

ism. In the early '90s, fundamentalist Islamists won free and more or less fair elections in Algeria.

There is another way of looking at this. Try selling the people of Cairo, Damascus, or Riyadh a liberal secular agenda—a bill of rights that gives infidels the right to preach, homosexuals the right to practice, Larry Flynt and Salman Rushdie the right to publish, and every woman and wife the right to fornicate freely and have an abortion—and you'd want the authoritarian dictators to save you from the will of the "active citizens."

With Iraq giving every sense of turning into an open-ended Mesopotamian morass from which there seems to be no exit, it is hardly surprising that Wilsonian imperialists hope to see a proverbial light at the end of the tunnel. But the triumphalist cheering over the recent changes in the Muslim world may turn out to be, at best, seriously premature and, at worse, just plain wrong.

George W. Bush has made a song and dance about how "the toppling of Saddam Hussein's statue in Baghdad will be recorded, alongside the fall of the Berlin Wall, as one of the great moments in the history of liberty." But as that liberal hawk Thomas Friedman has conceded that the wall "will fall one bloody brick at a time and, unfortunately, Vaclav Havel, Lech Walesa and Solidarity are not waiting to jump into our arms on the other side." There is a real possibility that the more democratic the Middle East becomes, the more Islamist, authoritarian, and anti-American it will be. If indeed that happens, those misguided idealists who signed up for this misbegotten venture will well and truly get mugged by reality. ■

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*Tom Switzer is opinion page editor of The Australian in Sydney. These are his personal views.*

[banned parenthood]

# Fathers Into Felons

No-fault divorce has turned a bastion of private life into a colony of the state.

**By Stephen Baskerville**

BY ALL INDICATIONS, we are gearing up for a major cultural and political war over the family. Opposition to same-sex marriage has tapped a vein of grassroots outrage that may run deeper than most observers imagine, with implications extending to the welfare state, the judiciary, and the most fundamental questions about the role of government. Conservatives who warn that family breakdown will lead to civilizational collapse sometimes seem incapable of recognizing the fulfillment of their prophecies.

The family crisis is generally attributed to deteriorating moral norms stemming from the sexual revolution. Yet the warfare over marriage is as much political as cultural, though basic political questions are conspicuously avoided: what precisely is the legal status of marriage, and what is the appropriate role of the state in private families and households? What are the relations of church and state insofar as each claims authority over marriage?

Family scholar Bryce Christensen likens the family crisis to the Civil War, with constitutional implications that could prove equally profound. G.K. Chesterton once suggested that the family serves as the principal check on government power and predicted that someday the two would directly confront one another. Same-sex marriage is

just one indication that that day has arrived.

Another is the administration's plan to redirect welfare funds for marriage education. Adapting Clinton-era fatherhood initiatives, the program is justified on the principle that marriage is a public institution conferring public benefits. "The time has come to recognize that marriage is a public social good," writes Alliance for Marriage President Matt Daniels. "The health of American families—built upon marriage—affects us all."

Yet the public nature of marriage is a truism that requires some qualification. The common-law tradition has long treated the family as a preserve of privacy that is largely off-limits to government—what Justice Byron White called a "realm of family life which the state cannot enter."

Family inviolability was never absolute, but the basic principle has been established for centuries and most emphatically in connection with what traditionalists point out is the unique and foremost purpose of marriage: raising children. The private family creates a legal bond between parent and child that allows parents (within reasonable limits) to raise their children free from government interference. "Whatever else it may accomplish, marriage acknowledges and secures the relation

between a child and a particular set of parents,” Susan Shell writes in *The Public Interest*. “The right to one’s own children ... is perhaps the most basic individual right—so basic we hardly think of it.”

Federal courts have long recognized parenthood as a “sacred” and “inherent, natural right,” “far more precious than property rights,” and “for the protection of which, just as much as for the protection of the rights of the individual to life, liberty, and the pursuit of happiness, our government is formed.” Shell summarizes assumptions that, until recently, have been virtually universal among free societies: “No known government, however brutal or tyrannical, has ever denied, in fact or principle, the fundamental claim of parents to their children. ... A government that distributed children randomly ... could not be other than tyrannical. Even if it had the best interest of society in mind ... a government that paid no regard to the claims of biological parenthood would be unacceptable to all but the most fanatical of egalitarian or communitarian zealots.”

As a statement of society’s moral consensus Shell’s point is unexceptionable. Yet it also illustrates the ignorance pervading current debates. For current marriage law has both validated her point and negated her fact: “No known government” ever crossed this line until about 30 years ago, well before same-sex marriage, when most of the Western democracies did so. It is having precisely the consequences she postulates.

