

Findings

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Strengthening Marriage

How Public Policy Can Reinforce the Foundation of Society

By Matthew Gerrald



In 1828, Noah Webster published his historic *American Dictionary of the English Language*. He was a master of dozens of languages—including Chaldean, Syriac, Hebrew, Arabic, Ethiopic, and Persian¹—and drew upon this wealth of linguistic knowledge to produce the most historically and culturally accurate definitions possible. His dictionary, adopted by Congress as the national standard in 1831,² defined marriage this way:

“The act of uniting a man and woman for life. ... Marriage is a contract both civil and religious, by which the parties engage to live together in mutual affection and fidelity, till death shall separate them. Marriage was instituted by God himself for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and education of children.”³

Webster’s dictionary put into print what the collective experience of societies across history has recognized, the law has traditionally acknowledged, and social science research has demonstrated: marriage between one man and one woman is the only context into which sexual activity should be channeled and the superior environment in which children should be raised. This paper will explore why marriage is important to society, describe the condition of marriage nationally and in North Carolina, and explain several proposals for strengthening marriage through public policy.

The Importance of Marriage

Healthy marriages are the bedrock of human civilization. Couples, families,

children, and even the government experience a wide variety of positive outcomes when the men and women of a society unite in monogamous marriage. It is for this reason that the public policy of this state and nation must lift up and encourage marriage.

Children raised in intact families are significantly less likely to use illicit drugs,⁴ be incarcerated,⁵ engage in behaviors such as lying or stealing,⁶ or experience psychological problems.⁷ On aver-

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age, they perform better in school,⁸ live in wealthier households,⁹ are more likely to abstain from sexual activity,¹⁰ and stand a greater chance of being employed¹¹ and having a healthy marriage when they grow up.¹² Such findings led Mary Parke of the Center for Law and Social Policy to conclude, “On average, children do best when raised by their two married biological parents.”¹³

Adults also derive many benefits from the institution of marriage. Married men and women tend to enjoy longer, healthier lives, experience higher levels of happiness and sexual fulfillment, and suffer from lower rates of psychological problems and alcohol addiction. Studies have also shown that marriage increases the earning power of men and protects women from domestic violence. Overall, marriage recognizes the inherent complementarity of the sexes—that men and women bring unique and important

characteristics to their relationships—and confers upon each spouse greater personal fulfillment.¹⁴

Marriage also benefits the state. Congress has determined that “children born out-of-wedlock are three times more likely to be on welfare when they grow up,”¹⁵ and another study has shown that teen childbearing costs the U.S. government nearly \$7 billion each year.¹⁶ For this reason, marriage promotion was one of the chief goals of the landmark welfare legislation passed in 1996,¹⁷ because as more children are raised in healthy, intact families, government welfare expenditures decrease. Similarly, the variety of positive effects that healthy marriages have on children also benefit the state by extension—when more children succeed in school, avoid using drugs, stay out of prison, and find good employment, society clearly benefits and the need for government intervention declines. Marriage also brings great stability to society, for when men and women confine sexual activity to marriage, the spread of sexually-transmitted disease is curtailed and fewer children are born out-of-wedlock. As a team of family scholars recently concluded, “Whether American society succeeds or fails in building a healthy marriage culture is clearly a matter of legitimate public concern.”¹⁸

Marriage Policy in N.C.

Will Marshall, president of the Progressive Policy Institute, and Isabel Sawhill, senior fellow at the Brookings Institution, have noted that “the moral premises embedded in public policies (or absent from them) do send signals to citizens about what constitutes socially responsible behavior.”¹⁹ North Carolina stands out among the fifty states in that the moral premises embedded in most of its laws and policies related to sexual activity

clearly point to marriage as the only appropriate context for such conduct.

