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## What Place for Marriage (E)quality in Marriage Promotion?

*Linda C. McClain*

I don't want to play Cupid. This isn't about telling anybody who should marry who. But when you have a couple who say, we're interested in getting married, or who are already married, it's about helping them develop the skills and knowledge necessary to form and sustain healthy marriages.

—Dr. Wade Horn, assistant secretary, Department of Health and Human Services (Henary 2002)

Men think that piece of paper says they own you. You are their personal slave. Cook their meals, clean their house, do their laundry. Who did it before I came along, you know? That's why they get married. A man gets married to have somebody take care of them 'cause their mommy can't do it any more. Most mothers don't want to be owned or slave for their husband. They want a partnership of equals. —Quoted by Kathryn Edin (2001)

### *Marriage Promotion and the Missing Dimension of Marriage (E)quality*

The place of marriage in a just and fair constitutional democracy reverberates as one of the most challenging questions posed in debates over family law and policy. What is government's interest in intimate affiliation and in families? Should the fate of the institution of marriage be government's central concern in regulating the family? On the one hand, some

voices urge that government should properly support and promote marriage, defined as the union of one man and one woman, as the proxy for the form of family best able to undergird our polity by allowing realization of the goods associated with family life and carrying out the important functions society assigns to families. On the other hand, critics of marriage's privileged place contend that it is an imperfect and inadequate proxy for these purposes: it fails to represent the full range of forms of intimate affiliation capable of fostering family members' capacities for self-government; of allowing the realization of such goods as interdependence, mutual support, and friendship; and of performing the vital function of nurturing children and other dependents (Solot and Miller, this volume). On this view, government should look beyond marriage—even if expanded to include same-sex marriage—to recognize a broader range of forms of families, such as the (single) parent-child bond, the bonds of extended and complex families, and the bonds of friendship.

As this anthology implicitly asks, Why marriage? Or, perhaps, Why *only* marriage? My answer to these questions is that marriage should continue to have a place in governmental regulation of families. As I elaborate in a longer work, there are two dimensions of family life that warrant governmental support and regulation: (1) the intergenerational dimension of families, that is, the role of families in carrying out the vital task of orderly social reproduction—nurturing children and preparing them to take their place as capable, responsible members of society (as well as attending to other dependency needs within the family); and (2) the dimension of intimate association between adults who form families, that is, the place of families in allowing the realization of such goods as love, friendship, sexual pleasure, commitment, interdependency, mutual responsibility, and the like (McClain 2005). Marriage, I contend, deserves governmental support because it is a social institution that may facilitate both of these dimensions of family life.

Thus, to the question, Should family law and policy move beyond marriage? my response is yes and no. I embrace moving beyond marriage in three relevant ways: (1) moving beyond “traditional” marriage to embrace more firmly sex equality, or equality *within* families, as a guiding norm for governmental efforts to support and encourage marriage; (2) moving beyond “traditional” marriage, defined as the union of one man and one woman, to recognize and support same-sex marriage as a step toward greater equality *among* families; and (3) as a further step toward equality *among* families, moving beyond an exclusive governmental focus upon

marriage toward recognition and support of a broader array of families that afford a place for carrying out the tasks assigned to and realizing the goods associated with families. Along with this “yes” is a “no”: society should not, as contributor Martha Fineman has proposed, move wholly beyond marriage to abolish it as a legal category, relegating all adult intimate relationships to the realm of private contract.

In the confines of this chapter, I will take up only the first of these three proposed moves beyond—but not wholly beyond—marriage: governmental efforts to support marriage should embrace and support equality within families, specifically, sex equality. Respect for sex equality does not require that marriage be abolished. Rather, such equality must feature in any governmental effort to support marriage. I will contend that, measured against this requirement, contemporary proposals to promote marriage and shore up a “marriage culture” made by the social movement known as the “marriage movement” and by politicians who seek to use marriage promotion as a central tool of welfare policy fall short. Although such proposals are also inattentive to the issue of equality generally within families (Young 1995), I defer that critique to another forum and in this chapter focus on the problem of inattention to sex equality within families.

Marriage promoters contend that shoring up the institution of marriage is vital to social health and that the best way for government, at all levels, to support families is to promote marriage and stem the tide of cohabitation, nonmarital childbearing, and divorce. Concern for declining levels of marital happiness and high levels of marital conflict leads to calls for government to help reduce the number of “unhealthy marriages” and to promote “healthy marriages.” Although the most immediate arena in which politicians propose to use law to promote “healthy marriages” is welfare reform, as concern is the most acute over low-income unmarried families, the rhetoric sweeps more broadly. Various state initiatives aim to equip their citizens with the skills and knowledge to have happy, long-lasting marriages. The social movement known as the “marriage movement” seeks reform in our culture itself, aiming to reverse a “divorce culture” and “nonmarriage culture” and to renew a “marriage culture.”

