

REPORT

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Canadian Marriage Policy: A Tragedy for Children

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It has become fashionable to believe that marriage and children share only an incidental connection. Marriage is, according to many intellectuals and jurists, first and foremost about the companionate and emotional needs of consenting adults.¹ For this reason, it is contended that the rules governing marriage laws should be purged of any expectation that children are begotten from adult sexual unions. Moreover, there ought to be no expectation that children are to be raised by their mother and father within the institution of marriage.

If marriage and children are to become as severable as the “companionate” view of marriage suggests, then it follows that there increasingly ought to be no expectation that parental responsibilities flow from adult sexual relations. Children should not, in any meaningful sense, belong to a mother and a father.

A consistent advocate of the companionate view of marriage would hold that children need to be assigned to the care of guardians, or “legal parents.” The “legal parents” may be the biological mother and father, but only in the event that the parental role is chosen by both of them.

Such is the direction in which Canadian marriage law is heading as it legalizes same-sex marriage. To level the playing field for gays and lesbians so that they can marry legally, mothers and fathers are being replaced, both explicitly and implicitly, by the gender neutral category of “legal parent.”² In this way, it is hoped that adults who wish to be parents will not be discriminated against for not being able to reproduce naturally. It follows from this that procreation should not necessarily determine parenthood. Biological kinship is to be secondary to the desire to be a parent.

¹ “Marriage, from the point of view of the secular state authority,” opined the Law Commission of Canada, “is a means of facilitating in an orderly fashion the voluntary assumption of mutual rights and obligations by adults committed to each other’s well-being.” See Law Commission of Canada. (2001). *The Legal Organization of Personal Relationships* [Electronic version]. *Beyond Conjugal: Recognizing and Supporting Close Personal Relationships*. Retrieved from http://www.lcc.gc.ca/about/conjuality_toc-en.asp.

² The explicit change in the parent-child relationship is found in the “consequential amendments” portion of Bill C-38 that was passed on July 29, 2005. It makes “legal parent” status relevant under the *Income Tax Act* for child support payment purposes. Bill C-38, s. 10-12. The new law also implicitly changes the parent-child relationship by its very definition of marriage, which is simply “the lawful union of two persons to the exclusion of all others.” Bill C-38, s. 2.

a) Why the Companionate View of Marriage Hurts Children

There are a number of serious ethical problems with the attempt to eradicate, by law, the significance of a mother and a father to a child, as well as marriage as the institution within which a mother and a father are expected to procreate and rear their children. In the first instance, it represents a radical paradigm shift in the focus of marriage from a duty-driven, child-centered institution to one that is to accommodate antinomian hedonism among adults. Even John Locke, that great defender of liberty as the *sine qua non* of government, recognized that the potential for children renders marriage, or conjugal society, an institution that has at its normative foundation the needs of children. In Locke's words:

Conjugal society is made by a voluntary compact between man and woman; and tho' it consist chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation; yet it draws with it mutual support and assistance, and a communion of interests too, as necessary not only to unite their care and affection, but also necessary to their common offspring, who have a right to be nourished, and maintained by them, till they are able to provide for themselves.³

Where duty is subordinated to choice, or where adults are to be parents only to the extent that they *choose* to be parents rather than because they *are* mothers and fathers, children are placed at risk in a number of ways. The ability to choose to be a parent has as its corollary the ability to choose not to be a parent, or to abdicate responsibility where parenthood is not desired. As the state undermines the duty-based and child-focused nature of marriage, it increases the likelihood that marital duties, especially to children, will be abdicated and that adults will place their sexual desires above their responsibilities to their children. Indeed, there is substantial evidence that existing reforms of marriage, especially as these relate to the liberalization of divorce laws, have had precisely this effect⁴ and that the results have been disastrous for children.⁵ It should be noted that it has taken over 30 years for the empirical evidence that divorce is generally harmful for children to be established beyond dispute. At the time that divorce reforms were being passed, it was fashionable among intellectuals to contend that the best interests of adults also serve the best interests of children.⁶ This formerly conventional wisdom has proven to be gravely mistaken, as the belief that mothers and fathers don't matter to children in determining parenthood is apt to prove to be.

Secondly, the attempt to render parenthood a matter of choice, rather than a moral obligation, if and when children are born, also encourages the

³ Locke, J. (1980). *Second Treatise of Government*. Indianapolis and Cambridge: Hackett Publishing Co, s. 78, p. 43.

⁴ Stetson, D. M., & Wright, Jr., Gerald C. (1975). The Effects of Divorce in American States. *Journal of Marriage and the Family*, 37, 537-545; Nakonezny, P. A., & Shull, R. D. The Effects of No-Fault Divorce Law on the Divorce Rate Across the 50 States and Its Relation to Income, Education and Religiosity. (1995). *Journal of Marriage and the Family*, 57, 477-488; Friedberg, L. (1998). Did Unilateral Divorce Raise Divorce Rates? Evidence From Panel Data. *American Economic Review*, 88, 608-627; Abernathy, Jr., Thomas, J., & Arcus, M. E. (1977). The Law and Divorce in Canada. *The Family Coordinator*, 26, 409-413. For a contrary view, see Peters, H. E. (1986). Marriage and Divorce: Informational Constraints and Private Contracting. *The American Economic Association*, 76, p. 454.