In North Carolina, “A valid and sufficient marriage is created by the consent of a male and female person” in the presence of an authorized minister or magistrate.²⁰ In order to be wed, the bride and groom must each be at least eighteen years old (or sixteen with parental permission)²¹ and must not be close blood relatives, already married, or mentally incapable of entering into a contract.²² Once married, a couple may not be divorced in North Carolina unless they live separately with the intent to end the marriage for at least one year,²³ in order to provide time for reconciliation. Additionally, North Carolina is one of thirty-nine states to have passed a defense of marriage act, which specifically prohibits marriages between individuals of the same sex or recognition of such marriages performed in other states.²⁴

The public policy of this state is clear: sexual activity is only acceptable between individuals who meet these qualifications and are joined in matrimony. Rape and incest are prohibited by law,²⁵ as are fornication and adultery (cohabitation),²⁶ prostitution,²⁷ and sodomy.²⁸ In adultery cases, the torts of Alienation of Affections and Criminal Conversation protect the marriage vow by permitting recovery against a third party who maliciously interferes with a marriage. Furthermore, schools in North Carolina are required to teach that “abstinence from sexual activity until marriage is the only certain means of avoiding out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health and emotional problems.”²⁹ This abstinence-based sex education requirement, together with the other statutes and civil actions, reflects a seamless, cohesive policy that as a state, North Carolina believes that marriage is the only appropriate context for sexual activity because of its proven benefits to society and its superiority as an environment in which to raise children.

Threats to Marriage

Sadly, the importance of marriage is diminishing in American culture. In 1950, there were 11.1 marriages per 1,000 population in the United States.³⁰ By 2004, the rate had fallen by a startling 33 percent to 7.4 per 1,000 population.³¹ According to Glenn Stanton, senior research analyst at Focus on the Family, the decline of marriage in modern society is due to the increasing tendency to view marriage as “optional, disposable, and redefinable.”³²

Optional: In a recent nationwide survey of high school seniors, 66 percent of boys and 61 percent of girls either “agreed” or “mostly agreed” with this statement: “It is usually a good idea for a couple to live together before getting married in order to find out whether they really get along.”³³ It should come as little surprise, then, that over half of all modern marriages in the United States are preceded by cohabitation³⁴ or that there are currently at least 5.4 million unmarried cohabiting couples in the United States.³⁵ Unfortunately, many Americans subscribe to the mistaken belief that cohabitation is useful as a marital “test drive” that will increase the likelihood of successful marriage later on. In fact, unmarried cohabiting couples are much more likely to see their marriages end in divorce or separation than those couples who do not cohabit prior to marriage.³⁶

Disposable: Nearly three-quarters of Americans agree that “marriage is a lifelong commitment that should not be ended except under extreme circumstances.”³⁷ Unfortunately, however, this opinion about the permanence of marriage is not reflected in practice. While the marriage rate in the United States has decreased dramatically in recent decades, the divorce rate has skyrocketed—from 2.2 per 1,000 population in 1960³⁸ to 3.7 per 1,000 population in 2004,³⁹ an increase of almost 70 percent. In North Carolina alone, there were 37,731 divorces and 65,902 marriages in 2004,⁴⁰ nearly three divorces for every five marriages over a period of one year. Such data reflect a changing societal attitude from one that truly views marriage as a lifelong commitment to one that views marriage as “at will”—disposable when the going gets rough.

Redefinable: As evidenced in Noah Webster’s dictionary, marriage has been recognized throughout history as the union of one man and one woman for life. Unfortunately, in the past decade, certain segments of the judiciary—convinced by homosexual activists that the purpose of marriage is simply the recognition of “loving relationships”—have taken it upon themselves to thwart public opinion⁴¹ and historic precedent and redefine marriage as gender-neutral. More than simply conferring the benefits of traditional marriage on same-sex couples, such decisions could pave the way for legal recognition of a host of “alternative” sexual relationships, including polygamy and incest. Although many courts have rebuffed attempts by homosexual activists to force same-sex “mar-

riage” on an unwilling public, the threat of judicial redefinition of marriage and even legislative action remains very real in any state that defines marriage statutorily rather than constitutionally—including North Carolina.

