

Government's Involvement In Marriage and
How We Would Be Better Off Without It

Josh Oliver

Virginia Tech

It can be hard to think about marriage as anything other than a man and a woman in love; I completely understand. Looking back in history, this is the way it has been for thousands of years, or at least that's how it appears. The idea of "traditional marriage" we hear of is not how it has always been, and government, or even the church, has definitely not always been involved. Marriage, as we have it today, is so deeply invaded by governmental policies and regulations that it truly does not even closely resemble this idea of "traditional marriage". Marriage is a practice that has evolved dramatically since its creation, and has gone from something that was entirely in the hands of the people to something controlled by government. While discussion concerning marriage usually involved marriage equality, as Keith Ablow (2013) states, there is a "...bigger debate we must have: Why was government so intrusive as to be involved in marriage, in the first place, and shouldn't government divorce itself from the concept of sanctioning marriage, altogether?"

I suppose a good place to start would be to go into how marriage began, how it has evolved, and what it is today. Marriage did not actually begin as a religious sacrament. It was originally a way to make sure a woman would only bear the offspring of one man, thus ensuring that his children were actually his. In Ancient Greece a father would give his daughter to a man with the words "I pledge my daughter for the purpose of producing legitimate offspring." (Wrath, 2013) The marriage made sure that the father's money and inheritance was actually going to his own child. It also was used to gain wealth and unite the two families into an alliance. This just happened naturally, The families agreed, thus the couple were married. Neither the church nor the state was involved and their permission was not needed.

Ancient Rome was one of the first instances of government being involved in marriage. There were laws concerning marriage, but the way people were married and the reasons behind it

remained mostly the same. A man was only able to legally marry one woman, but concubines and even young men for sex were allowed. If the woman was not able to have children, a divorce was allowed. "That is traditional marriage. The selling of women into domestic and sexual slavery by their fathers." (Wrath, 2013) Before the implementation of monogamy into the Roman Imperial Law, polygamy was actually the most common form of marriage according to professor of history at Harvard University, Nancy Cott. (2013) Marriage was a form of wealth and definitely not the sacred union of one man and one woman as many fight for in today's politics.

It was not until 12th Century AD when marriage became a religious sacrament and not simply a business contract. The argument against marriage equality for Biblical reasons does not really work, because the church has only been involved in marriage for a very short period. In fact, the church's stance on same-sex unions has not always been what it widely is today. "Until the 13th century, male-bonding ceremonies were common in churches across the Mediterranean. Apart from the couples' gender, these events were almost indistinguishable from other marriages of the era." (Wrath, 2013) These unions are still shrouded with some mystery as to what they truly symbolized. Many push the idea aside, saying that they were not unions for love that resulted in any sort of sexual activities and they were simply business contracts. It does not make sense to me why a simple business contract would have a ceremony nearly identical to marriage; they even included the "kiss" that we all know is part of the marriage ceremony.

It is clear that marriage did not originate as a Biblical doctrine, so why has our current government and politicians stuck to this idea for so long? Many say that the child bearing part of the relationship is what makes it an actual family, and thus they are the only ones who should be

married. 7th Circuit Judge Richard Posner sees the defense of traditional marriage in a slightly different light:

[The] government thinks that straight couples tend to be sexually irresponsible, producing unwanted children by the carload, and so must be pressured... to marry, but that gay couples, unable as they are to produce children wanted or unwanted, are model parents—model citizens really—so have no need for marriage. (Posner, 2014)

In short, government wants to make sure that accident children happen to married couples as opposed to unmarried ones. Posner puts this argument in his own words and really shows the injustice occurring: “Heterosexuals get drunk and pregnant, producing unwanted children; their reward is to be allowed to marry. Homosexual couples do not produce unwanted children; their reward is to be denied the right to marry. Go figure.” (Posner, 2014) In truth, arguments against marriage equality tend to fall flat. Richard Posner, a conservative, proves this every time he debates the topic.

Those who say that the government allowance of same-sex marriages will erode the Biblical idea family unity, clearly have not looked at the history of government's involvement in marriage. They say that it is government's place to protect the family unit, but it stopped doing that years ago. “The advent of no-fault divorce, in which one party can abrogate the marriage contract without penalty or consideration of the other party, has completely destroyed the notion that the government plays a role in protecting ‘integrity and well being of the family’” (Morrissey, 2009) It is not government's place to decide whether something is moral or not. It is up to the individual to decide whether they should have a same-sex marriage or a divorce.

