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Marriage privatization would devastate society.

By John Stemberger
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At first glance, it sounds nice to say we should “get government out of the marriage business.” Marriage, as far as the state is concerned, would be merely a private relationship contract, with no reference to the lasting features of natural marriage between a man and woman, and its connection to the bearing and raising of children.

Many libertarians, including [Rand Paul](#), and now even some conservatives, claim that this will solve the same-sex marriage

controversy. Few understand the logical implications of their argument. There are at least seven reasons why “marriage privatization,” if really achieved, would profoundly harm citizens and society.

(1) Private “relationship contracts” would immediately legitimize and permit polygamy, group marriages, incest and other aberrant relationships.

Anthropologist [Stanley Kurtz notes](#) that even if marriage is “privatized,” government “still has to decide what sort of private unions merit benefits ... under this privatization scheme.” We would end up with the “same quarrels over social recognition that we got before privatization.” Government will have to deal with polygamous, polyamorous, and incestuous relationships also attempting to obtain contracts under the new scheme as well as attempts by heterosexual acquaintances to make “marriages of convenience” to obtain things such as spousal medical insurance. Legitimizing these aberrant relationships would only further dilute the meaning of natural marriage as a norm in society.

(2) It would increase the sexual exploitation of children through human sex-trafficking.

Marriage laws that currently regulate the age at which a person can be married protect children from sex-slavery and even from desperate parents from certain impoverished countries who may seek to exploit or manipulate minor children into “arranged” marriages for financial gain. News in London now reports 15 and 16 year old girls are being duped into “marrying” ISIS operatives and are running away from home. This would be easy in the U.S. if marriage were a private contract.

(3) It would overburden courts and side-step legal protections for children and abandoned spouses, replacing them with court ordered damages, penalties and state-coerced action.

If a legislature repealed marriage statutes and did nothing to define or regulate the creation and or dissolution of marriages, then by default, parties would be left only with legal contracts to address child custody, visitation, alimony and property rights. If the parties breached these private contracts, litigation would ensue regarding the intent, interpretation, and enforcement of those agreements — many of which would likely be drafted by non-lawyers with vague and confusing terms. Courts would issue penalties, damages and would have to order private parties to enforce contracts, often with draconian results. Real-life economic and practical hardships would befall untold thousands of single mothers where men to abandon their families – or even take forcible physical custody of small children — where no such contract was in place.

The creation of plural marriage and group marriage contracts would create the legal equivalent of the “Wild-Wild-West.” These “prenuptial-like” marriage contracts would also further undermine the idea of marriage as a lasting, life-long covenant. Instead of keeping government out of the marriage business, this move would do just the opposite. The great irony of marriage privatization is that it would only increase the state’s involvement in the lives of its citizens.

(4) It ignores what’s best for children.

Arguments to privatize marriage, whether made by scholars or politicians, tend to ignore what is best for children. Economist Jennifer Roback Morse, who has strong libertarian credentials, [argues that](#) marriage privatization would come “at the expense of children,” and “is a concept developed by adults that will benefit only adults.”

In the common law, whenever children are involved in divorce, custody disputes, adoption or dependency proceedings, the legal standard has always been is the best interest of children involved. With the redefinition of marriage to include same-sex unions, “adult desires” have been allowed to trump [what’s best for children](#). Dissolving marriage law would have the same effect. When men divorce the mothers of their children without these private agreements, single mothers would be left with no laws to protect or support their children.

(5) It would create more social maladies, broken families, and human suffering.

Throughout history, marriage has been always been regulated in some way. In small and cohesive societies, this was usually done through strong social mores and religious institutions. In larger, more diverse and modern societies, marriage has also been regulated through law and public policy. This is part of what separates civil societies from more primitive ones. For this reason, completely privatizing marriage could be a sociological disaster.

Today’s inner cities are “[Exhibit A](#)” to the poverty, crime, fatherlessness and devastation that emerges when marriage and family structures are weak, fragmented or nonexistent. This measured collapse in inner cities would move even faster into every area of communities if marriage is legally abolished and reduced to private contracts.

(6) It would cost taxpayer’s big-time.

Maggie Gallagher [has called](#) marriage privatization a “fantasy” since “there is scarcely a dollar that state and federal government spends on social programs that is not driven in large part by family fragmentation: crime, poverty, drug abuse, teen pregnancy, school failure, mental and physical health problems.” [A study](#) by the Institute for American Values concluded that the cost to U.S. taxpayers from family fragmentation as a result of

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divorce and unwed childbearing was \$112 billion annually.

Sadly, the political left in America feeds on divorce, broken families, and unwed childbearing. Strong marriages and families help break the grip of an ever-growing administrative state, freeing her citizens from poverty to reach their fullest economic potential as creators of wealth rather than being chronic recipients of distributed wealth.

(7) It would grow government.

Government has a compelling interest in defining, regulating, and promoting marriage because of the self-governance it creates when children are socialized in this environment. At the most basic level, marriages — and the families they create — produce social order in homes, neighborhoods, states and nations. Marriage channels masculine energy in socially productive ways, protects women, and increases almost every category of human flourishing. Research is clear that a married biological mother and father is objectively the optimal context for rearing children. Marriage benefits not just those in the relationships, but the businesses, economies, and communities around them. Marriages, and the families that flow from them, tend to produce more productive citizens who create wealth and contribute to society.

The failure of marriages and families has caused the rapid expansion of the welfare state, dramatic tax increases, and has helped increase the national debt. Jennifer Roback Morse [argues that](#) “it is simply not possible to have a minimum government and a society with no social or legal norms about family structure, sexual behavior, and childrearing. The state will have to provide support for people with loose or nonexistent ties to their families. The state will have to sanction truly destructive behavior, as always. The destructive behavior will be more common because the culture of impartiality destroys the informal system of enforcing social norms. ... A free society needs marriage.”

Marriage is not merely a private, religious institution; it is also a public institution deserving of public recognition and protection, quite apart from any religious or theological argument. Marriage serves not only people of faith but also the common good of society. “Family is built on marriage,” [argues Princeton’s Robert George](#), “and government — the state — has a profound interest in the integrity and well-being of marriage, and to write it off as if it were purely a religiously significant action and not an institution and action that has a profound public significance, would be a terrible mistake.”

Removing the legal recognition of marriage would devastate not just marriage and family, but civil society as a whole.

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