

Marriage and the Law

A Statement of Principles

Executive Summary

HOW SHOULD FAMILY LAW TREAT MARRIAGE? In this report, a group of family scholars and legal scholars come together to acknowledge some key propositions about marriage and family law in the United States.

Marriage is a key social institution, with profound material, emotional, and social consequences for children, adults, and society. As marriage weakens, fewer men are committed to family life, more women are saddled with the unfair burdens of parenting alone, and children's ties to both their parents (especially fathers) are weakened. Communities face increasing social and economic problems.

The most important benefits of marriage are not the sole creation of law. Social science evidence strongly suggests the prime way that marriage as a legal institution protects children is by increasing the likelihood that children will be raised by their mother and father in lasting, loving (or at least reasonably harmonious) family unions. Marriage in any important sense is not a creation of the State, not a mere creature of statute.

For marriage to create these benefits, it must be more than a legal construct. Creating a marriage culture that actually does protect children requires the combined resources of civil society—families, faith communities, schools, and neighborhoods—public policy, and the law in order to channel men and women towards loving, lasting marital unions. In recent years more Americans, and more family scholars, are taking marriage seriously.

Unfortunately, the recent trend in family law as a discipline and practice has been just the opposite. Family law as a discipline has increasingly tended to commit two serious errors with regard to marriage: (a) to reduce marriage to a creature of statute, a set of legal benefits created by the law, and (b) to imagine marriage as just one of many equally valid lifestyles. This model of marriage is based on demonstrably false and therefore destructive premises. Adopting it in family law as a practice or as an academic discipline will likely make it harder for civil society in the United States to strengthen marriage as a social institution.

As scholars and as citizens, we recognize a shared moral commitment to the basic human dignity of all our fellow citizens, black or white, straight or gay, married or

unmarried, religious and non-religious, as well as a moral duty to care about the well-being of children in all family forms. But sympathy and fairness cannot blind us to the importance of the basic sexual facts that give rise to marriage in virtually every known society: The vast majority of human children are created through acts of passion between men and women. Connecting children to their mother and father requires a social and legal institution called “marriage” with sufficient power, weight, and social support to influence the erotic behavior of young men and women.

We do not all agree on individual issues, from the best way to reform unilateral divorce to whether and how the law should be altered to benefit same-sex couples. We do agree that the conceptual models of marriage used by many advocates are inadequate and thus contribute to the erosion of a marriage culture in the United States. We seek to work together across the divisive issue of gay marriage to affirm the basic importance of marriage to our children and to our society. We call on all the makers of family law—legislators, judges, the family law bar, and legal scholars who create the climate in which other players operate—to develop a deeper understanding of and commitment to marriage as a social institution.

A prime goal of marriage and family law should be to identify new ways to support marriage as a social institution, so that each year more children are protected by the loving marital unions of their mother and father.

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