I'd say that this is not the only debate we should be having. The fact that government is so deeply entrenched in our personal relationships is disturbing and seemingly more important.

For 16 centuries the Catholic Church deemed a couple to be married if they said they were. Not until 1215 did the Church deem that a marriage ceremony had to take place in a church in order for a union to be “licit.” Yet couples married illicitly had the same rights and obligations as those who went to the chapel. (Gallagher, 2012)

At this time in history, even though the Church did have some control over marriage, it was still up to the people. As noted previously, up until the 1300s male bonding ceremonies were still common and allowed by the church. It was not until the 1500s that the Catholic church made it law “...that weddings be performed in public, by a priest, and before witnesses” (The Week Staff, 2012) It was at this point when government in Europe, the Catholic Church, made it its duty to rule over marriage.

Since the colonization of America, government has always been involved in marriage, whether it be the British crown, or the new United States government. A marriage license has always been required for the marriage to be recognized by the state. Without it, none of the benefits for marriage would be received, and the one who presided over the marriage would be “...subject to a \$500 fine and up to six months in jail” (Gallagher, 2012) The laws surrounding marriage licenses tightened and changed as different people wanted marriage. In short, politicians and government used their marriage laws to discriminate. When issues of interracial marriage came up, the law forbade it. The laws tightened even more with the increase of Mormonism and their polygamous ways (Jones, 2010) A next wave of tightened laws came up with the not-so-new desire by same-sex couples to be married. Everyone who was involved in the creation of these laws just so happened to be white, Christian males who believed that this “traditional” marriage outlined in the Bible was the only right way, despite the fact that the church became involved in marriage less than a millennia ago. “Government should not play

favorites or show prejudice.” (Ablow, 2013) This is exactly what is has been doing since the United States was born, but sadly this is something that occurs in every government in many different forms.

As someone who identifies most closely to Libertarianism, I believe in government being as limited as it possibly can. Government's main role is to protect its citizens: “First, from aggression by other nations, which government can do by having an effective foreign policy and military. Second, from aggression by criminals, which government can do by having a just and effective system of justice: police, courts of law and prisons.” (Burke, 2012) This protection from harm is not limited to physical harm. The reason government is involved in the making and carrying out of contracts, such as those involving marriage, is due to the harm done by the breaking of a contract. Everything one has invested into the contract is gone. Protecting us from financial harm is also part of the government's job. This is the main reason government is currently involved in marriage.

I think government's involvement in marriage causes multiple issues, both socially and politically. The social issues are fairly obvious. The first is simply the fact that many people in the U.S. cannot marry. Some would say there are other options such as civil unions or domestic partnerships, but Chai R. Feldblum (1996), a Professor of Law at Georgetown University, differs: “...it is solely marriage, and not domestic partnership, that can achieve the domestication of husbands and the care of both partners...” He believes that anything short of marriage would be unsatisfactory for same-sex couples. If you only allow the other unions to the couples, there would still be discrimination.

The political side is a little more difficult. Government's involvement in marriage causes a lot of problems politically. The first problem is that it remains a problem. If government had no

say in who could be married, then there would be no reason for this to be written. There would be no political battles concerning it. That, I believe, is one of the larger problems government involvement creates. There is a large amount of time spent discussing marriage equality that could be used for more important subject matter. In many instances, I believe this is actually done on purpose. I think politicians use their argument for or against marriage equality to further their own careers and success. There are certain opinions that will gain votes no matter what, and an opinion for or against same-sex marriage is definitely one of those. People will vote for someone simply based on their opinion of that and nothing else.

In other cases, I think politicians will state their beliefs on marriage or discuss their beliefs in order to not talk about their other beliefs. "Same-sex marriage is one such distraction. No "issue" diverts attention as successfully as this..." (Pilger, 2012) Most politicians are slimy and deceitful, so obviously they are going to do whatever to get their votes. If they have some opinions that are not very liked, they will just focus on a topic like marriage equality to make themselves liked.

