

Deconstructing Marriage:

Less Freedom More Inequality

by Jennifer Roback Morse

Freedom and equality are the hallmark values of advanced western democracies. The case for deconstructing marriage in Canada is based largely upon these ideals. It is said that adults are entitled to the freedom to determine the gender and number of their sex partners, as well as their own living and child-rearing arrangements. "Privileging" marriage has come to be seen as an unacceptable infringement upon freedom and an unlawful imposition of inequality.

The contrary view defends the traditional position that marriage is the appropriate context for sexual activity and childbearing, precisely to protect freedom and equality. While the modern trends appear to bring about more freedom and equality, abolishing marriage as a privileged institution will result in less freedom and less equality for the next generation.

Marriage is society's normative institution for regulating both sexual activity and the rearing of children. The modern alternative idea is that society does not need such an institution: no particular arrangement should be legally or culturally privileged as the ideal context for either sex or childbearing. Although gay marriage is the current hot-button topic, it is a parenthetical issue. The more basic question is whether society needs the institution of marriage at all.

Marriage is a natural, pre-political social institution

Marriage is an organic, pre-political institution that emerges spontaneously from society. People of the opposite sex

are naturally attracted to one another, couple with each other, co-create children, and raise those children. The little society of the family replenishes and sustains itself. Humanity's natural sociability expresses itself most vibrantly within the family.

Even though societies vary in the definition of marriage, all societies have some set of arrangements that are "privileged" over others. Some societies permit polygamy, while modern western societies do not. This fact does not mean that polygamous societies have no preferred or privileged context for sexual

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activity and child rearing. The social and legal permission for men to take multiple wives does not create space for anyone to do anything they want sexually. Islamic societies, for instance, ruthlessly punish deviations from the marital norms. The fact that lifelong monogamy is not the universal form of marriage does not refute the point that every society has some institution for channelling sexual activity and governing the responsibility for childrearing.

The sexual urge is an engine of human sociability. Our desire for sexual satisfaction draws us out of our natural

self-centredness and into connection with other people. Just as the desire to make money induces business owners to try to please their customers, so too, the desire to copulate induces men to try to please women, and women to try to attract men. The attachment of mothers to their babies, and women to their sex partners, tends to keep this little society together. The man's possessiveness of his sexual turf and of his offspring counterbalances his natural tendency toward promiscuity. These desires and attachments emerge naturally from the very biology of sexual complementarity, with no assistance from the state.

But this is not the only sense in which the institution of marriage arises spontaneously. In every known society, communities around the couple develop customs and norms that define the parameters of socially acceptable sexual, spousal and parental behaviour.¹

This culture around marriage may have some legal or governmental elements. But by far, the greater part of that cultural machinery is more informal than legal, and is based more on kinship than on law. We do things this way because our parents did things this way. Our friends and neighbours disapprove of us if we go too far outside the norm.

Government does not create marriage, any more than government creates jobs. Just as people have a natural "propensity to truck, barter and exchange one thing for another," in Adam Smith's famous words,² we have a natural propensity to couple, procreate and rear children. People instinctively create marriage, both as couples and as a culture, without



any support from the government whatsoever.

The new idea about marriage claims that no structure should be privileged over any other. This will by definition, mean the abolition of marriage. The institution formerly known as marriage will be replaced by a set of legal entitlements and requirements. The organic social reality of marriage will be gone.³

However, abolishing organic marriage will reduce both freedom and equality. Freedom will be reduced because both the taxation and regulatory power of the state will expand. Equality will be harmed because some types of family structures create systematically better life chances for children than others. Even massive investments by the state are unlikely to fully equalize the life chances of children from different types of families.

The state can not be fiscally impartial among family forms.

Some kinds of families objectively function better than others. The children of unmarried or divorced parents are more likely than other children to have emotional, behavioural and health problems. As these children become old enough to go to school, they have lowered school achievement, poor school attendance, and discipline problems. As these children mature, they are more likely to get into trouble with the law, commit crimes, abuse drugs, and end up in jail.⁴

These systematic differences between the children of married parents and other children have consequences for both equality and for freedom. The parents may be treated “equally” by the state in the sense that the state attempts to be impartial among family forms. But the life chances of the children are not equal.⁵ The children of unmarried parents are more likely to be poor and less likely to go to college. These kinds of differences persist over the lifetime. The state can respond to this situation in one of two ways. The state may take the “leave us alone” attitude to its logical conclusion. The parents have made these life-style decisions; the state will not interfere with the consequences of those decisions. This government policy simply allows the income inequality

among the children to persist.

