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The Intertwined Existence of Families and Religion

*Lynn D. Wardle**

I. INTRODUCTION

This paper considers how and why two fundamental social institutions—families and religion—are related, how they enrich each other and society, and argues that the continued flourishing of both are closely intertwined. The future of families is bound up with the future of religion, and vice versa. As both institutions are crucial to the well-being of society in general, and of all members of society individually, there are powerful reasons for lawmakers to protect and foster families and religion. Sadly, some data suggests that families in the United States and many western nations are struggling these days—families are less popular, less stable, and in some ways less successful than they were in prior times. Likewise, religion seems to be faltering and less relevant in the lives of Americans than it was in the past. This paper considers why lawmakers should make supporting and promoting healthy marriages and responsible religions urgent public policy priorities. In conclusion, this paper suggests a few specific ways states might accomplish that goal.

There is significant government support for religion and families in many nations. A 2017 Pew Research Center report analyzing data covering 199 countries and territories around

* This paper was prepared for the Symposium on Families and Religion co-sponsored by the Brigham Young University Journal of Public Law and by the Ave Maria Law Review held at J. Reuben Clark Law School at Brigham Young University, October 13, 2017.

the world found that more than 80 countries [more than 40%] favor a specific religion, either as an official, government-endorsed religion or by affording one religion preferential treatment over other faiths”¹

In 2015, “fully one-in-five countries around the world (22%) had declared a single state religion, typically enshrined in the constitution or basic law of the country.”² Islam is the most common government-endorsed faith, with twenty-seven countries (including most in the Middle East-North Africa region) officially enshrining Islam as their state religion. By comparison, just thirteen countries (including nine European nations) designate Christianity or a particular Christian denomination as their state religion.³

In thirty nations, the heads of state must belong to a specified religion.⁴ A state religion not only manifests a government’s support for a particular religion, but it may also manifest the government’s opposition or hostility to other religions and to religious liberty.

On the other hand, many secular western democracies provide special protection for religious liberties in their constitutions, including freedom to worship and to engage in other faith observances.⁵ These and other policies in many nations

1. PEW RESEARCH CTR., MANY COUNTRIES FAVOR SPECIFIC RELIGIONS, OFFICIALLY OR UNOFFICIALLY, 3–11 (2017) (“[A]n additional 40 governments around the globe unofficially favor a particular religion, and in most cases the preferred faith is a branch of Christianity. Indeed, Christian churches receive preferential treatment in more countries – 28 – than any other unofficial but favored faith.” On the other hand, ten nations (5%) are considered to be hostile to religions “These are Azerbaijan, China, Cuba, Kazakhstan, Kyrgyzstan, North Korea, Tajikistan, Turkmenistan, Uzbekistan and Vietnam.” However, overall, “[m]ost governments around the globe . . . are generally neutral toward religion.”).

2. *Id.* at 7.

3. *Id.* at 3.

4. See Angelina E. Theodorou, *In 30 Countries, Heads of State Must Belong to a Certain Religion*, PEW RESEARCH CENTER, 22 July 2014, at <http://www.pewresearch.org/fact-tank/2014/07/22/in-30-countries-heads-of-state-must-belong-to-a-certain-religion/> (most of these nations are Islamic).

5. U.S. CONST., amend I; G.A. Res. 217 (III), A Universal Declaration of Human Rights, art. 2 (Dec. 10, 1948); *id.* art. VIII. See also Michael W. McConnell, *Why Protect Religious Freedom?*, 123 YALE L.J. 770 (2013).

manifest widespread recognition of the value of religion and religious tolerance to society.

Likewise, many governmental policies and programs support and seek to strengthen families. The constitutions of more than three-fourths of the sovereign nations in the world today contain provisions acknowledging the importance of marriage and/or families and provide special protection for them.⁶

II. THE IMPORTANCE OF FAMILIES TO SOCIETAL AND INDIVIDUAL WELL-BEING

It is axiomatic that the family is the basic social unit of society. For example, The Universal Declaration of Human Rights recognizes that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁷ Similar statements about the foundational importance of families are found in dozens of other international conventions, compacts, and instruments⁸—including the International Covenant on Civil and Political Rights,⁹ the International Covenant on Economic, Social and Cultural Rights,¹⁰ the Convention on the Elimination of All

6. See generally Lynn D. Wardle, *Trends, Values, and Changes in Families and Family Law in the USA: Towards Realism, Idealism, or Confusion*, <https://www.isflhome.org/amsterdam-conference-papers> (last visited Oct. 16, 2017) (hereinafter *Trends*).

7. G.A. Res. 217 (III), A Universal Declaration of Human Rights, art. 16(3) (Dec. 10, 1948); See also Jane Adolphe, *The Holy See and the Universal Declaration of Human Rights: Working Toward a Legal Anthropology of Human Rights and the Family*, 4 AVE MARIA L. REV. 343 (2006); See generally Don Browning, *The Meaning of Family in the Universal Declaration of Human Rights* in 1 *The Family in the New Millennium* 38 (2007); Mary Ann Glendon, *Knowing the Universal Declaration of Human Rights*, 73 NOTRE DAME L. REV. 1153 (1998).

8. See Lynn D. Wardle, *Federal Constitutional Protection for Marriage: Why and How*, 20 BYU J. PUB. L. 439, 483 (2006) (listing 35 international treaties, charters, conventions and other instruments with provisions acknowledging the important of families and/or marriage).

9. G.A. Res. 2200 A (XXI), International Covenant on Civil and Political Rights, art. 23, (Dec. 16, 1966).

10. G.A. Res. 2200, annex, International Covenant on Economic, Social and Cultural

Forms of Discrimination Against Women,¹¹ the Hague Convention on the Civil Aspects of International Child Abduction,¹² the Convention on the Rights of the Child,¹³ the European Convention for the Protection of Human Rights and Fundamental Freedoms,¹⁴ and the American Convention on Human Rights.¹⁵

Likewise, written constitutions of at least 145 of the 193 sovereign nations on the earth today (75%) have language about the fundamental importance of the family and its special status in their legal system.¹⁶ For example, the Constitution of Brazil provides: “The family, the foundation of society, enjoys special protection from the state.”¹⁷ The Constitution of China, similarly, declares: “Marriage, the family, and mother and child are protected by the state.”¹⁸ Likewise, the Constitution of Iran declares: “[Since] the family is the fundamental unit of Islamic society . . . all the laws, regulations, and *pertinent programs must tend to facilitate the formation of a family, and and to safeguard its stability and the sanctity of family relations on the basis of the law and ethics of Islam.*”¹⁹

Rights, art. 10 (1966).

11. Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980).

12. The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89, available at http://www.hcch.net/index_en.php?a=conventions.text&cid=24.

13. G.A. Res. 44/25, Convention on the Rights of the Child, preamble, (Nov. 20, 1989).

14. European Convention on the Protection of Human Rights and Fundamental Freedoms, done at Rome, art. 8, Nov. 4, 1950 (in force Sept. 3, 1953), 213 UNTS 222.

15. American Convention on Human Rights, art. 17 (Nov. 22, 1969), available at <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm> (last visited 13 August 2008).

16. See *Growth in United Nations membership, 1945-present*, at United Nations, <http://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html> (last visited Oct. 11, 2017); see generally *Trends, supra* note 6, The number of sovereign nations is taken from the United Nations.

17. CONSTITUIÇÃO FEDERAL [CONSTITUTION] art. 226. (Braz.).

18. XIANFA, [CONSTITUTION] art. 49 (1982) (China).

19. IRAN CHAMBER SOCIETY, THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN, art. 10 (1980), http://www.iranchamber.com/government/laws/constitution_ch01.php (emphasis added).

The importance of the family to a stable, productive society and to a sound and responsible form of government are ideas that have been widely understood for millennia. The connection between family relations and political relations in society have been discussed by political philosophers for centuries.

For example, in his “Second Treatise of Government,” Locke observes that mankind has a nature that is “under strong obligations of necessity, convenience, and inclination, to drive him into society . . . The first society was between man and wife, which gave beginning to that between parents and children . . .”²⁰ People form political societies “by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a great security against any that are not of it.”²¹

Jean Jacques Rousseau, the most influential proponent of the “social contract” theory of social organization, agreed. He declared that “[t]he most ancient form of all societies, and the only *natural* one, is the society of the family,” and that “you could call the family the *prime model* of political societies.”²²

Montesquieu, whose writings, especially, “The Spirit of the Laws,” were cited more often than any other secular writer by the American founders during the decade in which the Constitution of the United States was written, explained that “[l]aws in their most extensive signification, are the necessary relations derived from the nature of things,” and that one of the first laws of human nature is man’s natural desire to live in society.²³

20. JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Infomotions, Inc. 2000) (1690).

21. *Id.*; See generally Lynn D. Wardle, *Disintegration of the Nuclear Family Threatens America’s Survival*, CNS News.com, (Feb. 11, 2014), <https://www.cnsnews.com/commentary/lynn-wardle/> (hereinafter *Disintegration*).

22. JEAN JACQUES ROUSSEAU, THE SOCIAL CONTRACT 1, 2 (Jonathan Burnett, 2007) (1762); See also *Disintegration*, supra note 21.

23. BARON DE MONTESQUIEU, THE SPIRIT OF LAWS 6 (Batoche Books 2011) (1750); See also *Disintegration*, supra note 21.

Thus, the leading political philosophers of the Western enlightenment viewed the family as the basic unit of society, the template or model for other important social institutions, and the foundation of government.²⁴ As Professor Scott Yenor has explained: “Governments and civil society are concerned that the form of the family cultivates self-government. This is the reason that states in the early republic favored the traditional family arrangements over patriarchal family arrangements, polygamous or bigamous marriage, and associations of free love.”²⁵

John Adams famously declared: “The foundation of national morality must be laid in private families. . . . How is it possible that Children can have any just Sense of the sacred Obligations of Morality or Religion if, from their earliest Infancy, they learn their Mothers live in habitual Infidelity to their fathers, and their fathers in as constant Infidelity to their Mothers?”²⁶ Professor Nancy Cott has noted that many other Revolutionary-era leaders agreed that “marriage had several levels of political relevance, as the prime metaphor for consensual union and voluntary allegiance, as the necessary school of affection, and as the foundation of national morality.”²⁷

Marital families provide demonstrable benefits for society as well as clear advantages for individuals. For example, “[m]arried people (especially men) have fewer health problems, both acute and chronic, than their unmarried counterparts Additionally, self-evaluated health status, which is strongly as-

24. See, e.g., Benedict XVI, “Address, Family Meeting: City of Arts and Sciences ‘Joy of life’” (address in Valencia, Spain, July 8, 2006), reprinted in L’OSSERVATORE ROMANO, July 12, 2006, at pp. 5 & 8 (English language edition) (“The family is a necessary good for people, an indispensable foundation for society”); see generally Scott Yenor, *The True Origin of Society: The Founders on the Family*, THE HERITAGE FOUND. (Oct. 16, 2013), <http://www.heritage.org/political-process/report/the-true-origin-society-the-founders-the-family>. Contemporary commentators agree.

25. Yenor, *supra* note 24.

26. NANCY F. COTT, PUBLIC VOWS, A HISTORY OF MARRIAGE AND THE NATION 21–23 (2000).

27. *Id.* at 21.

sociated with perceived quality of life . . . is highest among the married population There is evidence that married people are better off psychologically as well . . .”²⁸ The superior health condition of married persons translates into significant savings of tax dollars for Medicare, Medicaid, and other public health programs.

Renowned sociologist Carle C. Zimmerman taught that: “Civilization depends on the health of the traditional family.”²⁹ Rod Dreher has commented: “Here’s the problem: Societies ruled by the atomistic family model, with its loosening of constraints on its individual members, quit having enough children to carry on. They become focused on the pleasures of the present. Eventually, these societies expire from lack of manpower”³⁰ [E]ven today, “the future belongs to the fecund faithful.”³¹ Mr. Dreher adds: “[C]ultures that don’t organize their collective lives around the family create policies and structures that privilege autonomous individuals, at the family’s expense.”³² As families weaken and decline in society, society weakens and the members of society become more vulnerable to neglect, abuse, and exploitation.

