

Is Preference for Marriage in the Law Justified?

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For many years, marriage has enjoyed a special status in law—the most highly-preferred, historically-favored status of any personal relationship recognized in law. It has been preferred for millennia and across all cultures. In his day, Aristotle taught that the first duty of wise legislators was to define and regulate marriage.¹ Today, the right to marry is still identified in numerous international documents as one of the fundamental rights of humanity. The Universal Declaration of Human Rights, for instance, declares that “[m]en and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family.”² Likewise, many other multilateral conventions and documents list “the right to marry and to found a family” as a basic human right.³ The national constitutions or fundamental charters of at least forty-two nations make specific reference to and guarantee special constitutional protections for “the right to marry” and/or the “fundamental” importance of the family.⁴ In other countries, marriage is given special unwritten constitutional status and protection.⁵ Clearly, marriage is highly preferred and specially protected in most legal systems.

However, there is a growing trend in many Western societies to challenge the special legal status, privileges, and protections of marriage. It has become fashionable in many circles to devalue marriage. In the U.S. and many other affluent nations, contemporary writers have argued that the government has no business trying to define any “family” relationships, much less encouraging or restricting certain kinds of family relationships. Family law scholars have noted the “privatization” of family law⁶ and the diminution of moral discourse in family law for several decades.⁷ As Bruce Hafen has noted, “The trend in most countries today is toward letting people decide for themselves how and when to form and dissolve marriages and child-parent ties. . . .”⁸ For example, during the 1980 White House Conference on the Family, the proposal that “family” should be defined as “two or more persons who share resources, responsibility for decisions, values and goals, and have commitment to one another over time” lost by only two votes among 761 delegates.⁹ The prevailing viewpoint among American law review writers is that the state should accept marriage as any relationship that the involved parties wish to call a marriage.

Likewise, movements are active in many countries to legalize and give legal status, benefits, and protections to “alternative family” forms and relations (including same-sex unions, non-marital cohabitation, childbearing without mar-

riage, and unilaterally-disposable marriage, among others). These movements are based on the belief that marriage, as it has been understood for millennia, no longer deserves unique, special legal status or protection. Thus, in some countries non-marital cohabitation is given virtually as many legal benefits and protections as marriage.¹⁰ In the last decade, four Scandinavian countries: Denmark, Norway, Sweden, and Iceland, and also the Netherlands have enacted legislation authorizing the formal registration of same-sex “domestic partnerships” and extending to such relationships essentially the same legal status, and most of the economic and legal incidents of marriage.¹¹ After a decision by the national supreme court, the legislature in Hungary legalized common-law, same-sex, live-in companionships for purposes of recognizing their mutually-owned purchases and acquisitions.¹² Proposals to create a new marriage-like legal status for same-sex couples are underway in France and Germany. In the U.S., several state courts have flirted with legalizing same-sex marriage; same-sex domestic partnership schemes have been enacted by at least one state legislature and by dozens of municipalities, and the governor of Hawaii proposed that the state “get out of the business” of regulating marriage, and leave that to private (religious) regulation.¹³ These recent developments are based upon the assumption that the definition, form, or structure of marriage has no particular significance for society or for the state.

It is apparent that the social interest in marriage and in families has become obscure. Advocates of “alternative” family forms, structures, and relations challenge us to answer a fundamental question about law and marriage—Why should the state give special legal status, benefits, and protections to marriage? This question is linked to others like: Why should any intimate relationship be given special, preferred treatment by the state? Why should marriage alone, and no other intimate relationships, receive the special status, benefits, and protections afforded by marriage law? What business is it of the state whether a particular couple gets married or not?

These challenges force us to reconsider the worth of marriage. They give us and our generation the opportunity to rediscover the tremendous value of marriage and family to society. Both experience and empirical evidence show that there is a significant relationship between the kinds of family forms and relations that a society fosters, encourages, or restricts and the economic, social, and political welfare of that society, as well as a relationship between the political structure and the structure of families. Marriage matters because

the stability and nature of marriage in a society is directly related to the stability and nature of family life. It matters because the quality and strength of families in a country is directly linked to the quality and strength of the nation itself and the quality and nature of its governmental institutions, economy, and liberty.