Shell’s principle also highlights an anomaly glossed over in official efforts to reverse family decline. Invoking the public benefits of marriage to justify state intervention in citizens’ private lives and even to define—and potentially redefine—marriage would appear self-defeating. “No one would argue that crime and child poverty in America are not the business of government,” writes

Daniels. “And no one wants to see the government turn a blind eye to the social trends that are doing the most damage to American children.” Daniels makes a powerful case, but he never distinguishes the public’s interest from the state’s. Government is not a neutral player.

Governments have always claimed control over marriage, whether solemnized religiously or civilly. Some libertarians now propose privatizing marriage as a strictly civil contract. Yet whatever the state’s precise role in marriage formation, politically it is far less important than another question. The institutional strength of marriage—and its connection with larger issues of public policy—is determined not by the words through which a marriage is formed but by the deeds through which a marriage is dissolved.

## THOUGH TRADITIONALISTS DECRY EFFORTS TO REDEFINE MARRIAGE, THE FUNDAMENTAL REDEFINITION HAS ALREADY BEEN EFFECTED BY THE LITTLE-UNDERSTOOD SYSTEM OF “NO-FAULT” DIVORCE.

Here the critical players, as both sides recognize, are not homosexuals but heterosexuals. “The problem today is not gay couples wanting to get married,” writes Jonathan Rauch. “The threat to marriage is straight couples not wanting to get married or ... not staying married.” The demand to recognize same-sex marriage is clearly a symptom of how weakened marriage has already become.

It is futile to try to assess the strength of marriage as an institution or understand its civic role without confronting its nemesis: divorce. Though traditionalists decry efforts to redefine marriage, the fundamental redefinition has already been effected by the little-understood system of “no-fault” divorce.

Some three decades ago, the Western world embarked on one of the boldest experiments in its history. With no public discussion of the implications, laws were enacted in virtually every jurisdiction that effectively ended marriage as a legal contract. Regardless of the terms by which a marriage is entered, government officials can now, at the request of one spouse, simply dissolve it over the objection of the other and with no penalty to the moving party. Maggie Gallagher titled her 1996 book *The Abolition of Marriage*. It is difficult to see how same-sex marriage can weaken an institution that has been abolished, nor how a constitutional amendment can protect a contract that is already unenforceable.

Divorce and unmarried childbearing have political consequences we are only beginning to understand since they

serve as major engines for the overall expansion of government. Daniels is undeniably correct that family dissolution breeds social ills for governments to solve: violent crime, drug abuse, and truancy are directly attributable to family breakdown and fatherless homes. The obvious political implications are studiously avoided. “If we want less government, we must have stronger families,” President Jimmy Carter once remarked, “for government steps in by necessity when families have failed.”

Carter may have perceived the cause and effect backward, for it follows that government has a stake in failed families and a motive to step in and declare failure when given the opportunity. As Gallagher points out, this is precisely what

divorce courts do: “No-fault divorce gave judges, at the request of one-half of the couple, the right to decide when a marriage had irretrievably broken down.”

If marriage is not wholly private, involuntary divorce by its nature requires constant supervision over private life by state officials. Marriage creates a private household, which may or may not necessitate signing some legal documents. Divorce dissolves not only a marriage but the private household formed by it, usually over the objections of one spouse. It inevitably involves state functionaries—police and prisons—to enforce the post-marriage order. Otherwise, one spouse might continue to claim the protections and prerogatives of private life: the right to live in the common home, to possess common property, or to parent the common children. In the roughly 80 percent of divorces that are unilateral, state agents are empowered, without further explanation, to remove innocent people from their homes, confiscate their property, and take away their children. Unilateral divorce dissolves not only marriage but private life.

Politically, no-fault divorce did much more than allow families to self-destruct. It permitted the state to assume jurisdiction over the private lives of citizens who were minding their own business and turn otherwise lawful private behavior into crimes. This obviously carried consequences far beyond family policy. Previously, a citizen could only be incarcerated following conviction by a jury for violating a specific statute, passed with citizen input and after deliberation by elected legislators, that applied equally to all. Suddenly, a citizen could be arrested and jailed without trial for failing to live in conformity with an order, formulated in a matter of minutes from limited information by an unelected judge, that applied

to no one but himself and whose provisions might well be beyond his ability to obey. A divorce decree amounted to a personalized criminal code legislated *ad hoc* around each former spouse, subjecting him to arrest for doing what anyone else might lawfully do.

