



INDIVISIBLE

Social and Economic Foundations of American Liberty

Leading Conservatives
Exchange Policy Perspectives

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INTRODUCTION BY JAY W. RICHARDS

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MARRIAGE

The Limited-Government Case for Marriage

BY JENNIFER ROBACK MORSE, PH.D.

LIFELONG MONOGAMY WAS ONE OF THE DISTINCTIVELY Christian contributions to Western civilization. Socialists have attacked every aspect of the social order created around the lifelong, sexually exclusive union of a man and a woman. Same-sex marriage, the current hot button issue, is but one of many issues designed to turn marriage into a collection of individuals loosely stapled together by the state. The Left often uses the rhetoric of individual choice and liberty to advance this project. But the rhetoric is not the reality. Deinstitutionalizing marriage will lead to an expansion of the size and scope of the state.



Jennifer Roback Morse

I came to the marriage issue late, and reluctantly. I had been trained in the University of Chicago school of economic thought and had been deeply engaged with the Austrian and Virginia schools of economics. Frankly, I didn't give the marriage issue much thought until I became a mother. That experience convinced me that we free-market advocates have taken the social institution of marriage far too much for granted.

THE SOCIAL PROBLEM THAT MARRIAGE SOLVES

Marriage is a pre-political, spontaneously arising, universal social institution. The essential purpose of marriage is to attach mothers and fathers to their children and to one another. Human beings are born alive and immature, through the sexual relations of a man and a woman. Every human child needs adult assistance in order to survive. Marriage exists, in all times and places, to solve this social problem. If our offspring were born as adults, ready to live independently, or if we reproduced through some asexual process, we might not need marriage (though marriage might still be valuable for other reasons).

This essential purpose is also profoundly social. Marriage creates a small society of mother, father, and children. That small social unit contributes to the larger society by creating a functioning future, a next generation. Everyone benefits from having a next generation in place to sustain the society and keep its institutions going. When I am old, even if I have not had any children myself, I benefit from the fact that younger people are building cars and houses, providing medical and legal care, starting new businesses, and running old ones. In modern developed countries, the family saves the state money

Just as the market is a system of social cooperation, so too is marriage the most basic and fundamental unit of social cooperation.

by taking care of its own dependent young, rather than foisting that responsibility onto the taxpayers. Thus, the benefits of marriage go far beyond the benefits to the individual members of the family.

Marriage exists to meet the social necessity of caring for helpless children, who are not and cannot be contracting parties. They are, rather, protected parties. At the same time, marriage should protect the interests of both parents in pursuing their common project of rearing their children.

Just as the market is a system of social cooperation, so too is marriage the most basic and fundamental unit of social cooperation. A man and a woman come together and create a child together. They work together for the benefit of the child, to raise him or her to adulthood. They both have an interest in the child's well-being. They both have the particular knowledge of the child's unique needs. Their union, their cooperation, is socially productive. Working together, they bring a child into being, which neither of them could do completely on their own.

Just as the market is a wealth-producing social institution, so too is marriage. Like the market, marriage harnesses the abilities, knowledge, and motivations of millions of people in a decentralized social system. Rather than trying to have some centralized agency of the state raise all the children in a homogenized way, each couple raises its particular children in the way that they deem will have the best chance of success.

Marriage should be an awe-inspiring sight to fans of limited government. By providing an extremely minimal legal structure related to marriage, the state facilitates a huge amount of voluntary cooperation. The state doesn't care about the details of particular couples' arrangements. As long as they fulfill a few basic requirements, the state has no further concern. Marriage is a largely self-regulating, largely voluntary system of long-term cooperation between parents.

THE SOCIALIST CHARACTER OF THE OPPOSITION TO MARRIAGE

The Marxist variety of feminism was one of the most persistent and virulent enemies of marriage in the 20th century. Marxist theory holds that relationships between men and women are necessarily characterized by conflict, with the continual danger of dominance of men over women. Thus, Marxists, then and now, consistently look for alternatives to marriage.

Frederick Engels, Marx's closest collaborator, equated the dominance of men over women with the dominance of capitalists over workers. He writes of an early, almost mythical period in which group marriage without concern for parentage was the norm. According to Engels, the transition from group marriage to monogamy marked the beginning of the subordination of women. He argues further that the economic and legal status of women is intimately connected to the organization of the household.

In Engels' version of history, the original communistic household, composed of many couples and their children, the task entrusted to women of managing the household was as much a public, socially necessary industry as the procuring of

food by the men. With the patriarchal family, and even more so with the single monogamous family, a change came. Household management lost its public character. It no longer concerned society. It became a private enterprise; the wife became the head servant, excluded from all participation in social production.

Within the family, the husband is in the role of the bourgeois, and the wife represents the proletariat, according to this perspective. The first condition for the liberation of the wife is to bring the whole female sex back into public industry. This, in turn, demands that the role of the monogamous family as the economic unit of society be abolished.

If you doubt the Marxist origins of these ideas, consider Betty Friedan, author of *The Feminine Mystique*. She was not just a random disgruntled housewife. She had been a committed Leftist since her student days at Smith College. She wrote for radical publications, including the journal of one of the most radicalized labor unions. Consider also: Destabilizing marriage has been a consistent priority for the radical Left, because they see marriage as a central part of the capitalist system of oppression. Liberalizing divorce laws was one of the first actions of the Bolsheviks in Russia as early as 1917 and was a priority of the Socialist government in Spain as recently as 2005.

The trend in academic family law is to “knock marriage off its perch.” The state, according to this trend, has no particular interest in channeling parenthood into marriage or assigning social and legal parental rights to the biological parents. Currently, the family courts have enormous discretion in allocating custody and financial support among known parents. If the family-law radicals have their way, the state will not simply be recording parentage, but actually determining parentage. This will vastly increase the discretion, and hence the power, of the family courts. This will necessarily be one of the consequences of same-sex marriage. The biological principle for establishing parentage will be weakened, and will be replaced in practice by the state establishing, rather than merely recording, parentage.