Family Structure and Relations as Sources of Political Freedom and Social Stability

Tolstoy summarized the truth underlying the relationship between families and social interest in his opening paragraph in *Anna Karenina*, "Happy families are all alike; every unhappy family is unhappy in its own way." Individuals in happy families are likely to be good citizens; whereas unhappy, dysfunctional families are a major source of social problems and instability. Society's interests in fostering good citizenship, promoting individual happiness, encouraging social stability, and also in preventing the explosion of social problems gives it a direct interest in fostering secure, happy families.¹⁴

As distinguished sociologist Robert Nisbet observed, "[F]amily, not the individual, is . . . the key link of the social chain. . . . It is inconceivable . . . that either intellectual growth or social order or the roots of liberty can possibly be maintained among a people unless the kinship tie is strong and has both functional significance and symbolic authority."¹⁵ Another scholar noted that "[t]hroughout much of human history the family has not only been the fundamental unit of socialization, but it has been the basic economic unit also."¹⁶ And, many have observed that "the stability of the state depends upon the stability of the family."¹⁷

Marriage is important to society because it is the best, most promising foundation of families. "[T]he family is the very seed-bed of democracy. Home is the place where we get our first ideas about ourselves, our attitudes toward other people, and our habits of approaching and solving problems."¹⁸ It is in the home that spouses, as well as children, learn lessons about cooperation and commitment, sharing and sacrifice, and obedience to the unenforceable that form the foundation for self-government. It is from their marriages that husbands and wives learn how to make the best of shortages, how to care for others, how to be happy, to love liberty, to fulfill one's duty, and the critical citizenship skills of mutual respect and cooperation.¹⁹ It is in marriage and in raising children that most adults relearn the importance and refine the techniques of sacrificing for others, how to really care for the next generation, to look beyond the present, to nurture the basics of life and community. The interconnectedness of our lives, the first lesson of all government, especially self-government, is learned first as children and most thoroughly as spouses and parents in the home. The home is the first and the most important schoolhouse in a democracy. Husband and wife, as well as parents and children, learn the most important lessons of

happy, successful living as they work together, play together, plan together, cooperate together, laugh together, weep together, prosper together, and share each others' pains and sorrows. It is in the home that trust in others and in the future is nurtured—or hindered—and that is the indispensable prerequisite for democracy.

More than one hundred and fifty years ago, the brilliantly perceptive French social commentator, Alexis de Tocqueville, observed:

There is certainly no country in the world where the tie of marriage is more respected than in America or where conjugal happiness is more highly or worthily appreciated. . . . When the American retires from the turmoil of public life to the bosom of his family, he finds in it the image of order and peace. There his pleasures are simple and natural, his joys are innocent and calm; and he finds that an orderly life is the surest path to happiness, he accustoms himself easily to moderate his opinions as well as his tastes. . . . The American derives from his own home that love or order which he afterwards carries with him into public affairs.²⁰

Given the recent spectacle of family infidelities committed by high public officials in the U.S., one wonders what de Tocqueville would think, and what tragic consequences will follow this temporary breakdown in the observance of family virtue that de Tocqueville and many others believed to be so critical for the perpetuation of democracy in America. For while democratic society can carry on adequately despite some moral deviation, domestic failure or breakdown of family integrity, when the quantity of those problems becomes significant, the drag they create burdens the entire society and undermines societal processes and institutions, like cancer eats away at the organs until the body cannot function properly.

The importance of marriage has not been apparent only to foreign observers. The United States Supreme Court has frequently emphasized the importance of marriage and family to society. One hundred and twenty years ago, in *Reynolds v U.S.*,²¹ the court described the high and central status of marriage in these terms: "Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal." A decade later, in *Maynard v Hill*,²² Justice Field noted: "Marriage, as creating the most important relation in life, [has] more to do with the morals and civilization of a people than any other institution. . . ." In *Skinner v Oklahoma*,²³ and again in *Loving v Virginia*,²⁴ the court emphasized that "[m]arriage and procreation are fundamental to the very existence and survival of the race."

In 1971, in *Boddie v Connecticut*,²⁵ the court emphasized that "marriage involves interests of basic importance in our

society," because it relates to the states' interest in "the stability of their social order . . . the good morals of all their citizens, and . . . the needs of children from broken homes. The States, therefore, have particular interests in the kinds of laws regulating their citizens when they enter into, maintain, and dissolve marriages."²⁶

The normative nature and structure of marriage and family are closely tied to the model of state authority. "[T]he family . . . [has a] critical role in raising good citizens. . . . [Scholars] affirm . . . the vital role that families play in preserving the fundamental liberal values underlying the constitutional structure."²⁷ This is true not just in Western societies. In Japan, for example, the structure of the family and the cultural values inculcated by the family affect the successful use of informal dispute resolution procedures in courts.²⁸ After World War II, the Allies insisted on the dismantling of the traditional family structure in Japan because they believed that there was a direct link between that potentially autocratic family form and the social, political, and militaristic values of the nation.²⁹

Marriage structures that underscore public commitment are important foundations for self-government, because such marriages are more for the community than for the individuals. Couples say their vows for the community who gathers to witness them pledge their troth to each other. Likewise, marriage forms that bind parents to children, not through mere legal formalities but through daily contact, living responsibilities, and ongoing relationships, enhance society. Marriage-based families are best for children. They provide a potentially optimal environment in which children may be conceived, raised, and taught the lessons of responsible living.