⁵ Studies have consistently shown that children of divorced parents are disadvantaged compared to children raised by their mother and father. See generally, Cherlin, A. J., & Furstenber, Jr., F. F. (1991). *Divided Families: What Happens to Children When Parents Part*. London: Harvard University Press; Amato, P. R. (1993). Children's Adjustment to Divorce: Theories, Hypotheses, and Empirical Support. *Journal of Marriage and the Family*, 55, 23-38; McLanahan, S. S., & Sandefur, G. (1994). *Growing Up with a Single Parent: What Hurts, What Helps*. London: Harvard University Press. See also *infra* note 8.

⁶ See generally, Nye, F. I. (1957). Child Adjustment in Broken and in Unhappy Unbroken Homes. *Marriage and Family Living*, 19, 356-371; Landis, J. T. (1962). A Comparison of Children from Divorced and Nondivorced Unhappy Marriages. *The Family Coordinator*, 11, 61-65; Goode, W. J. (1956). *Women in Divorce*. New York: The Free Press, 318.

commodification of children. After all, if one chooses to be a parent, then why can't one also choose the child, or a package of desirable traits?⁷ As marriage becomes companionate, children become not the focus of the family but additions to it that enhance or detract from a chosen lifestyle. Children that "fit" a lifestyle, such as those that are low-maintenance or attractive, will be selected over those who do not. This lesson, however, is one that is apt to be learned by the "chosen" children. It can be anticipated that they, like their parents, will increasingly come to view themselves and others not as intrinsically valuable, but as instrumentally so. Such an approach to familial relations is antithetical to unconditional love and a belief in the intrinsic value of all persons, regardless of their specific traits, which is the very foundation of a belief in human equality.

A third ethical issue that arises from the attempt to redefine marriage as serving the needs of adults, not children, is that it invites, over time,

greater state intrusions into family life. This is necessitated by the fact that the state must increasingly intervene into the realm of the family to determine who owes obligations to whom. Where marriage is the union of one man and one woman who are responsible for the rearing of their begotten children and for one another, the state generally need not intervene to determine to whom children within such unions belong. The state's role is primarily a supportive one of recognizing what the parents, and society at large, take to be obligatory because of established familial relations. Once it can no longer be assumed that children belong to a mother and a father, where it is possible for children to be claimed by two mothers, or two fathers, or some other combination, then it is imperative for the state to intervene to settle the question of belonging and of responsibility. Such uncertainty and instability is not good for children.⁸ Moreover, even when the state settles the question of legal belonging, the very

⁷ See generally Kass, L., & Wilson, J.Q. (1998). *The Wisdom of Repugnance. Ethics of Human Cloning*. Landham: AEI Press.

⁸ Similar instability exists for children when divorce occurs, requiring the state to intervene and determine to whom children belong. As with same-sex parenting, divorce creates a situation in which two or more adults claim legal rights over children, potentially to the exclusion of others. As with same-sex parenting, divorce undermines one of the constitutive norms of the institution of marriage. The evidence that divorce is harmful to children is abundant. See generally, See Blakeslee, S., Lewis, J.M., & Wallerstein, J. S. (2001). *The Unexpected Legacy of Divorce: A 25 Year Landmark Study*. New York: Hyperion; Whitehead, B.D. *The Divorce Culture*. (1997). New York: Alfred A. Knopf; Wilson, J. Q. (2002). *The Marriage Problem: How Our Culture Has Weakened Families*. New York: Harper Collins. Children of divorced families experience depression and a deep desire for the absent parent. See Kelly, J. B., & Wallerstein, J. (1996). *Surviving the Breakup: How Children and Parents Cope with Divorce*. New York: Basic Books. Moreover, children of divorce experience depression and related emotional problems into adulthood as well. Landsdale, C., Lindsay, P., Cherlin, A. J., & McRa, C. (1998). Effects of Parental Divorce on Mental Health Throughout the Life Course. *American Sociological Review*, 63, 239-249. In boys, family instability due to divorce is correlated with a decrease in academic scores, an increase in antisocial behaviour and an increase in depression. Forgatch, M. S., & Martinez Jr., Charles, R. (2002). Adjusting to Change: Linking Family Structure Transitions with Parenting and Boys' Adjustment. *Journal of Family Psychology*, 16, 107-117. In girls, parental divorce substantially increases the likelihood of having a child raised out of wedlock. Teachman, J. D. (2004). The Childhood Living Arrangements of Children and the Characteristics of Their Marriages. *Journal of Family Issues*, 25, 86-111. Children of both sexes who have experienced parental divorce are more apt to have sexual intercourse during their teen years. Hobcraft, J., & Kernan, K.E. (1997). Parental Divorce During Childhood: Age at First Intercourse, Partnership and Parenthood. *Populations Studies*, 51, 41-55. For a valuable resource offering summaries of empirical studies on marriage and family matters, see Maher, B. (Ed.) (2004). *The Family Portrait*. Washington, D.C.: Family Research Council. The extent in which conclusions are drawn as to how same-sex marriage will affect children, many researchers consider the most appropriate comparison group to be children of heterosexual divorced parents, given that many children raised by gay or lesbian parents have undergone the divorce of their parents. See Parke, M. (2003). Are Married Parents Really Better for Children? What Research Says About the Effects of Family Structure on Child Well-Being. *Center for Law and Social Policy Brief No. 3, 6*; Gallagher, M. (2006). (How) Does Marriage Protect Child Well-being? In George, R.P. & Elshstain, J.B. (Eds.) *The Meaning of Marriage: Family, State, Market, & Morals*. Dallas: Spence, 200, footnote 8. This suggests that research as to how children fare in stepfamilies is also highly relevant. For evidence that children do not thrive as well in these alternative family structures, see *infra*, note 14. The limitations of existing social scientific studies that draw conclusions about how children fare when raised by same-sex couples are canvassed in sources cited *infra*, note 15.