The foundational importance of families has long been recognized in international law. For example, as noted previously, the 1948 Universal Declaration of Human Rights, the foundational document of modern international human rights law, calls the family “the natural and fundamental group unit of society,” and expressly protects the gender equality of “men and women” in forming the institution of marriage (and within it),

28. MICHAEL POLLAND & KATHLEEN MULLAN HARRIS, NONMARITAL COHABITATION, MARRIAGE, AND HEALTH AMONG ADOLESCENTS AND YOUNG ADULTS, RAND LABOR & POPULATION 4 (2013), https://www.rand.org/content/dam/rand/pubs/working_papers/WR900/WR997/RAND_WR997.pdf (last visited Oct. 11, 2017).

29. Rod Dreher, *Western civilization needs to learn to procreate or perish*, THE DALLAS MORNING NEWS, Feb. 20, 2008, 2W62W63359517226.

30. *Id.*

31. *Id.*

32. *Id.*

as a core and essential universal value of human rights in modern (at least western) legal systems.³³ Similarly, the Cairo Declaration on Human Rights in Islam, adopted in 1990 by the forty-five nations belonging to the Organization of the Islamic Conference (who are uncomfortable with some aspects of the western-culture-dominated Universal Declaration), also provides that: “The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage”³⁴ Dozens of international treaties, conventions and compacts provide such description of and protection for the institution of marriage and/or family.³⁵

These widely respected principles of international law acknowledge and establish two important facts. First, they recognize the essentiality of marriage and family to social cohesion, that marriage and marital families are foundational social institutions. Across boundaries of cultures, languages, religions, races, ethnicities and nationalities marriage and families are recognized as foundational for society, stable government, and individual well-being.³⁶ Second, marriage and the family are not mere creations of the state. The state, the law, does not “create” marriage any more than it “creates” children, or air, or land. Rather, it recognizes marriage and marital families as pre-existing social institutions, which the state regulates *and channels* in the public interest.³⁷

33. See e.g., G.A. Res. *supra* note 5 at art. 16(1) (“Men and women of full age . . . have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”).

34. Annex to G.A. Res. No. 49/19-P, Cairo Declaration of Human Rights in Islam, Aug. 5, 1990, art. 5 (June 9, 1993); See also *id.* at art. 6(a) (equality).

35. See Lynn D. Wardle, *Federal Constitutional Protection for Marriage: Why and How*, 20 B.Y.U. J. Pub. L. 439, 483, at App. II (2006) (listing international documents protecting marriage and/or family).

36. See generally Lynn D. Wardle, *The “Constitution” of Marriage and the “Constitution” of Nations*, 45 U. SAN FRANCISCO L. REV. 437 *passim* (2010).

37. *Id. passim*; See generally INSTITUTE FOR AMERICAN VALUES, WHY MARRIAGE MATTERS, SECOND EDITION (2005), http://americanvalues.org/catalog/pdfs/why_marriage_matters2.pdf at 6-7 (last visited Nov. 8, 2017).

III. THE IMPORTANCE OF RELIGION TO SOCIETAL AND INDIVIDUAL WELL-BEING

Respect for religion is deeply and pervasively ingrained in the American political character. For example, the Declaration of Independence refers to God five times.³⁸ “God or the divine is mentioned at least once in each of the 50 state constitutions and nearly 200 times overall, according to a Pew Research Center analysis.”³⁹ More than two-thirds of the state constitutions refer to God multiple times.⁴⁰ Some of those state constitutions even prohibit persons who do not believe in God from holding public office.⁴¹

The importance of religious freedom was explained well by a respected former lawyer and current religious leader of the Church of Jesus Christ of Latter-day Saints (Mormon), Elder D. Todd Christofferson. Speaking at Cambridge University recently he stated: “Religious freedom is the foundation of all freedom, a core right in an ecosystem of freedoms that promotes social and political diversity. . . .”⁴² He asserted that “[r]eligious freedom erects an effective shield for other freedoms, [and that it] protects the freedom of individual belief and expression in all areas of human activity.”⁴³ He explained: “Religious freedom does not exist in isolation It is the core right in what might be thought of as an ‘ecosystem’ of freedom. As religious freedom goes, so go many other precious rights.”⁴⁴ Protection for churches and faith institutions is important be-

38. Harold Pease, *God Referenced Five Times in the Declaration of Independence*, LIBERTY ARTICLES, July 3, 2017, <http://libertyunderfire.org/2017/07/god-referenced-five-times-in-the-declaration-of-independence/>.

39. Aleksandra Sandstrom, *God or the Divine is Referenced in Every State Constitution*, 1 PEW RESEARCH CENTER (Aug. 17, 2017), <http://www.pewresearch.org/fact-tank/2017/08/17/god-or-the-divine-is-referenced-in-every-state-constitution/>.

40. *Id.* at 2.

41. *Id.*

42. Elder D. Todd Christofferson, *Religious Freedom: The Foundation Freedom* (August 13, 2017), THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS NEWSROOM, at B3.

43. *Id.*

44. *Id.*

cause “[r]eligious organizations stand as bulwarks of freedom between the state and the unprotected individual.”⁴⁵ So “[a]s religious freedom goes, so go many other precious rights.”⁴⁶ He added: “Religious freedom, in short, ‘gives us all space to determine for ourselves what we think and believe’”⁴⁷

Likewise, Elder Christofferson quoted British philosopher Michael Oakeshott who “explained that the freedom we experience and value ‘lies in a coherence of mutually supporting liberties, each of which amplifies the whole and none of which stands alone.’”⁴⁸

The superstructure of the modern state and legal system rests upon a substructure set of values, beliefs, and principles. The state and legal system reflect and are built upon bedrock core values and beliefs. Families and religion are critical parts of that foundational substructure that nurture, foster, and protect those core values, beliefs, and principles.⁴⁹ If those foundational values change, the stability of the governmental superstructure that rests thereon also will be transformed.⁵⁰

IV. THE DISINTEGRATION OF FAMILIES IN AMERICA IN RECENT YEARS

Marriages and marital families are less common and less ubiquitous in modern societies than they were previously. Data

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* (quoting Michael Oakeshott, *The Political Economy of Freedom, in* RATIONALISM IN POLITICS AND OTHER ESSAYS 40 (1962)).