The health, longevity, income, and life satisfaction of married men and women is generally and consistently higher than it is for divorced, separated, and even often single adults. Professor Linda Waite, in her celebrated presidential address to the Population Association of America entitled "Does Marriage Matter?" emphasized that social science research has established clearly that there are substantial benefits for individuals who are married. For example, negative health behaviors such as excessive drinking, drinking and driving, substance abuse, and excessive risk-taking is much higher for divorced men than for widowed or married men. Similarly, research indicates that married men and women generally face lower risks of dying at any point than other persons, enjoy higher incomes, greater levels of wealth, experience greater satisfaction in sexual relations, and better relations with their children.³⁰ Another study emphasized that "[o]f all the social variables whose relationships with the distribution of psychopathology in the population have been studied, none has been more consistently and powerfully associated with [mental disorders] than marital status."³¹ Marriage is also positively linked

with overall health; divorced and separated persons have higher rates of chronic disease, hospitalization, longer hospital stays, higher incidence of high blood pressure, and more suicides than married persons.³² Thus, not only is marriage good for individuals, it is less costly for society, which shares the costs of illness, disease, dysfunctional behavior, and death.

Society has an interest in fostering family structures that produce these kinds of positive and socially-beneficial results, results that avoid lost productivity, reduce tax expenditures for medicines, health services, social security, and prevent to some degree the social costs of broken homes. Thus, society has a direct and measurable interest in fostering good, happy marriages, and stable, loving families.

The Influence of Marital Instability and Breakdown upon Social Disintegration, Political Instability, and Authoritarianism

Marriage provides the benefits of two parents for children, which research has repeatedly confirmed is the best environment for child rearing. The negative consequences of nonmarriage (single parenting) and marital breakdown are terrible and are undisputed—both for children and for society in general. Distinguished social scientists Jean Elshtain and David Popenoe summarized a number of recent research studies this way, "The most important causal factor of [recent declines in American] child well being is the remarkable collapse of marriage, leading to growing family instability and decreasing parental investment in children."³³ Sara McLanahan and Gary Sandefur recently reviewed the professional literature and their own research and concluded that the evidence overwhelmingly proved that "children who grow up in two-parent families [do] better, on average, than children who grow up with only one parent."³⁴ The research shows that "children who grow up with both parents are more successful in making the transition from adolescence to adulthood than children who grow up with only one parent."³⁵ Similarly, Dr. David Popenoe declared, "I know of few other bodies of data in which the weight of evidence is so decisively on one side of the issue: on the whole, for children, two-parent families are preferable to single-parent and step-families."³⁶ The detrimental effects of the disintegration of the family in the U.S. are many and varied, but among the most important categories are poverty, high-risk behaviors (premarital sexual behaviors, abortion, drug use, etc.), disadvantaged socialization, and crime.³⁷

Poverty

Among the most profound advantages of marriage is basic economic security for children. Marital status is more closely associated with avoiding child poverty than any other factor. One study reported that more than half of the increase

in child poverty in the U.S. between 1980 and 1988 “can be accounted for by changes in family structure during the 1980s.”³⁸ In addition,³⁹ “[c]hanging family structure also accounted for 48 percent of the increase during the 1980s in deep poverty, and 59 percent of the rise in relative poverty among U.S. children.”⁴⁰ Many studies have shown that children in single-parent families are many times more likely to be living in poverty than children living with both a mother and father.⁴¹ William Galston, who served as a Domestic Policy Advisor to President Clinton, agreed that “[i]t is no exaggeration to say that a stable, two-parent family is an American child’s best protection against poverty.”⁴² The U.S. government reports that children who grow up without a father at home are “five times more likely to live in poverty, compared to children living with both parents.”⁴³ Similarly, researchers have repeatedly documented the “feminization of poverty” that results from divorce. Adults as well as children suffer from marital disintegration.

High-risk behaviors

Separation of children from their fathers is “the engine driving our most urgent social problems, from crimes to adolescent pregnancy to child abuse to domestic violence against women.”⁴⁴ Children in single-parent families exhibit higher teen-childbirth rates.⁴⁵ Children growing up in single-parent households are at a significantly increased risk for drug abuse as teenagers.⁴⁶ The eminent researcher, Dr. Urie Bronfenbrenner, reported that even after controlling for such factors as low income, “Children growing up in single-parent households are at a greater risk for experiencing a variety of behavioral and educational problems, including . . . smoking, drinking, early and frequent sexual experience, and in extreme cases, drugs, suicide, vandalism, violence, and criminal acts.”⁴⁷

Disadvantaged Socialization

Lack of parental time and direction is a common affliction of children of divorce and out-of-wedlock birth. Children being raised by single parents are at exacerbated risk for “hyperactivity and withdrawal; lack of attentiveness in the classroom; difficulty in deferring gratification; impaired academic achievement; school misbehavior; absenteeism; [and] dropping out of school,”⁴⁸ to mention just a few problems. Parental divorce is associated with many emotional problems, problems with self-esteem, and difficulties with social relationships.⁴⁹