foundation of the family unit remains a frail one, being entirely a creation of legal convention.

b) How Supporters of the Companionate View of Marriage Err

Marriage reformers defend the contention that marriage and procreation are, and ought to be, only incidentally connected in two ways. First, they argue that marriage and children are severable by pointing to evidence of declining sexual mores. Noting widespread use of contraceptives, ready access to abortion, and reproductive technologies that expand reproductive possibilities, marriage reformers contend that it is simply too late in the day to turn back the clock to a time when being a mother or father was not a matter of choice.⁹ With the sexual revolution and the rise of liberal egalitarianism, it is thought to be regressive and oppressive to contend that marriage should entail the union of a man and a woman for the purpose of procreation as well as for their mutual support. Second, supporters of the companionate view of marriage argue that marriage as between a man and a woman unfairly discriminates against other adults, especially gays and lesbians. It is said that marriage entails not only responsibilities, but also a host of tangible and intangible benefits, especially domestic stability, and that these benefits are denied to adults who cannot marry because of their sexual orientation or lifestyle choices.¹⁰

Marriage reformers are quite right to argue that marriage has suffered since the advent of the sexual revolution in the late 1960s, but this is no reason to accept a trend that has been harmful for children. Same-sex marriage, like prior marriage reforms, will also harm children by further weakening the normative connection between marriage and procreation. As same-sex couples cannot procreate themselves, if they are to become parents, a mother-child and/or father-child bond must be severed. Hence, the corollary of the expectation that same-sex couples ought to be able to be parents is societal acceptance of biological parents forsaking responsibility toward their children.

Moreover, the argument that marriage is not “only” about procreation, but primarily serves the companionate needs of adults, misconstrues the type of institution that marriage is.¹¹ As a social institution, marriage, like all institutions, is not governed by logic such that it is necessary in all cases for certain conditions to hold true for marriage to exist. What matters is not that procreation is a necessity within marriage but that it is *normative* to procreate within marriage. For procreation and the rearing of children to be normative within marriage means that: a) Most of the time children are being raised by their mother and father who are married to one another; and, b) Society expects that mothers and fathers *ought* to raise their own children within marriage.¹²

⁹ See *Halpern v. Canada* (A.G.), 2003 CanLII 26403 (ON C.A.) [hereinafter “*Halpern*”] at s. [122]: “As previously stated, same-sex couples can have children by other means, such as adoption, surrogacy and donor insemination. A law that aims to encourage only ‘natural’ procreation ignores the fact that same-sex couples are capable of having children.”

¹⁰ See, for example, Jr., W. (1996). *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment*. Free Press. See also Sullivan, A. (1989, August). *Here Comes the Groom: A Conservative Case for Gay Marriage*. The New Republic, [Electronic version]. Retrieved from <http://www.tnr.com/arch/search.mhtml>.

¹¹ *Halpern, supra*, s. 94: “Importantly, no one ... is suggesting that procreation and childrearing are the only purposes of marriage, or the only reasons why couples choose to marry. Intimacy, companionship, societal recognition, economic benefits, the blending of two families, to name a few, are other reasons that couples choose to marry.”

¹² These conditions correspond to Hart’s ‘external’ and ‘internal’ points of view about the normativity of law. Hart, H.L.A. (1961). *The Concept of Law*. Oxford: Oxford University Press, 88: “At any given moment the life of any society which lives by rules, legal or not, is likely to consist in a tension between those who, on the one hand, accept and voluntarily co-operate in maintaining the rules, and so see their own and other persons’ behaviour in terms of the rules, and those, who, on the other hand, reject the rules and attend to them only from the external point of view as a sign of possible punishment.” See also Maier, B., & Stanton, G.T. (2004). *Marriage on Trial: The Case Against Same-Sex Marriage and Parenting*. Downers Grove: Intervarsity Press, 29-30.

Same-sex marriage guts the normative underpinnings of marriage for it is founded on the premise that marriage is nothing more than a union of two consenting adults for their mutual betterment. Once this is accepted, marriage no longer serves the interests of children. Without marital norms, adults have little reason to believe that they owe duties to the children they beget. Children become chosen, not begotten. They are thereby treated as appendages to a marriage, as commodities, and as problems for the courts to decide. Antinomian hedonism, not just among homosexuals, but among *all* adults, triumphs in the private realm. As children are raised within a culture of narcissism, they are not apt to find happiness but a pervasive sense of anomie.¹³

To this argument, supporters of the companionate view of marriage counter that there are weighty ethical reasons for supporting same-sex marriage. First among these is that marriage as between a man and a woman is unfairly discriminatory. By excluding certain adults from

the institution of marriage, the state treats them as second-class citizens and thereby damages their sense of dignity and personhood. Equality before the law and the demands of personal autonomy demand, according to supporters of companionate marriage, that the institution of marriage include all adults.¹⁴

This argument assumes that the institution of marriage exists primarily to serve the emotional and financial needs of adults, which it does not, at least not where marriage is limited to one man and one woman. The argument that traditional marriage is discriminatory begs the question of whether marriage ought to be simply companionate, or whether it makes sense to preserve child-centered marriage norms. If the best interest of children is the standard by which marriage reforms are to be assessed, same-sex marriage cannot be justified.