Preserving Marriage

The public policy of North Carolina and the nation must affirm that traditional marriage is the foundation of healthy families and a prosperous society. Unfortunately, efforts have been made to weaken the state’s pro-marriage laws, which currently constitute one of the strongest family policies in the nation. There are those who would repeal the prohibitions against cohabitation and sodomy, abolish the tort actions of Alienation of Affections and Criminal Conversation, and substitute “comprehensive” sex education for abstinence-based education. Opponents of these critical elements of North Carolina’s pro-marriage framework argue that such policies are outdated and that the state has no rational basis for “legislating morality.” However, in the words of law professor and U.S. Circuit Judge Richard Posner, “The [social science] evidence . . . refutes any claim that policies designed to promote marriage are irrational.”⁴² Maintaining the positive characteristics of this state’s marriage and family laws is vital in the effort to preserve and protect healthy marriages.

In addition to preserving the positive aspects of current laws and policies, however, it is important to consider the reformation or amendment of other aspects of the law in order to create the most pro-marriage environment possible. Public policy must dispel the myths that marriage is optional, disposable, and redefinable, and instead affirm that marriage is essential, invaluable, and immutable.

Marriage is Essential

Discourage domestic partnerships:

Because of marriage’s proven benefits to society and its respected place in cultures across history, public policy must not encourage lifestyles contrary to marriage or discourage men and women from entering into marriage. Thus, the law should not promote unmarried cohabitation. The boundaries of marriage must be clear; marital benefits should not be conferred upon unmarried cohabiting couples. Domestic partner benefits blur the distinction between marriage and other less socially beneficial family forms and thus inadvertently discourage marriage.

Retain pro-marriage amendments to

the tax codes: The federal and state tax codes also must not discourage marriage. For many years, a variety of “marriage penalties” made it less advantageous to marry than to remain single. Fortunately, both the U.S. Congress and the North Carolina General Assembly have recently recognized these flaws in the tax laws and taken steps to remedy the most common disadvantages to married couples. These improvements to the state and federal tax codes must be made permanent, and efforts to revive the “marriage penalties” should be opposed.

Reform anti-marriage biases in the welfare system: Public policy must also discourage out-of-wedlock childbearing; welfare policies that have historically discriminated against marriage in favor of single motherhood must be reformed. An astonishing 74 percent of means-tested (adjusted based on income) welfare aid to households with children—over \$150 billion annually—goes to single parents.⁴³ This type of aid is biased against marriage because a single mother receives greater welfare benefits than she would if she married a working husband. Recognizing this, Congress made promoting marriage one of the preeminent goals of its 1996 welfare reform legislation. Most states—North Carolina included—have not done much to directly advance this goal, however. In an effort to achieve this objective, President Bush’s Healthy Marriage Initiative proposes to earmark \$300 million—0.02 percent—of annual welfare funds for marriage education and marriage penalty reduction.⁴⁴ This proposal is a step in the right direction towards reducing the anti-marriage bias in the welfare system and thereby reducing the number of American families who need government assistance.

Encourage marriage through public service announcements: In addition to changing public policy to affirm that marriage is essential, the state should also consider proposals that could help reshape the public perception that marriage is optional, such as the broadcast of public service announcements reinforcing the value of marriage. Pro-marriage announcements have appeared on television, radio, and billboards in Washington, Michigan, Tennessee, Louisiana, and South Carolina.⁴⁵

Marriage is Invaluable

Allow fault to play a role in divorce proceedings: Common sense dictates that public policy should reward good behavior and punish bad behavior. Given the importance of marriage to society, this maxim must also apply to marriage and divorce

laws. Currently, fault plays little if any role in divorce proceedings in most states, but the law should not be neutral when one spouse is clearly innocent and the other has clearly done wrong. Judges must be allowed or even mandated to consider fault in computing alimony payments, dividing property, and awarding custody of children. Unless there are consequences for their behavior, parties to a marriage contract have little legal incentive to remain faithful.