In today’s political climate, this is not a very likely or very stable policy outcome. The more likely alternative government response is that the state will pump resources into the alternative families, to try and offset some of the disadvantages the children face. Direct income support for the children of unmarried parents is only the tip of the iceberg, because the costs are more than purely private costs to the mother and father. The costs of health care, schooling, and mental health care are not entirely private in modern society. A child who can not behave in school is a cost to the local school district as well as to all the other children in

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the classroom. A seriously depressed person, or a substance dependent person is likely to make demands on the public health sector. If the child ends up in the criminal justice system, as the children of unmarried parents are significantly more likely to do, they will be a significant cost to the state.

And for all the intervention and public expenditures that these children will demand, the outcomes are still inferior to the outcomes of married parents. The evidence shows that even controlling for income differences, the children of married parents do better in life.⁶ Even in Sweden, a country with a generous social safety net, the children of single parents have higher rates of mental illness, are more likely to abuse drug and alcohol and are more likely to attempt suicide.⁷

The state does not and can not respect the privacy of “alternative families.”

This tension between freedom and equality for adults and freedom and equality for children is not confined to the fiscal sphere of government. The great irony of family law is this: in the name of personal privacy, we have weakened the social norms that govern family life. When families dissolve, we allow the state to intervene in the most personal areas of family life. Let me

describe a hypothetical example that illustrates the point.

A man and woman have a child. The mother and father have no permanent relationship to each other, and no desire to form one. When the relationship ceases to function to their satisfaction, it dissolves. The mother sues the father for child support.

The couple argues through the court system over how much he should pay. The woman wants him to pay more than he wants to pay. The court ultimately orders him to pay a particular amount. He insists on continuing visitation rights with his child. She resists. They argue in court, and finally settle on a periodic visitation schedule to which he is entitled.

The agreement works smoothly at first. Then the parents quarrel. At visitation time, the mother is not home. He calls and leaves a nasty message on the answering machine. They quarrel some more. She says his behaviour is not appropriate. He smokes too much, and over-indulges the child in sweets. She says the child, who is now a toddler, is impossible to deal with after visits. He quits paying child support. The court garnishes his wages to force him to pay. He goes to court to try to get his visitation agreement honoured. The court appoints a mediator to help the couple work out a solution. The mother announces that she plans to move. He goes to court and gets a temporary order to restrain her from moving. She invents a charge of child abuse and gets a restraining order forbidding him from seeing the child.

Say what you like about this sort of case. You may think this is the best mere mortals can do. You may think this contentiousness is the necessary price people pay for their adult independence. You may blame the mother or the father or both. Or perhaps you think this is a nightmare for both adults as well as for children. But on one point we can all agree: this is not a free society in which the state honours people’s privacy. Agents of the government actively inquire into, pass judgments upon and intervene in the most intimate details of this couple’s life.

The state solicitude for the mother and her child is a direct result of father

absence. Without a father's assistance, this woman and her child are more likely to become dependents of the state. The state believes, quite reasonably, that it is more cost-effective to help the mother extract assistance from the father, than to provide taxpayer-funded financial assistance. Aggressive programs for tracking down "dead-beat dads," become a substitute for providing direct payments through the welfare system as conventionally understood.

A radical individualist might argue that the state should allow this couple to sink or swim on its own. If the man abandons her, tough luck for her and her child. If she kicks the man out, for good reason or no reason, tough luck for him. The social order simply can not afford to indulge people who can't get along with their closest and most intimate family members. If the state would get out of the family business, or charge people the full cost for the use of its services, fewer people would get into these contentious situations. People would be more careful in forming their intimate childbearing unions.

But our current ideological environment makes this position impossible, however much it might appeal to the radical individualist. The political pressures for the state to intervene on behalf of the unmarried mother are simply overwhelming. The welfare state is so entrenched that singling out unmarried mothers at this late date is not plausible. Given that reality, it is not realistic to expect the state to cease and desist from all the activities of the family court, no matter how intrusive or highly subsidized they may be.