The reason for this is that marriage between a man and a woman, who are expected to rear their begotten children, is the most successful institution for the rearing of children who thrive.¹⁵ There is little

¹³ See Lasch, C. (1991). *Culture of Narcissism: American Lie in an Age of Diminishing Expectations*. New York: W.W. Norton.

¹⁴ See *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at 530, cited in Halpern: "Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits."

¹⁵ This conclusion has been most eloquently and forcefully made by Maggie Gallagher, "(How) Does Marriage Protect Child Well-Being?" in R.P. George and J.B. Elshstain, eds., *The Meaning of Marriage: Family, State, Market, & Morals* (Spence, 2006), 198: "In the last thirty years, thousands of studies evaluating the consequences of marriage for children and society have been conducted in various disciplines... In virtually every way that social scientists know how to measure, children do better, on average, when their parents get and stay married (provided those marriages are not high-conflict or violent). By contrast, every major social pathology that can trouble an American child happens more often when his or her parents are not joined by marriage: more poverty, dependency, child abuse, domestic violence, substance abuse, suicide, depression, mental illness, infant mortality, physical illness, education failure, high school dropouts, sexually transmitted diseases, and early unwed childbearing (and later) divorce." Among the well known sources Dr. Gallagher cites are: Amato, P., & Booth, A. (1997). *A Generation At Risk: Growing Up in an Era of Family Upheaval*. London, Harvard University Press; Gallagher, M., & Waite, L. J. (2000). *The Case for Marriage: Why Married People are Happier, Healthier and Better-Off Financially*. New York: Doubleday; McLanahan, S., & Sandefur, G. (1994). *Growing Up with a Single Parent: What Hurts, What Helps*. London: Harvard University Press; Doherty, W. J. et al. (2002). *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences*. New York: Institute for American Values. Among the conclusions that social scientists have reached about concrete ways that children thrive in marriages between their biological parents are the following: Children raised with their married biological parents spend more time with their fathers, and receive more affection and warmth from them, than do those living with a cohabiting father figure or a stepfather. Anderson, K. G., & Hofferth, S. L. (2003). Are All Dads Equal? Biology Versus Marriage as a Basis for Parental Investment. *Journal of Marriage and Family*, 65, 213-232; Adolescents living with their biological parents are the least likely to use illicit drugs. Johnson, R. A., & Hoffmann, J. P. (1998). A National Portrait of Family Structure and Adolescent Drug Use. *Journal of Marriage and the Family*, 60, 633-645. Adolescents living with their married biological parents are less likely to engage in delinquent behavior than are their peers in stepfamilies. Lamb, K. A., & Manning, W. D. (2003). Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families. *Journal of Marriage and Family*, 65, 876-893. Children living in stepfamilies are at higher risk of physical abuse than those living with their biological parents. Giles-Sims, J. (1997). Current Knowledge About Child Abuse in Stepfamilies. *Marriage and Family Review*, 25, 215-229.

to no empirical evidence as to how children fare in same-sex homes.¹⁶ Even presuming, as the Ontario Court of Appeals mandates,¹⁷ that same-sex couples are capable of making fine “legal parents,” it remains hard to believe that this social experiment with the lives of children will end well for the simple reason that the child-centered norms of traditional marriage are destroyed by the companionate view of marriage that is invoked to justify same-sex marriage. Children are being subjected to a bold social experiment. In this, all children have to rely upon is the good will of those in whose custody they are placed. Good will falters even among the best of people, and when it does, companionate marriage provides little incentive for couples, and especially for men, to remain committed to rearing their children. Companionate marriage is inherently unstable as it is tied solely to variable human emotion. Instability of this sort is bad for children.¹⁸

As the companionate view of marriage

triumphs in Canadian marriage policy, the result is an increased risk for children. It is children who are being unfairly discriminated against by marriage reforms, including same-sex marriage. As gays and lesbians claim victory, children are being deprived of the one institution in which it is known that they are most apt to thrive: that is a marriage between a child's mother and father. Children, the most vulnerable of all members of Canadian society, are those who are placed at greatest risk by the companionate view of marriage. In a society that values equality for all, it is a travesty of justice that the least among us will continue to suffer the most.

c) How the Companionate View of Marriage Mortgages Our Children's Future

The ill effects of the companionate view of marriage, of which the legalization of same-sex marriage is the most recent manifestation, do not

¹⁶ Studies on the effects of same-sex marriage suffer from a number of flaws, including a lack of longitudinal studies, a lack of representative sampling and control groups, and prejudgment on the merits. . See Biblarz, T. J., & Stacey, J. (2001). Does the Sexual Orientation of Parents Matter? *American Sociological Review*, 66, 159-183. See George, R.P. & Elshstain, J.B. (Eds.). *The Meaning of Marriage: Family, State, Market, & Morals*, 200-203. For evidence that children do not tend to thrive well in alternative family structures, see *supra*, notes 8 and 15.

¹⁷ Halpern, *supra*, s. 123.