Unilateral divorce thus placed the family in a legal-political status precisely the opposite of the original purpose of marriage. Far from preserving a private sphere of life immune from state intervention, involuntary divorce opened private lives to unprecedented state control.

The logic reaches its conclusion in directives recently published by the American Law Institute (ALI). This influential legal practitioners’ group announced on its own authority that family law jurisdiction would henceforth encompass non-marital private arrangements such as cohabiting couples, both heterosexual and homosexual, and indeed all private homes.

Marriage defenders expressed outrage, but they misunderstood the implications. As they now argue with respect

breath-taking irony, an “intimate relationship”—which officials reserved for themselves to define—became not a status off-limits to government scrutiny but the exact opposite, one that gives government an *entrée* to exert virtually unlimited supervision over personal life. The abolition of marriage led directly to the abolition of private life.

Compounding the irony, the factor that now invariably justifies state intervention into the private sphere is the very one that had previously required keeping the state out—children. As with same-sex marriage, by ignoring children a plausible case can be made that divorce harms no one beyond the couple. Introducing children changes the dynamic.

Prior to the divorce revolution, authority over children had long been recognized to reside with their parents, absent some infraction. “For centuries it has been a canon of law that parents speak for their minor children,” wrote Justice Potter Stewart. “So deeply embedded in our traditions is this principle ... that the Constitution itself may

**POLITICALLY, NO-FAULT DIVORCE DID MUCH MORE THAN ALLOW FAMILIES TO SELF-DESTRUCT. IT PERMITTED THE STATE TO ASSUME JURISDICTION OVER THE PRIVATE LIVES OF CITIZENS WHO WERE MINDING THEIR OWN BUSINESS AND TURN OTHERWISE LAWFUL PRIVATE BEHAVIOR INTO CRIMES.**

to same-sex marriage, traditionalists charged that ALI was undermining marriage by blurring the distinction between legitimate marriage and cohabitation. But ALI was doing much more than this. Family-law practitioners were using the toehold they had established in married households through divorce law to extend government jurisdiction into every household entailing an “intimate relationship,” married or not. With

compel a state to respect it.” This too has been not only abrogated but directly inverted by divorce law, which proceeds on the opposite principle. As one analysis observes, “The child’s best interest is perceived as being independent of the parents, and a court review is held to be necessary to protect the child’s interests.” Divorce allows one parent to surrender both parents’ decision-making rights to the state.

As many have observed of marriage itself, the introduction of children into marital politics brings pressures for gender differentiation. Traditionally, as Allan Carlson points out, governments set the terms of marriage less to provide rights than to impose burdens, and the ones Carlson enumerates all pertain to divorce: “alimony, child custody, and the division of property.” Significantly, these burdens were not symmetrical; they all involved removing something from the man. But they were accepted because in return the man derived one vital protection from marriage: the right to have children recognized as his. This too has become a fiction.

Margaret Mead once observed that reinforcing the parent-child bond has always been more necessary for fathers than for mothers. Some modern conservatives insist that marriage serves foremost to control male promiscuity. If so, it does so as a product of its larger function: to protect the father-child bond and with it the intact family. This is evident today, as the weakening of marriage produces fatherless, not usually motherless, homes. This point is overlooked by today’s traditionalists, who argue that marriage undergirds civilization, for it is the father’s presence that signifies both the intact family and, by the same measure, the civil institution. Thomas Hobbes attributed to married fatherhood a central role in the shift from the state of nature to civil society. In nature, Hobbes argued, “the dominion is in the mother”: “For in the condition of mere nature, where there are no matrimonial laws, it cannot be known who is the father, unless it be declared by the mother. And therefore the right of dominion over the child dependeth on her will and is consequently hers.”

Only in civil society—where “matrimonial laws” do operate—is custody over children shared with the father.

### **A new tale of Iraq and Niger yellowcake uranium skullduggery**

that is circulating within the intelligence community originates with a former CIA officer who claims that he was present at discussions relating to the forgery of the incriminating document. Over drinks one evening, two very senior retired CIA Directorate of Operations officers who served extensively in the Middle East and Africa decided that it would be entertaining to make George Tenet, then the Director of Central Intelligence and a man they despised, look bad. This was the post-9/11 world, and they decided that the best way to make Tenet appear ridiculous would be to create a document tying Iraq to a nuclear-weapons program. They were convinced that Tenet, in their eyes the ultimate political sycophant, would jump at the information uncritically to feather his own nest with the White House, which badly wanted to devise a *casus belli* against Iraq. They hoped that Tenet would be humiliated and would be forced to resign after it was subsequently determined that the document was a fake.