Surveys of child well being repeatedly show that children living apart from their fathers are far more likely than other children to be expelled or suspended from school, display emotional and behavioral problems, have difficulty getting along with their peers, or get in trouble with the police.⁵⁰ Children in a single-parent family generally receive less parental time and direction and less competent child rearing

than those in two-parent homes.⁵¹ “They perform less successfully in educational activities, have more social adjustment problems. . . .”⁵²

Crime

The relationship between adolescent (especially male) criminal behavior and marital breakdown or dysfunction has long been known. Researchers have frequently observed that boys with fathers rarely commit crimes; fatherless boys commonly commit crimes.⁵³ According to a 1990 study commissioned by the Progressive Policy Institute, the “relationship between crime and one-parent families” is “so strong that controlling for family configuration erases the relationships between race and crime and between low income and crime.”⁵⁴ The likelihood that a young male “will engage in criminal activity doubles if he is raised without a father, and triples if he lives in a neighborhood with a high concentration of single-parent families.”⁵⁵ This is a serious concern in the U.S. where “[v]iolence among the young is so rampant that the American Academy of Pediatrics calls it a public health emergency.”⁵⁶

Thus, it is of great social concern that American society “is becoming an increasingly fatherless society.”⁵⁷ In 1995, an estimated 40 percent of all children in the U.S. resided in homes in which their fathers did not reside; before they turn eighteen, it is predicted that more than one-half of all children in America will spend a “significant” part of their childhood living apart from their fathers.⁵⁸

Recent studies in Europe replicate and validate the conclusion that “[f]amily structure [is] clearly associated with” risk factors for adolescents:

Even after controlling for their generally better material circumstances, young people living with both parents at fifteen were, three years later, less likely than those from ‘step’ and/or lone parent households to be heavy drinkers, have experience of drugs, or heterosexual intercourse, no school qualifications, to be unemployed, or, among young women, to have experienced pregnancy.⁵⁹

G.K. Chesterton famously stated that we should “regard a system that produces many divorces as we do a system that drives men to drown or shoot themselves.”⁶⁰ By the same token, a social system that drives (or even facilitates so easily) parents to so severely harm and handicap their children is severely dysfunctional. Thus, society has a profound interest in family structure and stability in order to prevent a host of social problems that can so cruelly afflict a generation of its citizens (the rising generation) and so severely burden the rest of society. “[T]he laws of society [are] designed to secure its peace and prosperity, and the morals of its people. . . .”⁶¹ The government has directly stated its reason to regulate the form and structure of marriage and the family.

Potential Effects of Political and Social Structure on Family Structure and Relations

There is a reciprocal relationship between families and governments, society, and laws. Not only do families directly influence governments, society, and its laws, the form, structure, and policy of the government, society, and its laws influences families. At one level this is obvious. One need only look at the disastrous effects of war to see how immediately and profoundly government policies may affect families. Likewise, unwise economic policies affect the welfare of families. Inadequate educational policies affect families for generations.

As the First Lady of the U.S., Hillary Clinton, has acknowledged, "It takes a village to raise a child." Constant community concern can help to keep marriages intact. The interest or lack of interest of the "village" (government and community) in the family profoundly affects the family. For example, by recognizing and respecting marriage and parental authority, the law may erect a barrier against the state power to standardize child rearing and children.⁶² One of the most terrible manifestations of totalitarian regimes is the separation of parent and child, the centrifugal forces that teach children to distrust and betray their natural protectors, their parents and siblings.⁶³ The distrust that breeds can destroy a generation. By the same token, protecting children against child abuse and serious neglect underscores the community interest in every child, and fosters the sense of community and belonging.⁶⁴

Inept and oppressive family policies can be self-destructive for the state. For example, excessive taxation imposes economic distress on families, leaving them with fewer after-tax dollars to meet their family financial needs.⁶⁵ "Tax policies, and the allocation of societal resources or defense or for the benefit of one particular class in a total society, may deprive many families of the possibility of providing adequate physical care, intellectual growth, and emotional security for their members."⁶⁶ Experience in North America and Western Europe has indicated that welfare programs that provide richer rewards for unmarried mothers than for mothers married to low income fathers provide a strong incentive for poor women to give birth out of wedlock, and consequently for single parenting (which in itself creates enormous social problems) and long-term welfare dependency.⁶⁷ Government policies designed to encourage women to enter the labor market or to slow population growth often discourage marital childbearing.⁶⁸ The willingness of couples to assume the responsibilities of bearing and raising children appears to be linked to government structure, as the world-leading rates of abortion in Eastern Europe during the era of communist repression and poverty suggest. Studies have confirmed that "the level and scope of a country's social security system is causally [sic] and inversely related to fer-

tility levels."⁶⁹ In one sense, "antidemocratic forces" pose the greatest threat to the family in established democracies.⁷⁰