This is not only limited to politicians though. Many citizens tend to enjoy hearing more about the less important things in politics. They do not want to hear about how huge national debt or questionable foreign policies. They tend to want to hear about things pertaining more to social issues; I believe the reason for this is because they can relate better. Due to this desire, reporters for newspapers, magazines, and television try to focus on these topics to keep the readers and viewers coming. This is not necessarily what needs to be reported, but it is what the people want. "Aren't there issues of significance that you'd like to talk about?" Romney snipped. "The economy? The growth of jobs? The need to put people back to work? The challenges of Iran?" (Seidl, 2012) There are politicians who actually want to talk about the more

important subjects, but many of the questions they get asked pertain to things like same-sex marriage. The truth is that marriage equality is not the most important issue within our country. Poverty, hunger, homelessness, debt, the economy, corruption, and foreign policy are just a few things that affect the citizens in a much more significant way than whether or not people can get married. "Obama and his people are seeking to change the subject of this election from the dreadful financial condition of our country to same-sex marriage or anything else that sticks." (Simon, 2012) One of the main reasons politicians focus on these lesser things is because, if they focused on other things, the people would realize that they are not exactly doing a very good job at helping the American people.

Same-sex marriage being used to promote politicians or being used as a distraction would not be a problem if the whole marriage system was privatized and out of the government's hands. The large efforts towards marriage equality could have been put into something else, because marriage would have already been open to everyone. "If marriage were a private concern, U.S. District Chief Judge Vaughn Walker would not have ruled that California's Proposition 8 violated the Constitution's guarantees of equal protection and due process, because Proposition 8 would not have existed." (Harsanyi, 2010) All of the laws that have been changed and the court cases that have occurred would have been avoided if marriage was a private institution like it used to be.

Now, I have stated the problems with government being involved with marriage and some benefits of marriage being private, but there is still the issue of how marriage would work without government involvement. Obviously government needs to be involved when contracts are present, so the religious or ceremonial side of marriage would have to be separated from the contractual parts. This is actually entirely possible.

When looking at the civil side of marriage, marriage licenses are needed. There are agreements on property, inheritance, and children, in addition to multiple other issues having to do with taxes and various other things. Many would argue that, because of these things, government needs to be involved with marriage. “Kmiec argued ‘civil licenses’ would address the question. He proposed the state withdraw from ‘the marriage business’ and do licensing ‘under a different name’ to satisfy government interests for purposes of taxation and property.” (Catholic News Agency, 2009) What Kmiec is saying, is that a couple, or more, could go to the courthouse and have a civil license instead of a marriage license. Morrissey would call these partnership contracts (2010). These contracts would, essentially, give the couple the same benefits that a married couple would have, they just would not yet be married. This gives the couple the option whether or not to actually pursue a marriage.

“The government’s only interest should be in enforcing child support and fair child custody and visitation for each parent, in the event of a dissolution of the (government-free) marital bond.” (Ablow, 2013) This would be one of the biggest things that would be handled with these partnership contracts. It is government’s job to keep all parties of a contract from being hurt, but it is also their job to keep the children from being hurt in the case of the contract being broken. If a couple would want a divorce, it would essentially be breaking the partnership contract. It would have had to have been clearly stated in the contract what would happen in this occurrence.

This would all take place separate from the actual marriage. I think this is important, because there are many couples that do not desire to get married for different reasons, yet still have a stable family that deserves to have those certain benefits. There are many interpersonal relationships that are just as important as marriage that need to not be ignored.

The other side of marriage would be dependent on the individual church or religion of the couple. "Catholics who want to get married in a Catholic church would still have to be a heterosexual couple above the age of consent, at least one of whom is Catholic, without issues of consanguinity, but would have to also sign a partnership contract for the civil recognition of the relationship." (Morrissey, 2009) The belief systems of the individual would decide where and if they get married. A homosexual couple could not get married in a Catholic Church, due to the Catholic's current beliefs of homosexuality. The couple would simply find a place that would marry them, there are plenty of them, and that would be that. If a couple believes in "traditional marriage" then they could get their civil partnership license or contract and get married the traditional way. No church would be forced to perform any type of ceremony. Government could not do that, because they would have no say in marriage whatsoever.