Reform divorce laws to make the dissolution of a marriage more difficult: Since the no-fault divorce revolution swept the nation beginning in 1969 with the adoption of California’s no-fault divorce law, the dissolution of a marriage has become easier than at any time in human history. As a result, the modern marriage vow is less binding than the average business contract—either spouse may walk away

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from the marriage at any time with no fault-based repercussions. Ronald Reagan, who signed the California bill into law, later said that he “regretted signing the no-fault divorce bill and that he believed it was one of the worst mistakes he ever made in office.”⁴⁶ Indeed, a solid 49 percent of Americans believe divorce should be more difficult to obtain,⁴⁷ and one estimate placed the costs of divorce to the state and federal governments at \$33.1 billion per year—\$1.1 billion annually in North Carolina alone.⁴⁸ Considered together with the devastating effects divorce is known to have on children and families, these are strong indications that current divorce laws are in dire need of reform.

Some reform advocates have expressed their belief that the no-fault experiment has been a failure and that society should return to the fault-based system that existed before 1969. Under such a system, a marriage could only be dissolved for certain enumerated reasons such as adultery, abandonment, neglect, or domestic violence. However, most modern reform advocates seem to support making divorce harder to obtain through more incremental amendments to existing laws. Marshall

and Sawhill favor retaining no-fault divorce, but only with the consent of both spouses in cases where the couple has minor children.⁴⁹ A bill introduced in Michigan in 2001 would have required mutual consent for all divorces.⁵⁰ Both proposals would leave in place the traditional fault-based grounds for unilateral divorce, and both would be a step in the right direction towards discouraging divorce through public policy.

Create incentives and opportunities for couples to attend marriage counseling: Florida was one of the first states to pass legislation encouraging marriage counseling prior to marriage by waiving the marriage license fee and decreasing the waiting period for couples who attended counseling.⁵¹ Florida and other states also distribute literature describing the seriousness of the marriage vow to all couples applying for a license, and require that all high schools offer optional marriage and relationship skills courses.⁵² Each of these measures demonstrates a commitment by many state governors and representatives to ensure that couples understand the historical and social value of a lasting commitment to marriage.

Marriage is Immutable

Define marriage constitutionally rather than statutorily: In response to several state court rulings striking down statutory definitions of marriage, voters in 18 states⁵³ have ratified constitutional amendments defining marriage as between one man and one woman. In North Carolina, a similar marriage amendment—favored by a majority of voters⁵⁴—was co-sponsored by a bipartisan majority of the General Assembly in 2005, but the bills, H.B. 55 and S.B. 8, did not receive consideration before the crossover deadline. Because the state’s defense of marriage act is subject to invalidation by a single judge, voters must continue to demand that marriage be constitutionally defined as between one man and one woman in order to insulate the sacred institution from redefinition by an activist judiciary. Further, it is critical to continue to press for an amendment to the U.S. Constitution—favored by 57 percent of Americans⁵⁵—to ensure that a federal judge may not invalidate the 1996 Defense of Marriage Act or any of the state constitutional amendments, as one judge recently did in Nebraska.⁵⁶

Conclusion

There is no greater issue facing civilization today than the preservation of marriage. As Congress declared in 1996,

“Marriage is the foundation of a successful society”⁵⁷ — a sentiment shared by those on both ends of the ideological spectrum. Former Vice President Al Gore has stated, “Strong marriages are a vital component to building strong families and raising healthy, happy, well-educated children. ... Fighting together against the forces that undermine family values, and creating a national culture that nurtures and encourages marriage and good family life, must be at the heart of this great nation’s public policy.”⁵⁸ Government at all levels must affirm the social and cultural value of marriage, encourage marriage through law and public policy, and refuse to endorse other adult relationships which mimic but are unequal to marriage. Precious few things could be more beneficial to American society.

Matthew Gerrald worked with the N. C. Family Policy Council as a legal intern from the Alliance Defense Fund’s Blackstone Fellowship during the Summer of 2005.

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