49. See also Lynn D. Wardle, *The “Constitution” of Marriage and the “Constitution” of Nations*, 45 U. SAN FRANCISCO L. REV. 437, 438–54 (2010); see generally Lynn D. Wardle, *The Bonds of Matrimony and the Bonds of Constitutional Democracy*, 32 HOFSTRA L. REV. 349, 355–359 (2003) (hereinafter *Bonds*).

50. *Bonds*, *supra* note 49; see also, FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

from National Vital Statistics shows an almost steady decline in marriage rates in the United States since 2000. That year the rate of marriages per 1,000 population was 8.2; but the rate of marriage has steadily fallen until, in 2014, the rate of marriages per 1,000 population had reduced to 6.9, as the following chart from the National Vital Statistics System shows:⁵¹

Provisional number of marriages and marriage rate: United States, 2000-2014

Year	Marriages	Population	Rate per 1,000 total population
2014	2,140,272	308,759,713	6.9
2013	2,081,301	306,136,672	6.8
2012	2,131,000	313,914,040	6.8
2011	2,118,000	311,591,917	6.8
2010	2,096,000	308,745,538	6.8
2009	2,080,000	306,771,529	6.8
2008	2,157,000	304,093,966	7.1
2007	2,197,000	301,231,207	7.3
2006 ₂	2,193,000	294,077,247	7.5
2005	2,249,000	295,516,599	7.6
2004	2,279,000	292,805,298	7.8
2003	2,245,000	290,107,933	7.7
2002	2,290,000	287,625,193	8.0
2001	2,326,000	284,968,955	8.2
2000	2,315,000	281,421,906	8.2

51. CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS, NATIONAL VITAL STATISTICS SYSTEM, NATIONAL MARRIAGE AND DIVORCE RATE TRENDS (2015), https://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm (last visited Nov. 9, 2017).

Not only is marriage diminishing generally, but we are witnessing the class separation of marriage. The *New York Times* reported in September 2017: “Marriage, which used to be the default way to form a family in the United States, regardless of income or education, has become yet another part of American life reserved for those who are most privileged.”⁵² The reporter noted: “Currently, 26 percent of poor adults, 39 percent of working-class adults and 56 percent of middle- and upper-class adults ages 18 to 55 are married, according to a research brief . . . published from two think tanks, the American Enterprise Institute and Opportunity America.”⁵³ Compared to 1990, current marriage percentages for those groups are down by 25%, 18%, and 9%, respectively.⁵⁴

Ironically, the greatest decline in marriage has been among the poor (who need the benefits of marriage the most), and the least decline in marriage has been among middle- and upper-class Americans. It is said that “[a] big reason for the decline [is]: Unemployed men are less likely to be seen as marriage material.”⁵⁵ However, the unemployment rate in the U.S. is the lowest it has been in sixteen years (since February 2001).⁵⁶ So clearly more than economic factors have influenced the decline in the U.S. marriage rate.⁵⁷

“As marriage has declined, though, childbearing has not, which means that [today] more children are living in families

52. Claire Cain Miller, *How Did Marriage Become a Mark of Privilege?* N.Y. TIMES (Sept. 25, 2017), https://mobile.nytimes.com/2017/09/25/upshot/how-did-marriage-become-a-mark-of-privilege.html?_r=0&referrer=https://t.co/RYCNPZl7Ju?amp=1.

53. *Id.*

54. *Id.*

55. *Id.*

56. *United States Unemployment Rate, 1948–2017*, at <https://tradingeconomics.com/united-states/unemployment-rate> (last visited Oct. 10, 2017).

57. See further, National Center for Health Statistics, National Vital Statistics System, *National Marriage and Divorce Rate Trends*, https://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm (providing annual numbers and rates of marriages, 2000–2014) (last visited Oct. 10, 2017).

without two parents and the resources they bring.”⁵⁸ Non-marital families are the source of significant long-term disadvantages for the children raised therein.

“Millennials continue to delay marriage because of economics, education, and preference. In 1960, fewer than 8 percent of women and 13 percent of men married for the first time at age 30 or older Now, nearly one-third of women and more than 40 percent of men who marry for the first time are 30 or older.”⁵⁹

Likewise, “[c]ohabitation rates are on the rise — 48 percent of women interviewed between 2006 and 2010 for the National Survey of Family Growth cohabitated with a partner as a first union, compared with 34 percent in 1995.”⁶⁰ “Births to unmarried women also are on the rise. Forty-one percent of all births are now to unmarried women, 2.5 times as high as was reported in 1980 and 19 times as high as in 1940.”⁶¹

Additionally, “Monitoring the Future, an ongoing survey of youths . . . reports that 80 percent of female high school seniors and 72 percent of males in 2006 to 2010 said marriage and family are ‘extremely important’ to them — numbers that have remained consistent since the mid-1970s.”⁶² However, those avowedly pro-marriage attitudes are not reflected in the actions of Millennials who are postponing or avoiding marriage.

Not only is marriage dwindling, but divorce continues apace. Dr. Judith Wallerstein has written: “Divorce is a life-transforming experience. . . . The whole trajectory of an individual’s life is profoundly altered by the divorce experience The child who grows up in a post divorce family often experi-

58. Miller, *supra* note 52.

59. Brigid Schulte, *Millennials Showing Less Interest in Marriage, Study Says*, WASH. POST (May 24, 2015), <https://www.bostonglobe.com/news/nation/2015/05/23/millennials-showing-less-interest-getting-married/aX8TpXzjaz7PgD1o1oiYYL/story.html>.