Nor does the sense of financial entitlement exhaust the entitlement mentality. Unlimited sexual activity is now considered an entitlement. Marriage is no longer the only socially acceptable outlet for sexual activity, or for the rearing of children. It is now considered an unacceptable infringement on the modern person's liberty to insist that the necessary context of sexual activity is marriage, with rights and responsibilities, both implicit and explicit. It is equally unacceptable to argue that having children outside of marriage is irresponsible. Women are entitled to have as many children as they choose in any context they choose. In this

sense, children have become a kind of consumer good. Choosing to have a child is a necessary and sufficient condition for being entitled to have one. Given this social and cultural environment, it is completely unrealistic to think that we can muster the political will to deprive unmarried parents of the use of the courts to prosecute their claims against one another.

Contrast this scenario with intact married couples. Not deliriously happy married couples, with stars in their eyes at all times. Just ordinary, everyday, run of the mill, married couples.

No one from the state forces them to pool their incomes, if they both work. If they have the traditional gender-based division of household labour, no one forces the husband to hand over his paycheque to his wife to run the household. No one makes the wife allow him to take the kids out for the afternoon. No one has to come and supervise their negotiations over how to discipline the children. When he's too tough, she might chew him out privately, or kick him under the table. When she lets them off the hook too easily, he might have some private signal for her to leave so he can do what needs to be done.

The typical married couple has regular disagreements over money, child rearing, the allocation of household chores, how to spend leisure time and a hundred other things. Every once in a while, even a stable married couple will have a knock-down, drag-out, (usually) private quarrel. But they resolve their disagreements, large and small, perhaps a dozen a day, completely on their own,

with neither supervision nor subsidy from any court.

Conclusion

We all recognize that a free market needs a culture of law-abidingness, promise-keeping and respect for contracts. Similarly, a free society needs a culture that supports and sustains marriage as the normative institution for the begetting, bearing and rearing of children. A culture full of people who violate their contracts at every possible opportunity can not be held together by legal institutions, as the experience of post-communist Russia plainly shows. Likewise, a society full of people who treat sex as a purely recreational activity, a child as a consumer good, and marriage as a glorified roommate relationship, will not be able to resist the pressures for a vast social assistance state, and for an overbearing family court system. The state will irresistibly be drawn into parental quarrels and into providing a variety of services for the well-being of the children.

The "leave us alone" ethos that lies behind the demand for the acceptance of all alternative families does not properly apply to the sphere of the family. Trying to equalize the outcomes for children requires that married couple families and childless people provide subsidies to those parents who dissolve their marriages, or who never form marriages. The state will be taxing the married to pay for the children of the unmarried. This is why the demand that the government be neutral among family forms is unreasonable. 🍁

ENDNOTES

¹Doherty, W., et al. (2002). *Why marriage matters: Twenty-one conclusions from the social sciences*. New York: Institute for American Values, p. 8.

²Smith, A. (1976). *The wealth of nations*. E. Cannan (Ed.). Chicago: University of Chicago Press, p. 17.

³Canada is leading the way in recreating marriage. The Law Commission of Canada issued a report entitled, *Beyond conjugality: Recognizing and supporting close personal adult relationships*. (2000). Ottawa: Law Commission of Canada. It recommended that the legal structure attempt to codify state impartiality among family forms. More recently, however, Canadian law has moved in more radical direction of favouring an understanding of marriage as a "close personal adult relationship." This redefinition actively disfavours the traditional understanding of marriage as a conjugal relationship, focused on children. See Daniel Cere's, *The future of family law: Law and the marriage crisis in North America*. (2005). New York: Institute for American Values, pp.12-15 and 18-20.

⁴In general, see Doherty, W., et al. (2002). *Why marriage matters: Twenty-one conclusions from the social sciences*. New York: Institute for American Values. Or Fagan, P.F., & Rector, R. (2000, June 5). *The effects of divorce on America*. Washington, D.C.: The Heritage Foundation Background, No. 1373.

⁵David Blankenhorn (1995) argues that having married parents or not is creating the new and most long-lasting forms of inequality. See his *Fatherless America: Confronting our most urgent social problem*. New York: Basic Books.

⁶McLanahan, S., & Booth K. (1989, August). Mother-only families: Problems, prospects and politics. *Journal of Marriage and the Family*, 51(3), p. 565.

⁷Weitof G. R., Hjern, A., Haglund, B., & Rosen, M. (2003, January 25). Mortality, severe morbidity, and injury in children living with single parents in Sweden: A population-based study. *Lancet*, 361(9354).