¹⁸ With the companionate view of marriage, society has witnessed a proliferation of out of wedlock births, divorces, and alternative relationships, with these, the problem of absentee parents, especially absentee fathers. Births to unmarried mothers are at a record high in Canada and the United States. In Canada, 28% of births were out of wedlock in 2002; this compares to 13% in 1980. In the United States, the rate of out of wedlock births has increased from 18% in 1980 to 34% in 2002. See Eberstadt, N., & Torrey, B. B. (2005, August/September). The North America Fertility Divide. *Policy Review*, 132. [Electronic version]. Retrieved from <http://www.policyreview.org/aug05/torrey.html>. Based on current divorce trends, between 40-50% of marriages today are likely to end in separation or divorce in the United States. National Marriage Project. (2003). *The State of Our Unions 2003: The Social Health of Marriage in America* (5th ed.), Piscataway: Rutgers University, at 25. In Canada, the marriage rate is only 60% of the American marriage rate as Canadians tend to enter common law relationships in greater numbers, marry later in life, and divorce less frequently. See Torrey and Eberstadt, 4-5. In both countries, the number of children living in single-parent families has more than doubled since the 1960's and more than 80% of children in single-parent families live with their mother. See U.S. Bureau of the Census. (2003). Table CH-1. *Living Arrangements of Children Under 18 Years Old: 1960 to Present*. Washington, DC: U.S. Printing Office. Also in Maher, B. (Ed.). (2004). *The Family Portrait*. Washington, D.C.: Family Research Council; Statistics Canada. (1992). *Lone Parent Families in Canada* (Collin, L.). Ottawa: Government of Canada. The consequences to children of being raised without a father are only currently being researched, but the evidence substantiates the conclusion that the results are harmful to children. See generally, Blankenhorn, D. (1996). *Fatherless America: Confronting Our Most Urgent Social Problem*. London: Harper Perennial; Popenoe, D. (1996). *Life Without Father*. New York: Free Press; U.S. Dept of Health and Human Services (2004). The Importance of Fatherhood for the Healthy Development of Children. *Child Abuse and Neglect User Manual Series*. Washington, D.C.: Wilcox, W.B.; Haglund, B., Hjern, A., Rosen M., & Weitoft, G.R. (2003). Mortality, Severe Morbidity, and Injury in Children Living with Single Parents in Sweden: A Population-Based Study. *The Lancet*, 361, 289-295; Kurtz, Stanley. (2004). The End of Marriage in Scandinavia. *The Weekly Standard*, 9(20); Wilcox, W.B. (2005). Who's Your Daddy? There's More to Fatherhood than Donating DNA. *The Weekly Standard*, 11(13).

stop with the proximate, familial harms to children that occur when traditional, child-centered marriage is forsaken. There are a number of ancillary pathologies that are foreseeable as child-centered marriage is weakened. All agree that marriage is a fundamental institution, but few are willing to acknowledge the implications of what it means for a fundamental institution of society to be gutted of its constitutive norms. It means that the institution of marriage should no longer be expected to play its traditional role of being a cornerstone of society. Marriage should no longer be expected to promote social stability or to impart values, beliefs and traditions that Canadians and other civilized peoples hold dear.

It almost boggles the mind to anticipate the long-range implications of the erosion of traditional marriage. So fundamental is marriage, with its emphasis on procreation and the rearing of children, to all aspects of human civilization that we cease to recognize the ways in which other institutions of society are dependent upon it. Yet institutions as diverse as religion, the market and the political community are

dependent upon the institution of marriage, and they cannot expect to thrive without the firm support that marriage, as a normative institution, provides to them. Hence, as marriage is being eroded, it is likely that other fundamental institutions of society will be destabilized over time. The future that our children and our grandchildren can anticipate is one in which they suffer for their parents' and grandparents' self-indulgence.

The most striking and unmistakable indication of the demise of child-centered marriage is that Canadians are having fewer children.¹⁹ So few, in fact, that the reproduction rate is no longer sustainable: the number of children born to each woman in Canada over her lifetime is approximately 1.5.²⁰ This ranks Canada among the least fertile nations of the world given that the replacement rate (the number of children per woman) needed to sustain the population over time is 2.1.²¹ Immigration might be supposed to be a potential solution to this problem, but it is unlikely to be adequate to fix Canada's long-term difficulties. Fertility rates are falling globally, albeit not as drastically as in Canada.²²

¹⁹ The decline in fertility is believed to have a number of causes, including urbanization, which renders children more of a cost than a benefit to parents, easy access to contraception, legalized abortion, and increasing numbers of women in the workforce, among other causes. All of these, in different ways, have also eroded the institution of traditional, child-centered marriage. In the first and last instance, marriage is placed in competition with economic considerations, in the other instances, procreation is made separable from marriage. See Wattenberg, B. (2005) *Fewer: How the New Demography of Depopulation Will Shape Our Future*. Chicago: Ivan R. Dee, 94-109. A similar account of plausible reasons for the decline in fertility rates is offered in Eberstadt, N., & Torrey, B. B. (2005, August/September). The North America Fertility Divide. *Policy Review*, 132. [Electronic version]. Retrieved from <http://www.policyreview.org/aug05/torrey.html> at 2. There, competing explanations for the decline in fertility include the "family economics hypothesis," which emphasizes the greater education and workforce participation of women, the "relative income hypothesis," which posits that women's work in the labor force depends upon whether they perceive a need to compensate for a man's salary to achieve a desired standard of living, and the "role incomparability hypothesis," which posits that the ability of women to combine work and childbirth is a significant determinant of how many children they will have. The latter hypothesis, however, does not seem to have adequate explanatory force as countries with favorable pro-natal policies are not significantly more fertile, as both of these cited works conclude.