60. *Id.*

61. *Id.*

62. *Id.*

ences not one loss—that of the intact family—but a series of losses as people come and go.”⁶³

Sara McLanahan and Isabel Sawhill recently confirmed that: “Marriage is on the decline. Men and women of the youngest generation are either marrying in their late twenties or not marrying at all.”⁶⁴ On the other hand, the rates of cohabitation for young adults have skyrocketed. “Some 74 percent of all 30-year-old women in America have cohabitated with a romantic partner without being married, according to the CDC.”⁶⁵

Young adults today are “more likely to cohabit than those earlier generations. But they’re not postponing having kids, regardless of where or with whom they live.”⁶⁶

“Among the notable influences that contribute to the growing trend to avoid or delay-marriage is culture. As Pope Francis declared in 2015, ‘we are living in a culture that pushes young people *not* to form families’”⁶⁷

A Pew Research Center graph (inserted below) visually shows the dramatic decline in marriage by young adults (ages 18-32) over four generation.⁶⁸

63. Michael McManus, *Why is it in the Government's Interest to Save Marriages?*, HERITAGE FOUND. (Feb. 25, 2002), <https://www.heritage.org/marriage-and-family/report/why-it-the-governments-interest-save-marriages>.

64. Sara McLanahan & Isabel Sawhill, *Marriage and Child Wellbeing Revisited: Introducing the Issue*, 25 FUTURE OF CHILD. 3, 3 (2015).

65. Michelle Castillo, *CDC: More Women Choosing Cohabitation Before Marriage*, CBS NEWS (Apr. 4, 2013), <https://www.cbsnews.com/news/cdc-more-women-choosing-cohabitation-before-marriage/>.

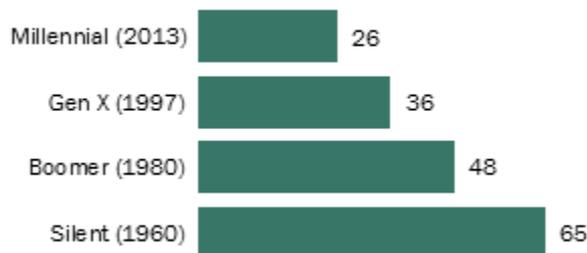
66. Lois M. Collins, *The Generation that Didn't Rush to get Married – or Postpone Having Kids*, DESERET NEWS (May 25, 2016), <http://www.deseretnews.com/article/865654935/The-generation-that-didnt-rush-to-get-married—or-postpone-having-kids.html>.

67. Matt Hadro, *How a 'Culture of Distraction' Is Keeping Millennials from Marrying*, CATHOLIC NEWS AGENCY (Oct. 20, 2015), <https://www.catholicnewsagency.com/news/how-a-culture-of-distraction-is-keeping-millennials-from-marrying-28537> (emphasis added).

68. PEW RESEARCH CTR., *Millennials in Adulthood, Detached from Institutions, Networked with Friends* (Mar. 7, 2014), <http://www.pewsocialtrends.org/2014/03/07/millennials-in-adulthood/> (“Most unmarried Millennials (69%) say they would like to marry, but many, especially those with lower levels of income and education, lack what they deem to be a necessary prerequisite—a solid economic foundation.”).

The Decline in Marriage Among the Young

% married at age 18 to 32, by generation



Source: Data from 1980, 1997 and 2013 are from the March Current Population Survey; 1960 data are from the 1960 Census

PEW RESEARCH CENTER

However, the decline in marriage seems to be due in large part to postponement of marriage by young adults more than to rejection of the institution.⁶⁹ Well over half (56%) of the unmarried 18–34-year-olds who still are unmarried report that they want to marry—in addition to the 28% of them who already are married, and 7% who previously were married.⁷⁰

Nevertheless, attitudes about marriage have changed dramatically. The 2012 General Social Survey asked Americans how important eight achievements were: getting married ranked seventh of the eight (just ahead of “having a child”), and over half (55%) of the respondents ranked getting married as “not important.”⁷¹ Sadly, these responses reveal a lack of under-

69. See Lois M Collins, *Marriage Isn't Dead, It's Just Delayed*, DESERET NEWS, (May 2, 2017), <http://www.deseretnews.com/article/865679030/Marriage-isnt-dead-its-just-delayed—except-for-this-group.html>.

70. Frank Newport & Joy Wilke, *Most in U.S. Want Marriage, but Its Importance Has Dropped*, GALLUP (Aug. 2, 2013), http://www.gallup.com/poll/163802/marriage-importance-dropped.aspx?g_source=marriage&g_medium=search&g_campaign=tiles.

71. *Id.* at 4, Figure 1.

standing of the importance to child well-being of the marriage of the child's parents!

An in-depth study of the trend toward delayed marriage in America reported that: "The age at which men and women marry is now at historic heights."⁷² Figure 1 from the *Knot Yet* report visibly shows that trend.⁷³



Thus, clearly, marriage is on the decline, at least being significantly delayed, in the United States. For young adults, it has moved from a present ambition to a future aspiration.

V. THE DWINDLING OF RELIGION IN AMERICA IN RECENT YEARS

For years, progressives have echoed the theme of Marxist historical determinism asserting that as society evolved progressively, religion would eventually vanish. However, as Francis Fukuyama put it: "The old assumption that religion

72. Kay Hymowitz, Jason S. Carroll, W. Bradford Wilcox, & Kelleen Kay, *Knot Yet, The Benefits and Costs of Delayed Marriage in America*, NAT'L MARRIAGE PROJECT, (2013) <http://nationalmarriageproject.org/wp-content/uploads/2013/03/KnotYet-FinalForWeb.pdf> (hereinafter *Knot Yet*).

73. *Id.* at 12, Figure 1.

would disappear and be replaced solely by secular, scientific rationalism is not going to happen.”⁷⁴

Yet there is abundant evidence that religious exercise and worship have diminished as current practices in the lives of most Americans. Religion has become an ornament more than a lifestyle or core belief system for most Americans. The *Washington Post* has noted that there are more unaffiliated Americans than either Catholic Americans or mainline Protestant Americans.⁷⁵ The Pew Research Center has found that “[t]he Christian share of the U.S. population is declining, while the number of U.S. adults who do not identify with any organized religion is growing . . .”⁷⁶ The Pew study found that the population shares of all Christian faiths (except Jehovah’s Witnesses) had dropped, and only Non-Christian faiths and Unaffiliated categories had increased.⁷⁷

VI. WHY IT MATTERS

The disintegration of marital families has profound consequences for society, and especially for children raised in nonmarital families. In 2015 Professors Joseph Price, Robert Il. Lerman, and W. Bradford Wilcox found that “[h]igher levels of marriage, and especially higher levels of married-parent families, are strongly associated with more economic growth, more economic mobility, less child poverty, and higher median fami-

74. Francis Fukuyama, *The ‘End of History’ 20 Years Later, An Interview with Francis Fukuyama*, 31 MPQ, (2014) http://www.digitalnpq.org/articles/global/401/10-21-2009/francis_fukuyama.