De Tocqueville wrote of the "influence of democracy on the family," and opined that the equality of democracy had mellowed and improved relations between generations.⁷¹ He added, "I think that in proportion as manners and laws become more democratic, the relation of father and son becomes more intimate and more affectionate; rules and authority are less talked of, confidence and tenderness are often increased, and it would seem that the natural bond is drawn closer in proportion as the social bond is loosened."⁷² He further opined that "[d]emocracy also binds brothers to each other. Under democratic laws all the children are perfectly equal and consequently independent; nothing brings them forcibly together, but nothing keeps them apart. . . ."⁷³ In sum, he believed that "[d]emocracy loosens social ties, but tightens natural ones; it brings kindred more closely together, while it throws citizens more apart."⁷⁴

"In an important sense, the state is a key agency in telling or reminding us what the family is."⁷⁵ There is a symbiotic relationship between family and state. "There are very few aspects of state legislation that do not have direct or indirect impact upon the family and very few practices of state officials that do not, again, directly or indirectly, have some kind of family dimension."⁷⁶ Thus, as the family is undermined, the economy is strained and the integrity of the government is threatened.

Conclusion

There are profound networks of reciprocal relationships among family, society, and the state that exert important influences on each other. For the sake of the political structures and values associated with freedom and responsibility, the social conditions and values associated with opportunity and order, and for the greatest potential for individual liberty and human development, it is important that marriage-based intergenerational nuclear—and in a different but important way, extended—families be protected and preferred by government, and that families try to foster accountability, openness, and good government.

Former law school Dean Bruce C. Hafen said, "I urge a renewed legal model that unapologetically defines the family, marriage, and child-parent ties to express the community's interest in family stability, and especially its interest in children."⁷⁷ "Family law traditionally acted as a bridle on human passions, stating expectations, steering us toward long-term relationships of loving commitment. Without that bridle, both our passions and our principles run wild, harming both individuals and society."⁷⁸

The challenge of our times is not so much to resist the changing environment, but to resist the forces that tend to pull marriage and families apart.⁷⁹ Our laws can foster intergenerational family commitment or they can foster centrif-

gal individualism; the former builds family ties, the latter disintegrates family. It is impossible for individuals to preserve and foster marriage and family bonds without some sacrifice of personal desires, without learning to control or master the urge for immediate self-gratification. Yet society benefits as individuals make those sacrifices and learn self-control for the benefit of others. Marriages are very demanding investments. They demand that we replace our selfishness with loving investment in the lives and well-being of others.

Thus, marriage qualities correlate with strength and promise in society—the primary characteristic that defines stable, productive societies is the ability to postpone or sacrifice immediate gratification for the good of the community. As de Tocqueville noted, “When the idea of family becomes vague, indeterminate, and uncertain, a man thinks of his present convenience; he provides for the establishment of his next succeeding generation and no more. Either a man gives up the idea of perpetuating his family, or at any rate he seeks to accomplish it by other means than by a landed estate.”⁸⁰

We must be vigilant against the neo-imperialism of international agencies and organizations that promote radical deconstruction or reformulation of the family. For example, recent international conferences in Beijing, Cairo, Istanbul, Nairobi, Geneva, New York City, and Rome, have proposed radical deconstructionist proposals including abortion-on-demand, gay, lesbian, bisexual, and transsexual “family” relations, and other extremely dangerous and anti-family proposals. The NGO Family Voice [now World Family Policy Center] has done wonderful work in calling attention and responding to these growing threats to family integrity and state sovereignty.

Finally, grave threats to marriage today come from the simple neglect and breakdown of the family. Husbands who abuse or simply neglect their wives, wives who demean or neglect their husbands, and parents who abuse or fail to support and teach their children, undermine the family and society. Today we see some mothers in affluent countries practically abandoning their children as they pursue the golden illusion of career fulfillment and prosperity, and we see fathers become absentee parents because they single-mindedly pursue their material success at the cost of depriving their wives and their children of the most important possession—memories of meaningful family life. Their children grow up as orphans of affluence, orphans of their parents’ blind pursuit of materialism. Sadly, these parents sell their birthright, and their children’s legacy, for the proverbial mess of pottage. They also weaken the fabric of their societies by their myopic behavior. Fathers must return to their role as providers, protectors of their families, and the teachers of their children, and mothers must return to nurture their children and provide a loving, supporting haven of home. Exigencies will arise and exceptions will exist, but for the sake of ourselves, our poster-

ity, and our societies, we must turn the hearts of the parents to their children and the hearts of children to their parents, and this can only occur within the marriage-based family where family relationships are valued above career and fortune.

Marriage matters because families matter. We must make them matter in our laws, in our countries, and in our own homes. As citizens of our own nations, and as government officers, we should do all that we can to promote laws and policies that are designed to preserve, foster, and strengthen the marriage-based family as the basic unit of society.