²⁰ In 2002, the total fertility rate in Canada per woman for women aged 15 to 49 was 1.50, according to Statistics Canada. Statistics Canada (April 19, 2004). *Births, 2002*. Retrieved from <http://www.statcan.ca/Daily/English/040419/d040419b.htm>. The total fertility rate for Canada in CIA Fact Book for the year 2005 was 1.61. This resource can be found on-line at <http://www.odci.gov/cia/publications/factbook/geos/ca.html>. A ranked summary of the total fertility rates of all countries that uses the CIA Fact Book as the source of its data can also be found on-line at <http://www.indexmundi.com/g/r.aspx?c=ca&v=31>. In Torrey and Eberstadt, *ibid.*, Canada's fertility rate is stated to be 1.49 children per woman.

²¹ Canada's fertility rate ranks 184 among 222 countries. See Index Mundi, *ibid.* Canadians are less fertile than peoples of the United States (2.08 children per woman), France (1.85 children per woman), and the United Kingdom (1.66 children per woman).

²² See the assumptions made by the United Nations Population Division on-line at <http://esa.un.org/upp/index.asp?panel=4>: "Total fertility in *all countries* is assumed to converge eventually toward a level of 1.85 per woman." [Italics added]. Note that this is substantially below the replacement rate of 2.1 children per woman, which is raising speculation that there might be global depopulation by the second half of the 21st Century. See also See Wattenberg, B. (2005) *Fewer: How the New Demography of Depopulation Will Shape Our Future*. Chicago: Ivan R. Dee, 15.

Even in underdeveloped countries, women are having fewer children than they did 50 years ago.²³ If this current trend continues, and it is expected to continue as this decline has been ongoing for decades, global depopulation is projected to begin sometime in the second half of the 21st Century.²⁴ Canada, then, finds itself in competition with other developed countries for immigrants. As the economies of these developing nations continue to grow with economic globalization, immigration is becoming a somewhat less attractive option to many immigrants Canada might seek to attract.

Moreover, what Canada has to offer its own children, let alone the children of immigrants, in years to come, is the burden of medical and pension schemes that are unsustainable at current levels of entitlement. In a nutshell: fewer and fewer young people will be expected to pay more and more to care for more and more sick and elderly people.²⁵ This is not a situation that is apt to be attractive to the best and brightest of Canada's children; many are apt to find that they have other more attractive options elsewhere. Canadians recognize that the graying of their population poses a challenge to cherished social security programs.²⁶ However, as yet little has been done to remedy this difficulty. If anything, the recent legalization of same-sex marriage indicates that the country is in a state of denial about the magnitude of the crisis precipitated by the demise of

traditional marriage, of which the decline in fertility is a foreboding reminder.

There is no greater resource that a country possesses than its people. It is generally the case that size matters in measures of greatest, ranging from economic robustness to cultural accomplishments.²⁷ However, it is possible to have a small yet vibrant population, one that makes up for in quality what it lacks in quantity. Canada has been such a nation, with a population that has been spirited, well-educated and well-nurtured, but it cannot assume that its past is its future. Confronted with the demise of marriage, and with it, the demise of child-centered family life, it is unlikely that our children and grandchildren will be educated and nurtured as well as in generations past. Concrete indicia of children failing to thrive in the wake of the demise of marriage have already been canvassed. However, there are other equally important yet largely intangible ways in which our children and our grandchildren are apt to be disadvantaged.

Foremost among these are self-defeating value systems, which have profound effects not only upon the lives of children inculcated within these, but upon other institutions as well. Education is primarily acquired at home, and this is particularly true of values, by which is meant those pursuits or ideals that are regarded to be worthwhile.²⁸ Furthermore, much of education is nonverbal, meaning that children learn

²³ See Wattenberg, *ibid.*, at 39-59.

²⁴ *Ibid.* at 17, citing the UN's 2002 Population report which states that world population "will lead first to a slowing of population growth rates and then to slow reductions in the size of world populations".

²⁵ Rowe, D. (July 4, 2002) Fertility Deficit' on the Horizon as Birth Rate Falls. *National Post*. Retrieved from <http://fact.on.ca/news/news0207/np020704.htm>.

²⁶ Mackinnon, J.C. (2004, September 14). The Arithmetic of Health Care. *Canadian Medical Journal Association* 171(6), 603-604. Retrieved from <http://www.cmaj.ca/cgi/contents/full/171/6/603>.

²⁷ This is particularly true in the geopolitical realm. See generally, Huntington, S. (1996). *The Clash of Civilizations and the Remaking of World Order*. New York: Touchstone.

²⁸ See Berger, P. and Luckmann, T. (1967). *The Social Construction of Reality*. New York: Anchor Books, 129-137, but especially 131-132. "The child takes on the significant others' roles and attitudes, that is, internalizes them and makes them his own. And by this identification with significant others the child becomes capable of identifying himself, of acquiring a subjectively coherent and plausible identity."

a great deal by what those closest to them do or how they act, and children tend to emulate this behavior.²⁹ The family is the first and most important institution in which children are socialized so as to be equipped with the skills and values that will guide them as they grow into maturity and eventually replace their parents.