75. Sarah Pulliam Bailey, *Christianity Faces Sharp Decline as Americans are Becoming Even Less Affiliated with Religion*, WASH. POST (May 12, 2015), https://www.washingtonpost.com/news/acts-of-faith/wp/2015/05/12/christianity-faces-sharp-decline-as-americans-are-becoming-even-less-affiliated-with-religion/?utm_term=.0f9144fbb825.

76. PEW RESEARCH CTR., *America’s Changing Religious Landscape* (May 12, 2015), <http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/>.

77. *Id.* Non-Christian faiths including Jewish, Muslim, Hindu, “Other world religions” and “Other faiths” had increased.

ly income at the state level in the United States.”⁷⁸ Among their findings were the following:

- [1] When we compare states in the top quintile of married-parent families with those in the bottom quintile, we find that being in the top quintile is associated with a \$1,451 higher per capita GDP, 10.5 percent greater upward income mobility for children from lower-income families, a 13.2 percent decline in the child poverty rate, and a \$3,654 higher median family income.
- [2] The share of parents in a state who are married is one of the top predictors of the economic outcomes In fact, this family factor is generally a stronger predictor of economic mobility, child poverty, and median family income in the American states than are the educational, racial, and age compositions of the states.
- [3] The state-level link between marriage and economic growth is stronger for younger adults (ages 25–35) than for older adults (36–59). This suggests that marriage plays a particularly important role in fostering a positive labor market orientation among young men.
- [4] Violent crime is much less common in states with larger shares of families headed by married parents, even after controlling for a range of socio-demographic factors at the state level. For instance, the violent crime rate (violent crimes per 100,000 people) sits at 343

78. W. Bradford Wilcox, Robert Il. Lerman, & Joseph Price, *Strong Families, Prosperous States: Do Healthy Families Affect the Wealth of States?*, AM. ENTER. INST. AND THE INST. FOR FAMILY STUDIES (Oct. 19, 2015), <https://www.aei.org/publication/strong-families-prosperous-states/>.

on average for states in the top quintile of married parenthood, whereas those in the bottom quintile average a rate of 563. This is noteworthy because high crime rates lower the quality of life and real living standards and are associated with lower levels of economic growth and mobility.⁷⁹

Additionally, nonmarital cohabitation is very unstable. Nearly forty percent of cohabiting parents in their twenties who had a baby between 2000 and 2005 split up by the time their child was five; that is three times higher than the rate for twenty-something parents who were married when they had their first child.⁸⁰

The deterioration of marriage has profound consequences for children. For example, “[m]ales from fatherless . . . divorced homes are 12.4 times more likely to be incarcerated than those from intact homes. Those born out-of-wedlock are twenty-two times more at risk to be incarcerated. Another study says that children living with their mothers are fourteen times more likely to be physically abused.”⁸¹ Also, “[c]hildren of divorce are twice as likely as those from intact families to drop out of school and are three times as likely to give birth out-of-wedlock.”⁸²

This is just a glimpse of a huge body of social science data that underscores the enormous advantages that marriage brings to society, to families, and especially to children, and the serious detriments that attend non-marital families.

79. *Id.* See also, AM. ENTER. INST., *State violent crime rates, by married-parent quintile* (Figure 15), <http://www.aei.org/wp-content/uploads/2015/10/Figure151.jpg> (showing that violent crime rates in a community decline as the rate of married couples in the community increases).

80. *Knot Yet*, *supra* note 72, at 10.

81. McManus, *supra* note 63.

82. McManus, *supra* note 63.

No nation can be stronger or more secure than its families. No society can be more successful as a society than its families. “[S]ociety is a chain and . . . each family constitutes one of the links that together make up the chain. If the links are not individually strong—if marriages are not holding together—then the very foundations of the state itself are threatened.”⁸³ Thus, it is of great importance that not only in our laws, but also throughout our culture, we reestablish the importance and ideal of good, healthy, and happy conjugal marriages and marital families. We must protect marriage and family against the rising tide of cultural and proposed legal influences that demean, devalue, undermine, and threaten the institution of marriage, or marital families. We must, therefore, reject the claims to ‘level’ marriage and equate it to non-marital cohabitation.

When families weaken, families fail; and when families fail, the rest of society suffers. Rod Dreher insightfully notes that “cultures that don’t organize their collective lives around the family create policies and structures that privilege autonomous individuals at the family’s expense.”⁸⁴ As marital families are marginalized and weakened, society suffers and the lives and futures of children are impaired. William J. Goode taught that after marriage is weakened in a society, it is nearly impossible to revitalize it without some dramatic external influence such as economic collapse, military conquest, or natural disaster.⁸⁵

Beyond the significance of the dwindling of religion and marital families for the individuals concerned, this disintegration also has profound significance for core institutions in society (including liberal democracy) as well as for society itself. The atrophy of the institutions that foster and generate the val-

83. JUDY PAREJKO, *STOLEN VOWS: THE ILLUSION OF NO-FAULT DIVORCE AND THE RISE OF THE AMERICAN DIVORCE INDUSTRY* 25 (InstantPublisher 2002).