This separation of government and marriage may make thing a little more complicated. It would involve a few more contracts and dotted lines to sign, but is that not worth being a little freer? Many people see problems with government removing itself from marriage. When asked if government should be involved in marriage, Paige Horst (2014), professor and PHD student at Virginia Tech, stated "Yes. It's a socially binding and legally binding contract. Some records need to be kept to protect the married partners (insurance, property, inheritance for any children)." There are many shouts of removing government from marriage, yet there are not nearly as many solutions given to the problems that would cause. Without explaining a reasonable change to marriage, the people hearing will just think it is ridiculous. Maybe if Paige would have been told how marriage would work without government, her opinions may have changed.

Marriage is a funny, confusing, and ever-changing matter. It is viewed and has been viewed in countless different ways in the approximately 4000 years it has been around. It has been everything from a business transaction, to practically the selling of a daughter, to a religious institution, to something controlled by government. There is no "right" view of marriage. The idea that the Biblical, "traditional" view of marriage is the original and the right view is absurd. Marriage began as the binding of two families for business purposes. For the noble classes, it was a way to unite kingdoms and make allies. The Biblical marriage is actually very polygamous, not one man one woman. It is up to the individual to decide what marriage is to them, not the government. Governmental involvement in marriage is a relatively new thing, and it is something that is used to discriminate and control, two things the government loves to do. There are ways to take away government's ability to do this, and one of those ways is removing it from government. This would leave the marriage to the church and the necessary civil contracts and such to the government. If this were how it had been all along, many problems would not have occurred. Politicians would not be using marriage as a way to get votes or distract from their corruption and they would have to focus on more important things. I think at this point, it would a long and difficult battle to separate marriage and government, but it would be one that would be worth it in the end.

References

- Ablow, Keith. "When It Comes to Marriage, Government Should Divorce Itself." Fox News. FOX News Network, 27 Mar. 2013. Web. 16 Dec. 2014.
- Burke, Thomas. "Should Government Be Involved in Marriage?" MercatorNet. MercatorNet, 17 Feb. 2012. Web. 16 Dec. 2014.
- Catholic News Agency (CNA). Web. 16 Dec. 2014. "Kmiec Proposes End of Legally Recognized Marriage." Catholic News Agency (CNA).
- Feldblum, Chae. "Gay Is Good: The Moral Case For Marriage Equality And More." Georgetown Law. Georgetown University Law Center, 1 Jan. 1996. Web. 16 Dec. 2014.
- Gallagher, Art. "Why Do You Need a License to Get Married?" MoreMonmouthMusings RSS. 21 Feb. 2012. Web. 16 Dec. 2014.
- Harsanyi, David. "David Harsanyi - Time for a Divorce." Townhall.com. The Wall Street Journal, 6 Aug. 2010. Web. 16 Dec. 2014.
- Horst, Paige. Personal Interview. 16 Dec. 2014.
- Jones, Ashby. "Why Do We Need the State's Permission to Get Married Anyway?" Law Blog RSS. The Wall Street Journal, 14 Jan. 2010. Web. 16 Dec. 2014.
- Morrissey, Ed. "Kmiec: Time to Get Government out of the Marriage Business - Hot Air." HotAir.com. Hot Air, 28 May 2009. Web. 16 Dec. 2014.
- Morrissey, Ed. "Why Is the State Involved in Marriage at All? - Hot Air." HotAir.com. Hot Air, 7 Aug. 2010. Web. 16 Dec. 2014.
- Pilger, John. "Gay Marriage Is a Distraction: Remember Manning." ABC News. The Drum, 17 May 2012. Web. 16 Dec. 2014.

Posner, Richard. "7th Circuit Judge Richard Posner Opinon." U.S. Courts. 26 Aug. 2014. Web. 16 Dec. 2014.

Seidl, Jonathon. "Romney Scolds Reporter: 'Aren't There Issues of Significance You Want to Talk About?'" The Blaze. The Blaze, 10 May 2012. Web. 16 Dec. 2014.

Simon, Roger. "Gay Marriage as a Distraction." Roger L Simon RSS. PJ Media, 10 May 2012. Web. 16 Dec. 2014.

The Week Staff. "How Marriage Has Changed over Centuries." The Week. The Week, 1 June 2012. Web. 16 Dec. 2014.

Wrath. "Godless and Black." : Marriage Did Not Begin In The Church. Wrath, 1 June 2013. Web. 16 Dec. 2014.