NOTES

1. Aristotle. “Politica,” in 10 *The Works of Aristotle*, 1334–1335 (W. Ross ed. 1921).

2. See Universal Declaration of Human Rights, Article 16.

3. [European] Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force on 21 September 1970, 20 December 1971, and 1 January 1990, respectively, Article 12 (“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”); see also American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force 18 July 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82 doc.6 rev.1 at 25 (1992) Article 17 (“the right of men and women of marriageable age to marry and to raise a family shall be recognized”); Habitat II Conference, Istanbul, Turkey, 3–14 June 1996, The Habitat Agenda (<http://www.undp.org/un/habitat/agenda/ch-2.html>) (“Marriage must be entered into with the free consent of the intending spouses, and husband and wife should be equal partners. The rights, capabilities and responsibilities of family members must be respected.”). See also Hong Kong Bill of Rights Ordinance, 30 I.L.M. 1310, *1318 (Effective 8 June 1991) (“The right of men and women of marriageable age to marry and to found a family shall be recognized.”).

4. Marriage Law Project, Marriage and Family in National Constitutions (paper distributed 9 January 1999, at Marriage Law Project consultation, A Federal Marriage Amendment?, New Orleans, Louisiana).

5. For example, the terms “marry” or “marriage” or “family” do not appear in the Constitution of the United States of America, but the Supreme Court of the United States has interpreted the Constitution as giving special unwritten protection to the right to marry and establish a family. See, e.g., *Meyer v Nebraska*, 262 U.S. 390, 399, 1923; *Pierce v Society of Sisters*, 268 U.S. 510, 1925; *Loving v Virginia*, 388 U.S. 1, 1967.

6. Singer, Jana B. *The Privatization of Family Law*, 1992 *Wisconsin Law Review* 1443, 1992.

7. Schneider, Carl E. *Moral Discourse and the Transformation of American Family Law*, 83 *Michigan Law Review* 1803, 1985.

8. Hafen, Bruce C. “Bridle Your Passions: How Modern Law Can Protect the Family,” *Vital Speeches*, Vol. 63, No. 20, 1 August 1997 (1997 WL 10024439); *Ibid.* 18 *The Australian Family*, Vol 18, No. 2, August 1997, p. 5.

9. Hafen, Bruce C. *The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social*

Interests, 81 *Michigan Law Review*, 463, 464, 1983. citing "All in the family," *Time*, 16 June 1980, p. 31.

10. See Agell, Anders. "Should and Can Family Law Influence Social Behavior," in *The Changing Family* 381, 1998, pp. 385-387; Lars-Goren Sund, "The Stability of Families—the Influence of Values & Law and Economic Factors," presented at Ninth World Conference of the International Society of Family Law, Durban, South Africa, July 1997, pp. 28-31.

11. See generally Wardle, Lynn D. "Same-sex Marriage and the Limits of Legal Pluralism," in *The Changing Family*, 1998, pp. 381, 385-387.

12. Year of 1996, XLII Law §§ 1-3 (21 May 1996) (Stuard Schulte transla. 1996). See also *Hungary's Gays Welcome Law on Rights as First Step*, Reuters World Service, 22 May 1996.

13. Dunford, Bruce. "Hawaii Lawmakers Pondering Whether to Legalize Gay Marriage," Associated Press, 21 January 1996 (1996 WL 4407590 p. 3 of 10).

14. Beasley, Christine. *Democracy in the Home*, 11, 1954 ("The two fundamental ideas on which democracy rests are: 1) a belief in the worth, dignity, and creative capacity of every individual human being; and 2) a belief in the value of creative participation and cooperation if all individuals within the group. . . . Democracy, then, is a process which succeeds only in so far as it achieves for each and every one of its members the happiness, productivity, and creative relationships which it is his drive to seek; its success lies in its measure of harmony with the needs of man").

15. Nisbet, Robert Nisbet. "The Twilight of Authority," cited in Allan Carlson, "The Family: Where Do We Go From Here?" *Society*, Vol. 32, No. 5, 17 July 1995, p. 7 (1995 WL 12535265).

16. Anderson, Gordon L., ed., *Worldwide State of the Family*, 1, Professors World Peace Academy, 1995.

17. Morgan, D.H.J. *The Family, Politics, and Social Theory*, 75, 1985; see further Donald DeMarco, *Social Justice and the Role of the Family*, 89, *Social Justice Review*, (Iss. #1-2), 1998, pp. 8-13.

18. Beasley, Christine. *Democracy in the Home*, 25, 1954.

19. *Ibid.* p. 12 ("A basic feeling of respect for every individual human being, no matter what his age or status or personal peculiarities, is the very cornerstone of democracy.")

20. de Tocqueville, Alexis. *Democracy in America*, vol. 1, p. 304 (New York, Alfred A. Knopf, 1972) (originally published in 1835).

21. 98 U.S. 145, 165, 1878.

22. 125 U.S. 190, 205-6, 1888.