84. Dreher, *supra* note 29.

85. WILLIAM J. GOODE, *World Changes in Divorce Patterns* 318, 335–36 (Yale Univ. Press 1993).

ues and principles that undergird democracy will ultimately impact democratic society itself. As Dr. Francis Fukuyama has explained:

[W]hile modern liberal democracy has its roots in this particular cultural soil, the issue is whether these ideas may become detached from these particularistic origins and have a significance for people who live in non-Christian cultures. The scientific method, on which our modern technological civilisation rests, also appeared for contingent historical reasons at a certain moment in the history of early modern Europe, based on the thought of philosophers like Francis Bacon and René Descartes. But once the scientific method was invented, it became a possession for all of mankind, and was usable whether you were Asian, African, or Indian. The question is, therefore, whether the principles of liberty and equality that we see as the foundation of liberal democracy have a similar universal significance. I believe that this is the case, and I think that there is an overall logic to historical evolution that explains why there should be increasing democracy around the world as our societies evolve. [. . .] I agree . . . that culture remains an irreducible component of human societies, and that you cannot understand development and politics without a reference to cultural values.⁸⁶

Fukayama emphasized: “We live for the particular shared historical traditions, religious values, and other aspects of shared

86. Francis Fukuyama, *After the ‘End of History,’* OPENDEMOCRACY (May 2, 2006), https://www.opendemocracy.net/democracy-fukuyama/revisited_3496.jsp.

memory that constitutes the common life.”⁸⁷ He added that “[l]iberalism cannot be completely even-handed toward different cultures, since it itself reflects certain cultural values and must reject alternative cultural groups that are themselves profoundly illiberal.”⁸⁸

Interestingly, today it often is the “primitive” or “ancient” cultures that seem to value gender-integrating marriage the most, and who are most active in seeking state protection for the preservation of marriage as the union of male and female. For example, in Australia the Aboriginal communities have been especially active in opposing the redefinition of marriage to legalize same-sex marriage.⁸⁹

“Speaking to AAP recently, Peter Walker, an Aboriginal elder from NSW, said that ‘the sacred and traditional union between man and woman is deeply part of our ancient and continuing culture across all of our communities.’”⁹⁰ Additionally, “[i]n 2015, Walker and dozens of elders from the indigenous community presented a bark petition . . . backed by more than 46 indigenous groups and clans that urged members of federal parliament to oppose same-sex marriage.”⁹¹

“Another elder (a member of the Yolngu community who wishes to remain unidentified) told me over the phone that same-sex marriage is a “no-goer” in traditional Aboriginal communities: ‘Our way of life, our own perception of marriage will be damaged by a change to the definition of marriage.’”⁹²

Another consideration is how legalization of same-sex marriage impacts religious liberty. In the United States, there have been many examples of bakers, florists, photographers,

87. *Id.*

88. *Id.*

89. Xavier Symons, *Have Aboriginal People Been Consulted About Same-sex Marriage?*, MERCATORNET (Oct. 10, 2017), <https://www.mercatornet.com/conjugality/view/have-aboriginal-people-been-consulted-about-same-sex-marriage/20547>.

90. *Id.*

91. *Id.*

92. *Id.*

and other persons in wedding businesses or marriage-related jobs who have been accused, threatened, and sued because they do not wish to participate in celebrating or facilitating same-sex marriages.⁹³ For example, Professor D. Paul Sullins has explained that “[t]he wedding cake is an essential element of a ritual system that expresses the public establishment of a marriage”⁹⁴ Thus, “[p]roviding or withholding the cake expresses consent or dissent from the wedding.”⁹⁵

The experience of other nations is both informative and disturbing. For example, in Australia, even before the formal national legalization of same-sex marriage, there were incidents of people being punished for supporting the understanding of marriage as the union of a man and woman.⁹⁶ Hostility and violence have been inflicted upon supporters of the traditional definition of marriage.⁹⁷

93. See, e.g., *Davis v. United States*, 495 U.S. 472 (1990); *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Comm’n*, No. 16-111 (S.Ct. 2017); *State v. Arlene’s Flowers*, 389 P.3d 543 (Wash. 2017).

94. D. Paul Sullins, “No Wedding’s a Wedding without a Cake”: *The History and Significance of the Wedding Cake*, 31 NAT. FAMILY 149, 162 (2017).

95. *Id.* at 163.

96. Augusto Zimmermann, *SSM’s Impact on Religious Freedom*, QUADRANT (Sept. 27, 2017), <https://wentworthreport.com/2017/09/29/ssms-impact-on-religious-freedom/>. (“There are cases in Australia where people are already being punished for supporting the traditional definition of marriage as the union between a man and a woman”) (Numerous cases of persecution tactics by pro-same-sex marriage advocates are reviewed.) For example, Dr. David van Gend was forced to appear before the Queensland Anti-Discrimination Commission “to respond to a complaint about an article that he wrote for *The Courier-Mail* arguing against any change to marriage laws.” The complaint was withdrawn, but not before the doctor had spent thousands of dollars on legal fees. “With marriage being redefined, religious liberty will be threatened Once the legal concept of marriage is redefined, anyone (including a priest) who disagrees with same-sex marriage and denies service[s] . . . may be prosecuted on the grounds of discrimination.” “If religious organisations can be punished for simply expressing their traditional views on marriage, family and a child’s right to a father and mother, then one wonders what else they and their followers might be punished for once same-sex marriage is legalised in Australia.”)

97. Augusto Zimmermann, *Same-Sex Marriage, Intolerance of the ‘Yes’ Campaign for All* to See, NEWSWEEKLY (Oct. 7, 2017), <http://www.newsweek.com.au/article.php?id=57833&cs=O hGSaU> (citing David Crowe, “Marriage Event off: Threats to Hotel Staff,” WEEKEND AUSTRALIAN, Sept. 17, 2016, at 10).

VII. HOW LAWMAKERS MIGHT SUPPORT AND PROMOTE HEALTHY FAMILIES AND SOUND RELIGIONS

There are many ways that marriage and marital families can be fostered, encouraged, and promoted by the government. Some general points might be the most important. First, as doctors, say, “first, do not harm.”⁹⁸ Government laws and programs should be examined to determine what effect they are likely to have on families. Marriage penalties (on traditional marriage) should be carefully reconsidered and eliminated, as a general rule. Marriage benefits also should be carefully examined to see how they might be made more effective to encourage, support, and promote marriage.

Second, a triage principle should be utilized that gives priority to the needs of the most vulnerable. Sometimes external input and resources can make a saving difference, and the government can provide a resource allocation function.

Third, both words and ideas matter. The government has vast information resources and these can and should be tapped to convey accurate, helpful information about the benefits of marriage and family life. That information can be especially valuable for young adults raised by single parents and other dysfunctional families. As they have not had role models of successful marriage and parenting, they need to learn how to be successful spouses and parents. While smaller mediating institutions (such as churches and other high-involvement civic organizations) generally can be more successful in teaching such lessons than governmental agencies, those public agencies can support, reinforce and, when necessary, stand-in for those more personal mediating bodies.