Forging the document was easy, using authentic copies of documents from the government of Niger as models. The document would only have to stand up to minimal scrutiny before it would be identified as a fake, or so it was thought. The problem was introducing the forgery into the intelligence system in a credible way. One of the forgers was a close friend of a neoconservative Washington think-tank scholar who in turn had a long-established relationship with the Italian military intelligence service, SISMI. The scholar, believed to have been on SISMI’s payroll for many years, had access to place the false information. He also thought that the document might well serve his personal agenda to bring about a war against Iraq. He presented the document to the Italians, describing it as having come from his own sources in Africa, and the Italians in turn presented it to the CIA. Mission accomplished.

Unfortunately, the forgery was not transparent enough and the information was viewed as credible in some U.S. government circles that badly wanted to believe that Saddam Hussein was pursuing a nuclear device. This led to the statement in President Bush’s State of the Union address accusing Saddam of seeking to buy the yellowcake uranium, which eventually became part of the justification for going to war against Iraq.



### **Law-enforcement officials are looking into an apparent leak of sensitive information**

that has led the American Israel Public Affairs Committee (AIPAC) to sever its connection to two employees before indictments are handed down in the Franklin affair. The FBI and a special prosecutor have been investigating the possible passage of Defense Department classified information to the government of Israel. The two employees, Steve Rosen and Keith Weissman, have denied any wrongdoing but are known to be at the heart of a long-term FBI inquiry into possible espionage. The firing is a dramatic turnabout for AIPAC, which had refused to punish the men and had insisted that they were innocent.

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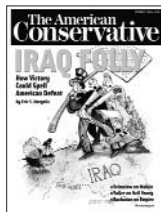
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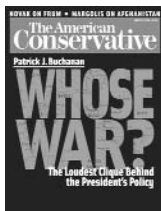
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Today, the different but interchangeable labels used for similar family-promotion schemes in the last two administrations implicitly recognize that fatherhood (Clinton) and marriage (Bush) are inseparable.

Traditionally, it has been marriage, not sperm, that determines the father. This was the purpose behind Lord Mansfield's law stipulating that a child born within wedlock is presumed to be that of the husband. It enabled a marriage to survive the wife's adultery. Here too, no-fault divorce has inverted the effect. By supporting what is now known as paternity fraud, Lord Mansfield's law has been transformed into an incentive to dissolve rather than preserve families. By filing for divorce, the adulterous wife, perhaps in collusion with the biological father, can now collect child support from the cuckolded husband for the children produced by the adultery.

Overwhelmingly, therefore, when children are involved, the spouse on whom government power will be brought to bear and who will experience the divorce regime's growing capacity to criminalize the involuntarily divorced is the father. Some believe this is logical, and it would be appropriate if, as popularly believed, the father is the one dissolving the family. In fact, the divorcing parent today is almost invariably the mother.

The failure of policymakers to confront this has further criminalized private life through a panoply of repressive measures against primarily (though not exclusively) fathers. "The advocates of ever-more-aggressive measures for collecting child support," writes Christensen, "have moved us a dangerous step closer to a police state." Devised as part of the welfare system to compel payments by unmarried fathers, penal measures pertaining to child support, domestic violence, and child abuse have now spread to the middle class through

divorce. Justified to protect and provide for women and children once the father is gone, they have mushroomed into an elaborate machinery that serves to remove fathers and subsidize fatherless homes.

Contrary to two decades of judicial and feminist propaganda, no scientific data indicate that fathers are, *en masse*, abandoning their families, beating their wives, and molesting their children. On the contrary, the evidence unambiguously establishes that a married household is the least likely setting for these problems.

The family crisis widely accepted on the Right as well as the Left is an optical illusion. What is advertised as an epidemic of dissolute fathers increasingly reveals itself as a power grab by a new class of political operatives who created no-fault divorce and who share an interest in displacing fathers and politicizing children. What makes it diabolically successful is a capacity to silence opposition and co-opt critics by claiming concern for children and distributing largesse ostensibly for their benefit. Thus camouflaged, the champions of other people's children make an end-run around more visible clashes over homosexuality, pornography, abortion, and schooling. But the bottom line remains: never before have governments created a bureaucratic apparatus whose primary purpose is to separate children from their parents.

The family crisis represents a microcosm of the larger crisis of modern politics, for it is driven by a class of political professionals whose livelihoods depend on politicizing everything, including now the most intimate corners of our lives. The government-occupied family is only the beginning of the brave new world we have created. ■

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