23. 316 U.S. 535, 541, 1942.

24. *Loving v Virginia*, 388 U.S. 1, 12, 1967.

25. 401 U.S. 371, 376, 1971 (invalidating requirement that indigent parties pay divorce filing fees).

26. 401 U.S. p. 389.

27. Dailey, Anne C. *Federalism and the Family*, 143 *University of Pennsylvania Law Review* 1787, 1792-1793 (1995).

28. See Bryant, Taimie L. *Family Models, Family Dispute Resolution, and Family Law in Japan*, 14 *UCLA Pacific Basin Law*

Journal, 1, 1995.

29. See generally Wardle, Lynn D. *Crying Stones: A Comparison of Abortion in Japan and the United States*, 14 *N.Y.L. Sch. Journal of International and Comparative Literature* 183, 1994.

30. Waite, Linda J., "Does Marriage Matter?" 32 *Demography* 483, 1995.

31. Bloom, Asher and White, *Marital Disruption As A Stressor: A Review and Analysis*, 85 *Psychological Bulletin* 867, 869, 1978.

32. Lynch, James. *The Broken Heart: The Medical Consequences of Loneliness*, 209, 244, Table B-5.

33. Hafen, "Bridle Your Passions," *supra* note 8, p. 5.

34. McLanahan, Sara S. and Gary Sandefur. *Growing Up with a Single Parent: What Hurts, What Helps*, 38, Cambridge, MA, Harvard University Press, 1994.

35. *Ibid.* p. 39.

36. Whitehead, Barbara Dafoe. "Dan Quayle Was Right," *Atlantic Monthly*, April 1993, p. 47 48, 84; See also David Popenoe, "The Controversial Truth: Two Parent Families Are Better," *New York Times*, __ 1992, at __.

37. See generally Wardle, Lynn D. *The Potential Impact of Homosexual Parenting on Children*, *University of Illinois Law Review* 833, 857-864, 1997.

38. Eggebeen, David J. and Daniel T. Lichter. *Race, Family Structure, and Changing Poverty Among American Children*, 56 *American Social Review* 801, 806 (1991). The study further indicated that, "[a]ccording to William Galston, . . . child poverty rates today would be one-third lower if family structure had not changed so dramatically since 1960. Fifty-one percent of the increase in child poverty observed during the 1980s is attributable to changes in family structure during that period." *Ibid.*

39. *Ibid.* (citing William Galston, *Causes of Declining Well-Being Among U.S. Children*, Aspen Inst. Q., Winter 1993, p. 52). Pennsylvania State University research recently concluded that if family breakdown had not deprived many families of a male breadwinner, "the child poverty rate would have declined to 13.8 percent in 1988." Myron Magnet, "The American Family," *Fortune*, 10 August 1992, p. 43.

40. Eggebeen & Lichter, *supra* note __, p. 807.

41. See National Comm'n on Children, *Beyond Rhetoric: A New American Agenda for Children and Families* 253, 1992 ("Children who live with only one parent, usually their mothers, are six times as likely to be poor as children who live with both parents."); William J. Doherty, "The Best of Times and the Worst of Times: Fathering as a Contested Arena of Academic Discourse," in *Generative Fathering: Beyond Deficit Perspectives* 217, 221, Alan J. Hawkins and David C. Dollahite eds., 1997 (66.3 percent of all children living with mothers who had never married were living below the poverty line, compared to only 10.6 percent of children living in two-parent families in 1993); Eggebeen & Lichter, *supra* note __ p. 806-807 (changes in family structure account for one-third of the increased child poverty between 1960 and 1988, and nearly 60 percent of the rise in child poverty during the 1980s).

42. Galston, William A. and Elaine Ciulla Kamarck. *Putting Children First: A Progressive Family Policy for the 1990s*, 12, 1990.