WHY THE DISSOLUTION OF MARRIAGE NOURISHES THE STATE, NOT SOCIETY

Our experience with no-fault divorce illustrates how marital dissolution contributes to centralized state power. Presented to the public as a great expansion of personal liberty, no-fault divorce has actually increased the power of the government over individual private lives.

No-fault divorce frequently means unilateral divorce: One party (the woman, in a majority of cases) wants a divorce against the wishes of the other, who wants to stay married. Therefore, the divorce has to be enforced. The coercive machinery of the state is wheeled into action to separate the reluctantly divorced party from the joint assets of the marriage—typically the home and the children.

Family courts tell fathers how much money they have to spend on their children, and how much time they get to spend with them. Courts tell mothers whether they can move away from their children’s father. Courts rule on whether

the father's attendance at a Little League game, a public event that anyone can attend, counts toward his visitation time. Courts rule on which parent gets to spend Christmas Day with the children, down to and including such details as the precise time of day they must turn the child over to the other parent.

Involving the family court in the minutiae of family life is hardly the role of the low-impact "night watchman" state. In fact, the activities of the family courts amount to an unprecedented blurring of the boundaries between public and private life. People under the jurisdiction of the family courts can have virtually all of their private lives subject to scrutiny.

UNMARRIED CHILDBEARING AND EXPANSION OF STATE POWER

At the same time, the breakup of families, or the failure to form families, leads to an expansion of state authority and expenditures. Children from disrupted families do worse than the children of intact married-couple households in virtually every way. Children whose families are not intact are more likely to have physical and mental health problems. Even when taking income into

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account, fatherless boys are more likely to be aggressive and ultimately to become incarcerated. A recent British study suggests that the children of single mothers are more likely to become schizophrenic.²⁶

And an extensive study of family structure in Sweden took into consideration the mental illness history of the parents as well as the family's socio-economic status, yet found that, even in this most generous welfare state in the world, with very accepting attitudes toward unmarried parenthood, the children of single parents were at significantly higher risk of psychiatric disease, suicide attempts, and substance abuse.²⁷

All of these social pathologies are expensive to the taxpayer and painful to the individuals involved. A recent study, calculating the national, annual taxpayer costs of family breakdown, announced its conclusion in its title: "The One Hundred Billion Dollar Man."²⁸

But more income doesn't solve the most severe problems associated with

26 Sarah Hall, "Schizophrenia Much More Likely in Children of Single Parents," *The Guardian*, November 22, 2006, at <http://www.guardian.co.uk/society/2006/nov/22/lifeandhealth.medicineandhealth> (accessed August 13, 2009).

27 G.R. Weitoft, A. Hjern, B. Haglund, M. Rosen, "Mortality, Severe Morbidity and Injury in Children Living with Single Parents in Sweden: A Population-based Study," *The Lancet*, Vol. 361, Issue 9354 (January 25, 2003), pp. 289–295.

28 Steven L. Nock and Christopher J. Einolf, "The One Hundred Billion Dollar Man: The Annual Public Costs of Father Absence" (2008), available from the National Fatherhood Initiative, Gaithersburg, MD, at www.fatherhood.org.

divorce or unmarried childbearing. Children suffer from the loss of relationship with one or both of their parents. That was the truly insidious harm caused by the old welfare system. The state gave families money if the father was not in the household. This doesn't help children any more than paying farmers not to grow crops improves the food supply. "Relationships over resources" should be the slogan of truly minimal government family policy.

"GETTING THE STATE OUT OF THE MARRIAGE BUSINESS" EMPOWERS THE STATE

"Getting the state out of the marriage business" is becoming a new, almost mantric, solution to the conflict over same-sex marriage—as if "privatizing marriage" were like privatizing the post office. Part of the appeal of this proposal is that the state appears to be neutral and even-handed, allowing each couple to form any kind of marriage and parenting contract they want. But this appearance is deceptive.

The motivation to form a contract depends largely on the "default" alternative position. If the state finances unwed childbearing, women have little incentive to form any union with the child's father. Even though the state may refuse to "privilege" biological mothers and fathers over other family forms, it can greatly affect the incentives for parental collaboration.

Rather than solving the problem, this move of government away from the issue of marriage simply shifts the problem and the conflict back a step. Instead of fighting over marriage, we still have to slug it out over related issues. Is unlimited, taxpayer-subsidized access to in vitro fertilization an entitlement for all women, married or not? We still need an answer to this question. "Privatizing marriage" doesn't address this and other questions, and will only worsen the problems in the long run.

"Relationships over resources" should be the slogan of truly minimal government family policy.

A FREE SOCIETY NEEDS MARRIAGE

Those who seek to deinstitutionalize marriage so that it becomes a series of temporary couplings with unspecified numbers and genders of people have used the language of choice and individual rights to advance their cause. This rhetoric has a powerful hold over the American mind. Dismantling the family could not have proceeded as far as it has without the use of this language of personal freedom.

But this rhetoric is deceptive. It is simply not possible to have a low-impact government in a society with no social or legal norms about family structure, sexual behavior, and childrearing. The state will have to provide support for people with loose or non-existent ties to their families.

So, in the long run, a free society needs marriage. It is high time that friends of freedom object when their rhetoric is hijacked by the advocates of big government. Rather than supporting enemies of traditional marriage, those who

advocate limited government also need to defend a robust set of social institutions. If marriage isn't a necessary social institution, then nothing is. And if there are no necessary social institutions, then the individual truly will be left to face the state alone.

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