As the families in which children are reared increasingly become “alternative” families, it should be expected that children will increasingly encounter transient and unstable living arrangements. After all, that which constitutes companionate marriage is merely mutual desire and betterment, which is hardly a stable foundation, being based as it is upon sentiment. Through these unstable arrangements, children are apt, quite understandably, to learn from the example of their parents, whose desires are apt to vary, that it is normal to be unreliable, untrustworthy, narcissistic, self-centered, pleasure-seeking, and irresponsible. They are apt also to learn that all that can firmly be regarded as wrong is the act of passing negative judgments upon others seeking their own satisfactions in their own ways. This value system, one in which “anything goes” in interpersonal relationships is, in turn, being reinforced in schools

across Canada. Canadian schools are increasingly mandating that teachers exhibit and teach tolerance to alternative lifestyles so that these come to be regarded widely as “normal.”³⁰

As these are the fundamental values that are being imparted to children, it should come as no surprise when these carry over into the worlds of business and politics. Why devote oneself to any given project, why make sacrifices for others, if one isn't going to attain gratification in the relatively short-term? The erosion of traditional marriage begets the erosion of social capital generally: there is apt to be less concern for others, and more concern for the self. Children cannot be expected to learn to put others first as they grow older if they had not been put first by their parents when they were younger.³¹ Traditional marriage, although not perfect, is the best institution known to date to produce children that thrive, and who in thriving, have the potential and the inclination to make life better for others.³² The value system that is fostered by companionate marriage, which is based upon an ethos of self-fulfillment rather than self-sacrifice, is at odds with the Canadian commitment to universal health care, to the maintenance of a minimal standard of

²⁹ Burleson, B.R et al. (2002). Parental and Peer Contributions to the Emotional Support Skills of the Child: From Whom Do Children Learn to Express Support? *Journal of Family Communication*, 79-97; Strom, R. D. and Strom, P. S. (2002). Parent and Adolescent Relationships in Japan and the United States. *Journal of Family Studies*, 8, 91-105.

³⁰ The expectation that teachers at all levels of education are to demonstrate and teach tolerance to alternative lifestyles is being mandated by the judicial branch of government. See *Chamberlain v. Surrey School District* (2002) SCC 86, wherein the Supreme Court adjudged the decision of a School Board, which refused to allow books depicting same-sex couples to be used in kindergarten and grade 1 classrooms, to be unreasonable. See also Cere, D. (December 30, 2002) Supreme Court Supplants Parents. *Montreal Gazette*. See also *Trinity Western University v. British Columbia College of Teachers* [2001] 1 SCR 772, wherein the Supreme Court stated in *dicta* that it would be impermissible for a teacher to discriminate against students because of sexual orientation. It is entirely plausible that a school teacher who expresses disapproval of homosexuality in the classroom could risk losing her job as well as be prosecuted under a provincial Human Rights Act and/or under federal hate speech laws. See Criminal Code R.S. 1985, c C-46 s. 318(4) amended 2004, c. 14 s. 1-2.

³¹ Although it is still early to test this hypothesis, the emerging evidence that children who spend extensive amounts of time in institutional daycare settings do not bond as well with their parents and tend to be more aggressive with other children supports this contention. NICHD Early Child Care Research Network, (1999) Child Care and Mother-Child Interaction in the First 3 Years of Life. *Developmental Psychology*, 35, 1399-1422; NICHD Early Child Care Research Network (1997) The Effects of Infant Child Care on Infant-Mother Attachment Security: Results of the NICHD Study of Early Child Care. *Child Development*, 68, 860-879; Bates J.E. et al. (1994) Child-Care History and Kindergarten Adjustment. *Developmental Psychology*, 30, 690-700; Vandell, D.L. (2001). Early Child Care and Children's Development Prior to School Entry. *NICHD Early Child Care Research Network*, National Institutes of Health.

³² See *supra*, note 15.

well-being for all, and to the belief in the fundamental dignity of all. A people who cannot commit to, and make sacrifices for, their kin are not apt to commit to, or make sacrifices for, anyone else.

The possibility that a shifting value system is a significant factor in the remarkable decline in fertility in Canada is raised by social scientists, who are unable to account satisfactorily for the divergence in the fertility rate by comparing other more tangible variables, such as the higher number of teen pregnancies in the United States, its more fertile Hispanic population, as well as geographic disparities in fertility rates. When all of these variables are held constant, the United States still has a substantially higher fertility rate.³³ Given the many similarities between the United States and Canada, it is remarkable that the former is inching back toward the replacement level of 2.1 children per woman, while Canada's fertility rate is estimated to be 1.5 children per woman. This is all the more striking as Canadians have historically been more fertile than their American counterparts. Hence, less measurable variables, including attitudes relating to the role of men within the family and religiosity, are being posited to account in part for the unexplained

differential.³⁴

Canadians are becoming a less religious people, which is perhaps the most dramatic evidence of how their value systems are changing.³⁵ While it is not clear whether the decrease in religiosity among Canadians is a cause or an effect of the weakening of traditional families, it is reasonable to assume that the weakening of the family and the decline in religiosity have been, and will continue to be, mutually reinforcing. They participate in a downward cycle in Canada in which there are fewer traditional marriages, less religiosity, and fewer children. This cycle reflects the interdependence of the institutions of marriage and religion for their mutual sustenance. It is within the context of families that children are introduced to a religion that shapes their values, and children raised with firm religious commitments tend to have a better sense of their own self worth and the worth of others.³⁶ Religion, in turn, tends to reinforce parental commitment to marriage and to children.³⁷ The religious beliefs of parents are very influential in shaping the religiosity of their children.³⁸ However, children who do not have parents with religious attachments, and the number of such children are increasing as traditional marriage wanes, lack the

³³ Eberstadt, N., & Torrey, B. B. (2005, August/September). The North America Fertility Divide. *Policy Review*, 132. [Electronic version]. Retrieved from <http://www.policyreview.org/aug05/torrey.html>, 2-4.