43. U.S. Dept. of Health and Human Services, National Center for Health Statistics, *Survey on Child Health* __, Washington, D.C., U.S. Gov't Printing Office, 1993.
44. Blankenhorn, David. *Fatherless America: Confronting Our Most Urgent Social Problem*, 1, 1995.
45. See *Ibid.* p. 66.
46. Denton, Rhonda E. and Charlene M. Kampfe. *The Relationship Between Family Variables and Adolescent Substance Abuse: A Literature Review*, 114 *Adolescence* 475, 1994.
47. Urie Bronfenbrenner, "Discovering What Families Can Do," in David Blankenhorn, et al, eds., *Rebuilding the Nest: A New Commitment to the American Family* __, Milwaukee, 1990.
48. Bronfenbrenner, *supra* note 45, p. __.
49. Furstenburg, Frank F. and Andrew Cherlin. *Divided Families: What Happens to Children When Parents Part*, 56, Cambridge, MA; Harvard Univ. Press, 1991; Paul R. Amato, *Children's Adjustment to Divorce: Theories, Hypothesis, and Empirical Support*, 55 *Journal of Marriage and the Family*, 23, 1993.
50. *Ibid.*
51. See generally Barbara Dafoe Whitehead, "Dan Quayle Was Right," *Atlantic Monthly*, April 1993, p. 47 (asserting that a growing body of social-scientific evidence demonstrates that children raised in single-parent families are worse off than children in two-parent families in many areas of well being).
52. See *Ibid.* p. 66.
53. Blankenhorn, *supra* note __, p. 30.
54. *Ibid.* at 31.
55. Hill, M. Anne and June O'Neill. *Underclass Behaviors in the United States: Measurement and Analysis of Determinants* __ New York City: University of New York, 1993. * Daniels 2.
56. Richman, Louis S. "Struggling to Save Our Kids," *Fortune*, 10 August 1992, p. 34.
57. Blankenhorn. *supra* note __, p. 1.
58. *Ibid.*
59. Sweeting, Helen and Patrick West, and Martin Richards. "Teenage Family Life, Lifestyles and Life Chances: Associations with Family Structure, Conflict with Parents and Joint Family Activity," 12 *International Journal of Law, Politics, and the Family*, 1998, pp. 35, 39 (family time and conflict with parents accounts for some of the difference for some of the factors, but those are also associated with family structure).
60. Hafen. "Bridle Your Passions," *supra* note 8, p. 5.
61. *Davis v Beason*, 133 U.S. 341-343, 1890; *Ibid.* ("Bigamy and polygamy . . . tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society, and receive more general or more deserved punishment. . .").
62. Daily, Anne C. *Federalism and Families*, 143 *University of Pennsylvania Law Review* 1787, 1857-1858, 1995, pp. 1857-1858.
63. See generally William Shirer, *The Rise and Fall of the Third Reich*.*
64. See generally *A Child Called It*.*
65. Hartman, David A. *The Welfare State: The Destruction of the Traditional American Family*, *Vital Speeches*, Vol. 63, No. 17 at 5-7, 15 June 1997 (1997 WL 10024456).
66. Yorburg, Betty. *Families and Societies, Survival or Extinction*, 134, 1983.
67. Hartman. *The Welfare State*, *supra* note __, p. 4; see also Allan Carlson, "The Family: Where Do We Go From Here?" *Society*, Vol. 32, No. 5, p. 6, 17 July 1995, (1995 WL 12535265); Agell, *supra* note __; Sund, *supra* note __. *Rev. Soc. Econ.*
68. Pyle, Jean L. "Women, the Family, and Economic Restructuring: The Singapore Model?" Vol. 55, No. 2, p. 1-6, 22 June 1997, (1997 WL 17333522); Steven Mosher, *Broken Earth* __ (1983).
69. Carlson, Allan. "The Family: Where Do We Go From Here?" *Society*, Vol. 32, No. 5, p. 5, 17 July 1995, (1995 WL 12535265).
70. Carlson, Allan. "The Family: Where Do We Go From Here?" *Society*, Vol. 32, No. 5, p. 3, 17 July 1995, (1995 WL 12535265).
71. de Tocqueville, *supra* note 20, vol. 2, p. 192.
72. *Ibid.* p. 195.
73. *Ibid.* p. 196.
74. *Ibid.* p. 197.
75. *Ibid.* p. 73. Ideas about the relationship between family and society span the political spectrum. Marxist theory was always critical of the hierarchical structure of capitalist family life. Engels compared wives to repressed proletariats and husbands to oppressive capitalists. Marxist theory urged as "the first premise for the emancipation of women . . . the reinroduction of the entire female sex into public industry. . . ." Inga Markovits, Book Review, *Family Traits*, 88 *Michigan Law Review* 1734, 1743, 1990, citing Frederick Engels, *The Origin of the Family, Private Property and the States in The Marx-Engels Reader*, 744 (R. Tucker, 2d ed., 1978). The preached of liberation from the economic foundations of monogamy, and introduced in Soviet law unilateral divorce, equated "de facto" marriages and formal marriages, and abolished illegitimacy. *Ibid.* pp. 1744-1746. Early Soviet family law theorists believed man to be the produce of social circumstance, viewed marital breakup as a matter of social not personal failure, emphasized minimal morality, and the importance of personal gratification. *Ibid.* p. 75. Many of these same assumptions underlie contemporary western capitalist and socialist family law in North America and Western Europe. Markovits, p. 1743 ("the transformation of modern capitalist family law corresponds—feature for feature—to the family law ideals of early Soviet socialism.").
76. Morgan, D.H.J. *The Family, Politics and Social Theory*, 58 (1985).
77. Hafen, Bruce C. "Bridle Your Passions," *supra* note 8, pp. 2-3.
78. *Ibid.* pp. 3-4.
79. See generally *Worldwide State*, *supra* note __, pp. 1-2.
80. de Tocqueville. *supra* note 20, pp. 49-50.