

Eugene Volokh • December 12, 2010 12:40 pm

Given the recent news story about father-adult daughter incest, I thought I'd ask a few questions about adult-adult incest (speaking specifically of parent-child, grandparent-grandchild, or brother-sister, and setting aside cousins and the like):

(1) Should it be illegal, and, if so, exactly why? Is it just because it's immoral? Because legalizing incest would, by making a future sexual relationship more speakable and legitimate, potentially affect the family relationship even while the child is underage (the view to which I tentatively incline)? Because it involves a heightened risk of birth defects (a view I'm skeptical about, given that we don't criminalize sex by carriers of genes that make serious hereditary disease much more likely than incest does)?

(2) Given *Lawrence v. Texas* — and similar pre-*Lawrence* decisions in several states, applying their state constitutions — what exactly is the basis for outlawing incest? Is it that bans on gay sex are irrational but bans on adult incest are rational, and rationality is all that's required for regulations of adult sex? Is it that bans on gay sex don't pass strict scrutiny (or some such demanding test) but bans on adult incest do? Is it that *Lawrence* rested on the fact that bans on gay sex largely foreclose all personally meaningful sexual relationships for those who are purely homosexual in orientation, whereas incest bans only foreclose a few possible sexual partners? UPDATE: For court cases on this, see here (stepfather-

stepdaughter) and here (brother-sister).

(3) If adult incest is indeed criminalized, what should the penalties be (assuming lack of further aggravating circumstances, such as force, strong evidence of grooming for future adult incest during childhood, and so on)? Should the penalty be relatively light, on the theory that only consenting adults were involved (much as the penalty for prostitution is relatively light)? Should it be very grave, on the theory that it's important to send a firm, unambiguous message that such behavior is wrong, or perhaps on the theory that one party is likely to have seriously harmed the other even though the other consented?

(4) Should all this apply to adult brother-sister incest, or are the arguments chiefly limited to what one sees as the likely special emotional control that parents might have over children?

Categories: Sexual Conduct Restrictions

294 Comments

1.

Jason says:

Consensual sex between adults should never be criminal. The notion that a parent has some magical control over a 21-year-old who isn't otherwise mentally handicapped is pure fantasy. Parents barely have control over their 14-year-olds.

All this is nothing more than projection based on the ich factor. (Quote)

December 12, 2010, 12:44 pm

2.

anony says:

What about homosexual incest, brother-brother, sister-sister, brother-father, sister-mother? There is absolutely no possibility of procreation, can there possibly be any reason to outlaw these relations? Much less to outlaw these marriages? (Quote)

December 12, 2010, 12:52 pm

3.

Turtle Noneck says:

Once incest is legalized, what is the rational basis for not recognizing incestuous marriages?