³⁴ *Ibid.* at 10.

³⁵ By religiosity is meant a commitment to institutional religion, particularly as manifested by regular attendance at religious services. Many Canadians profess some religious belief, but their religious commitments are increasingly nebulous and ill-defined. O'Toole, R. (1996). Religion in Canada: Its Development and Contemporary Situation. *Social Compass*, 43. Retrieved from <http://are.as.wvu.edu/o'toole.html>; See also Torrey and Eberstadt, *ibid.* at 10.

³⁶ Bagley C. and Mallick, K. (1997). Self Esteem and Religiosity: A Comparison of 13- to 15-Year-Old Students in Catholic and Public Junior High Schools. *Canadian Journal of Education*, 22, 89-92; Miller L., et al. (2000). Religiosity and Substance Use and Abuse among Adolescents in the National Comorbidity Survey. *Journal of the American Academy of Child and Adolescent Psychology*, 39, 1190-1197; Johnson, B.R. et al. (2000). Escaping from the Crime of Inner Cities: Church Attendance and Religious Salience among Disadvantaged Youth. *Justice Quarterly*, 17, 377-391; Youniss, J. et al. (1999) The Role of Community Service In Identity Development: Normative, Unconventional, and Deviant Orientations. *Journal of Adolescent Research*, 14, 248-261.

³⁷ Bélanger, A. and Oikawa, C. (1999, Summer). "Who Has a Third Child?" *Canadian Social Trends* 53, *Ibid.* at 10.

³⁸ Kelly, J. et al. (1998) National Context, Parental Socialization, and Religious Belief: Results from 15 Nations. *American Sociological Review*, 62, 639-659. This study concluded, *inter alia*, that parental religiosity is particularly important in shaping the religiosity of children in secular contexts. However, it is precisely in these contexts that parental commitment to religion is relatively rare.

support of an additional institutional resource that bolsters them, that provides them with a sense of security and that helps orient them within a quickly changing world. Such children, in turn, can be expected to rear their own children without religion, and without religion, such children are apt to have fewer stable marriages and fewer children.

Hence, the demise of child-centered norms that are constitutive of traditional marriage does not simply result in the erosion of marriage; it is also associated with the erosion of religion as well. Not one, but two fundamental institutions of civil society that stand between the individual and the state are imperiled by the movement to replace, by law, traditional marriage with companionate marriage.³⁹ The ramifications of this dual blow to social order and self-governance are potentially very grave. As discussed, virtually every type of social pathology is significantly enhanced by the demise of marriage and the decline in religiosity. But this is not all. The erosion of marriage and religion is entirely likely to have profound effects on businesses, nonprofit organizations, economies and, of course, the state itself. In the first instance, the projected decline in population results in lower demand domestically, aggravates the problem of sustaining social service programs, and reduces the geopolitical significance of Canada and its European allies.⁴⁰ In the second instance, the shifting values that are accompanying this downward slide exacerbate this projected trend as the fewer peoples who are left to cope with these challenges -- our children and grandchildren -- are not being provided adequately with those

fundamental institutional resources that would best equip them to deal with crises of this magnitude. They increasingly lack the resources made available to civilized peoples through the institutions of marriage and religion.

Should these projected trends continue, it is foreseeable that, out of necessity, the state will be called upon to solve the problems that our children and grandchildren are apt to find difficult to solve themselves because they will increasingly lack the intermediate and proximate institutions through which they could be effective in solving problems. The radical individualism of companionate marriage is profoundly statist.⁴¹ However, the tragedy our children and grandchildren will face in turning to the state is that, on the one hand, they will be deprived of the dignity that comes from being fully autonomous, responsible, self-governing persons, and, on the other hand, the state will likely be incapable of solving these problems with anything more than stopgap solutions.

The demise of child-centered marriage is thus not only a tragedy for children; it is a tragedy for all Canadians.

³⁹This argument is further developed in Seana Sugrue, "Soft Despotism and Same-Sex Marriage," in George, R.P. and Elshstain, J.B. (2006) *The Meaning of Marriage: Family, State, Market & Morals*. Dallas: Spence Publishing, 191-196.

⁴⁰See generally, Wattenberg, B. (2005) *Fewer: How the New Demography of Depopulation Will Shape Our Future*. Chicago: Ivan R. Dee. Wattenberg is somewhat optimistic in his assessment of the prospects of depopulation as he believes, quite properly, that people are resourceful and will be able to adapt. However, he does not take into account in this optimistic assessment that the causes of the projected decline in population, which in different ways are related to the erosion of traditional marriage and family, do not simply result in the reduction of sheer numbers of people; these also reduce social capital, including the willingness of people to make long-term commitments and sacrifices.

⁴¹Sugrue, S. (2006). Soft Despotism and Same-Sex Marriage. In George, R.P. and Elshstain, J.B. *The Meaning of Marriage: Family, State, Market & Morals*. Dallas: Spence Publishing, 172-196.