



Should Christians abandon state marriage?

Growing chorus says move would end fight over same-sex unions

By John Aman

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Government doesn't belong in the marriage business.

That's what a chorus of prominent libertarian, conservative and Catholic voices have been saying for some time. They argue that there's no good reason for the state to regulate marriage and predict that making marriage a purely private affair will bring a blissful end to the same-sex marriage debate.

If the state isn't defining marriage, it can't redefine it either, they reason.

That sounds good to some, but privatizing marriage would make matters worse, say experts in law and family policy. Marriage is a fundamental public institution that demands a state role, they say, warning that private marriage would jeopardize children and give marriage the same status as alternatives like polygamy.

Still, as homosexual marriage advances, the drumbeat for privatization grows louder:

David Boaz, a vice president at the libertarian Cato Institute, opened the debate in 1997 when he asked, "Why should the government be in the business of decreeing who can and cannot be married?" He contended that ending government's role in marriage would "solve the gay-marriage problem."

Conservative talk host Larry Elder told WND readers in 2004 that marriage licenses made as much sense as licensing barbers or taxi-cab drivers. The state should "leave marriage to non-governmental institutions like churches, synagogues, mosques and other houses of worship or private institutions."

Doug Kmiec, a pro-life law professor who urged fellow Catholics to vote for Obama in 2008, said in 2009, "If the state got out of the marriage business. . . . then the question of who can and cannot be married would be entirely determined in your voluntarily chosen faith community."

Former GOP presidential candidate Ron Paul announced in 2012 that he "would like the state to stay out of marriage. . . . A voluntary association shouldn't be interfered with by the state, so I'd just as soon that the state not issue licenses or define marriage." Paul wants to "let the individual, let two people define marriage," arguing it "would get rid of this whole debate and we wouldn't be arguing over the definition of marriage."

Tea party favorite Glenn Beck told entertainer Penn Jillette in late 2012 that same-sex marriage does not "pick my pocket nor break my leg," and he didn't think the government had a role in regulating marriage. "The question is not whether gay people should be married or not, the question is why is the government involved in our marriage."

Currently, government is heavily involved in marriage. Changing that would require a wrenching overhaul of American law. For example, until recent changes adopted following the U.S. Supreme Court's skewering of the Defense of Marriage Act, federal law treated married couples differently than single individuals in 1,138 ways, according to a 2003 GAO report. Marital status matters when it comes to taxation, federal civilian and military benefits, Veterans and Social Security benefits, private employer benefits, immigration and more.

Uprooting this body of law would launch a social revolution in which marriage is treated no differently than those who prefer the same sex, multiple wives or any other imaginable intimate arrangement.

"It absolutely would be an upheaval in a very good way," said libertarian economist Ryan McMacken, a proponent of privatizing marriage.

Such a change would "greatly diminish the power of the state," he predicted, and "greatly increase the power of private society at the expense of the state."

Many marriage and family advocates disagree. Deleting marriage from the law, they contend, will harm children, society and liberty. And it won't provide peace from the same-sex marriage conflict, either, they insist.

Jennifer Morse, president of the Ruth Institute, which supports traditional marriage, says privatizing marriage "doesn't really resolve the gay marriage issue, it capitulates on the key point, which is what is the public purpose of marriage, and whether the state has any role in protecting the interests of children."

"This is a rhetorical tactic for trying to make it go away. I don't think it works."

Peter Sprigg, senior fellow for policy studies at the Family Research Council, said marriage deserves a privileged place in the law because it brings benefits "that are important to the well-being of society as a whole and not just a couple."

Chief among those benefits is the bearing of children “for the continuance of the human race.” Marriage is “the only type of relationship that results in the [natural generation of children] and provides children with both a mother and father,” he said.

“Marriage can exist without the state and in fact the institution predates the state,” said Sprigg. Even so, “there is value in having the state recognize marriage, because without that recognition it would be much more difficult to protect the rights and obligations of spouses and to distribute the benefits that the state gives.”

“If it’s going to do that, it’s going to have to have some way of defining it [marriage],” he said.

Sprigg, a leading defender of traditional marriage, said he’s “fine with privatizing homosexual relationships” but rejects privatizing true marriage because of its special status.

“Society gives benefits to marriage because marriage gives benefits to society. Therefore the burden of proof is on the advocates of alternatives to marriage to prove that their relationships benefit society. I think that’s a burden of proof that same-sex marriage cannot meet.”

Morse said the libertarian idea that two or more people can make up their own “marital” contract any way they wish collides with the needs of children.

Crafting intimate arrangements without guidance from God, culture or the state “just doesn’t work when you have a child,” she said. “The modern world does not know quite what to do with these helpless creatures.

“Marriage is designed to protect the legitimate interests that children have,” she said. It’s an “institution that takes care of infants in the least minimum government fashion.”

Marriage also protects against tyranny because it is the “only institution that keeps government out of the family.”

Libertarian writer Ryan McMacken takes issue with claims about the social value of marriage and that children are best protected within marriage.

He agrees that “strong marriages are essential in a free society,” but rejects “the assertion that it’s a public good,” since, he says, marriage does not meet the standard of what constitutes a public good in economic theory.

“When [marriage supporters] say it’s a public good, all they’re really saying is that they think the state should regulate it.”

He agrees children need to be protected, but he said family law, especially no-fault divorce, has failed to advance children’s interests.

“I don’t think the track record of the civil government is very good, there,” he said.

Herbert W. Titus, former dean of the Regent University School of Law and Government, agrees that state and federal laws, especially no-fault divorce, have fostered social chaos but says a return to marriage laws that conform to biblical norms is the solution, not privatization.

Marriage licenses serve a useful purpose, Titus said, because they determine “if you’re entitled to a marriage certificate” and “screen out those people who were violating the rules the Bible laid down as to who could be married and who could not be married.”

He cited Leviticus 18, which forbids sexual relations between close relations, family members and individuals of the same sex.

But once the law allows same-sex marriage, Titus said, “then it’s very difficult to see that there are any ... barriers to marriage,” and that opens the door to sodomy and polygamy.

“The very purpose of civil government was to protect and foster the family as the primary economic institution of society,” said Titus, who was the Constitution Party’s vice-presidential candidate in 1996.

And families also benefit society because they protect freedom.

“If the family is strong,” Titus said, “the civil government can’t intrude into family governance.”

He noted that states have traditionally been uninvolved in the details of family life, not forcing, for example, parents to pay children minimum wage laws for doing chores.

“That’s unthinkable in the historic understanding of marriage. But once you break down marriage and anyone can get married, why shouldn’t there be total [state] jurisdiction with regard to the labor system?”

Conservative Protestant minister Matt Trehwella, founder of Missionaries to the Preborn, is sometimes lumped in with the advocates of marriage privatization because he tells Christians not to get marriage licenses and refuses to marry couples who do.

Trehwella regards marriage licenses as a grant of authority to marry from the state.

“The state cannot grant the right to marry. It is a God-given right.”

Despite that view, Trehwella wants the state to ban same-sex marriage.

“I think the whole idea of privatizing marriage is absurd because the state should uphold and affirm the law word and created order of God regarding marriage as revealed in Scripture.”

He believes the solution to same-sex marriage is not privatization but the re-criminalization of sodomy.

“That’s what makes the whole homosexual marriage debate go away,” he said.