98. *Premium non nocere* are “[t]he Latin words for [the] medical slogan ‘First do no harm,’ a fundamental medical precept of Hippocrates . . .” MedicineNet, <https://www.medicinenet.com/script/main/art.asp?articlekey=6110> (last visited Nov. 9, 2017); see also Am. Med. Ass’n, *Primum non nocere*, 75 ARCHIVES OF OPHTHALMOLOGY 456, 456-57 (1966).

VIII. CONCLUSION

Anyone interested in creating and perpetuating any kind of lasting community must be very concerned about marriage and families, for they are the seedbeds in which community identity, values, mission, and meaning are sown and nurtured. This is not just important at the time of a nation's founding but is critical for the ongoing perpetuation from generation to generation of any kind of community, including a political-legal community.⁹⁹ Families and religion are essential to protecting the DNA of our society.

Truly, marriage uniting man and woman is a ubiquitous and naturally-existing social institution that has existed in some form in all known societies.¹⁰⁰ Marriage as a gender-integrating union which is associated with important sexual-channeling, procreative, child-rearing, and dependent-protecting functions and is a pre-legal, pre-state institution; it existed prior to the existence of states and legal systems.¹⁰¹

Marriage is the most secure and beneficial foundation of families. It is not the marriage certificate that makes the heterosexual marital relationship uniquely beneficial to individuals and society, but it is the nature of the relationship itself that is so valuable. Marriage is unique. No other companionate relationship provides as great a potential for benefitting individuals and society as the lifetime committed union of a man and a woman known as marriage. That is why such unions are given the preferred legal status of marriage in all nations. The public

99. Wardle, *supra* note 38, at 462 (citing Lynn D. Wardle, *The Morality of Law and the Transformative Power of Inclusion*, in *WHAT'S THE HARM?* 207, 211-14 (2008)).

100. William C. Duncan, *Marriage on Trial*, 12 J. GENDER, RACE & JUST. 493, 494 n.1 (2009) (citing G. ROBINA QUALE, *A HISTORY OF MARRIAGE SYSTEMS 2* (1988) (stating that "[m]arriage, as the socially recognized linking of a specific man to a specific woman and her offspring, can be found in all societies.")).

101. *Id.* (citing Norval D. Glenn et al., *Why Marriage Matters: Twenty-One Conclusions from the Social Sciences*, Spring 2002 AM. EXPERIMENT Q., 34, 37 (stating "[a]t least since the beginning of recorded history, in all the flourishing varieties of human cultures documented by anthropologists, marriage has been a universal human institution.")).

purposes for which marriage has been created are best achieved by dual-gender, gender-integrative unions.

As Pope John Paul II expressed, “[t]he future of the human person, his happiness, his capacity for giving life meaning all depend on the family. The destiny of the human being depends upon that of the family . . .”¹⁰² “[T]he future of humanity is closely linked to that of the family . . .”¹⁰³ “Marriage is also the condition that allows the State to make a correct and necessary discernment between genuine families with their inalienable rights and other forms of cohabitation.”¹⁰⁴ Pope John Paul II called marriage “an interior requirement of the covenant of conjugal love . . .”¹⁰⁵ He correctly declared that “[t]he family is the first and vital cell of society.”¹⁰⁶ He also recognized that “[a]s the family goes, so goes the nation, and so goes the whole world in which we live.”¹⁰⁷

“From solid families strength flows to the nation . . . Without such families the future is dark.”¹⁰⁸ It has been said that “[w]e come into possession of our public institutions and values the same way we come into possession of public buildings and monuments—someone else builds them and we simply inherit them. And like public buildings and monuments, our public institutions and values tend to deteriorate and wear out if they are neglected . . . The cost of neglecting marriage [and marital families] is paid in human suffering, in lost generations,

102. Pope John Paul II, *As The Family Goes, So Goes The World*, in L’OSSERVATORE ROMANO, Oct. 24, 2001.

103. *Id.*

104. *Id.*

105. *Id.* (citing *Redemptor*, n.11).

106. Pope John Paul II, *Homily of John Paul II*, Perth (Australia) (Nov. 30, 1986) (transcript available on Vatican website, https://w2.vatican.va/content/john-paul-ii/en/homilies/1986/documents/hf_jp-ii_hom_19861130_perth-australia.html).

107. *Id.*

108.

John F. Brug, *Psalms II: People’s Bible Commentary*, The Hausvater Project, <http://www.hausvater.org/quotations/96-as-the-family-goes-so-goes-the-nation-and-church.html> (last visited Oct. 3, 2017).

and in years (sometimes lifetimes) of sorrow, pain, and regret.”¹⁰⁹

What can we do to cultivate a society in which marriage and families are valued and where religion within the rule of law is respected? We can review and revise our laws and social policies to eliminate hostility or animosity toward marriages and marital families. Our legal policies must reflect our popular “pro-marriage” and “pro-family” rhetoric. Rabbi Lord Jonathan Sacks has warned that “[w]e are in grave danger of forgetting the moral basis of society.”¹¹⁰

In addition to such macro-level social and legal reforms, there must be micro-level personal and family transformations. Elder D. Todd Christofferson explained, “I believe that it is the ‘small and simple things’ that matter most. . . . We must be better husbands and wives, fathers and mothers”¹¹¹ Families and religion contribute great benefits to society. But those institutions are easy to take for granted and easy to neglect. In this time of proposed revolutionary redefinition and reconstruction of marriage and families, it is important to remember and protect both religion and marital families. Thus, we must revitalize the institutions of gender-integrative (traditional) marriage and marital families with public policies that reflect the true value of those institutions for all in society.

109. Wardle, *supra* note 49, at 355.

110. Lord Sacks, “*The Great Covenant of Liberties: Biblical Principles and Magna Carta*,” in *MAGNA CARTA, RELIGION, AND THE RULE OF LAW* 301, 311 (Robin Griffith-Jones & Mark Hill eds. 2015).

111. Christofferson, *supra* note 42.