This chapter will examine the social health argument for marriage promotion set forth in key documents of the marriage movement, including the reasons offered for why marriage promotion is a legitimate governmental interest. Do the social health benefits argued to flow from marriage justify a governmental program of marriage promotion? Or, as some popular sentiment holds, is marriage really a private choice with which

government, particularly the federal government, has “no business” interfering? What special concerns arise from using welfare reform as a vehicle to promote marriage among low-income (disproportionately minority) members of society, who have lower rates of marriage and higher rates of nonmarital family forms? Will government’s agenda of promoting “healthy” marriage include a normative commitment to certain values? If so, will they include sex equality and economic interdependence as elements of healthy marriage (rather than women’s traditional economic vulnerability and dependence within marriage)?

The marriage movement and governmental actors seeking to promote “healthy marriage” have paid insufficient attention to the relationship between marriage *quality* and sex *equality*. Proposals to promote marriage and a “marriage culture” fail, for the most part, to reckon with whether a commitment to sex equality is in tension with these ends or, by contrast, is a vital component of pursuing them. These proposals invite two questions: To what extent does the marriage movement’s program of promoting healthy marriage rest on and seek to shore up fixed gender roles or gender stereotypes like those of an earlier regime of family law, condemned in our constitutional jurisprudence as inconsistent with contemporary norms of sex equality? And if this gender retrenchment is not a purpose of the movement, are the policies proposed likely to undermine gains in sex equality? I will conclude by suggesting how norms of sex equality should shape any governmental program of supporting marriage.

### *Marriage Promotion: From Social Movement to a “Central Pillar” of Welfare Policy*

On the premise that most Americans desire a happy, long-lasting marriage, but this goal eludes them, the marriage movement seeks to restore a “marriage culture.”<sup>1</sup> Various organizations affiliated with this movement have issued “calls” or “reports” to the nation, urging that reinvigorating marriage is our most urgent social challenge.<sup>2</sup> For example, the National Marriage Project releases annual reports titled “The State of Our Unions.”<sup>3</sup> Since the 1990s, a related social movement has sought to promote “responsible fatherhood” through, among other things, fortifying marriage and affirming the unique and irreplaceable role of fathers in the emotional and moral development of children (Blankenhorn 1995).<sup>4</sup> Other social movements, such as the Alternatives to Marriage Project,<sup>5</sup> and the

movement for recognition of same-sex marriage, argue for support of a broader range of family forms (Solot and Miller, this volume).

Promoting marriage animates not only social movements but also governmental actors. As a social movement, the marriage movement aims at transforming “culture,” and yet it also urges federal, state, and local governments to “make supporting and promoting marriage an explicit goal of domestic policy” (Marriage Movement 2000). Moreover, within the last decade, promoting “responsible fatherhood” has become not only a social movement but also a governmental imperative. Indeed, Wade Horn, former head of the National Fatherhood Initiative, became assistant director of the Administration for Children and Families (ACF) at the Department of Health and Human Services (DHHS). In his writings and public appearances, Horn has stated that government cannot be “neutral” about marriage, a social good, and that the nation needs to be convinced that supporting marriage is a legitimate function of government (Toner 2002). Testifying before the Senate in support of President Bush’s marriage promotion proposals, Horn appealed to research showing the greater benefits for children of healthy marriages and stated: “What we seek to do in our proposal [for welfare reauthorization] is increase the number of children who grow up in healthy marriages, and decrease the number of children who grow up in unhealthy marriages” (Horn 2002).

The most immediate vehicle for promoting a governmental “message” about marriage is welfare policy, as is evident in the unfolding debates over reauthorizing the Temporary Assistance for Needy Families (TANF) component of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). In that act, Congress found that “marriage is the foundation of a successful society” and included as a purpose of TANF encouraging the formation and maintenance of two-parent families (PRWORA 1996). When TANF came up for reauthorization, Congress held hearings on welfare and marriage, on the assumption that welfare law should do far more to promote marriage, and that government, at various levels, might successfully encourage people who would otherwise have children outside of marriage to marry and to remain married. In support of proposals to promote skills and knowledge needed for successful marriage, legislators cite data from the Fragile Families and Child Well Being Survey, which reports that 80 percent of unmarried parents are romantically involved at the time of their child’s birth, and that the majority say there is a good or almost certain chance that they will marry (although few in fact do go on to marry).<sup>6</sup>

The Bush administration's welfare plan, "Working toward Independence," includes "strengthening families" as a central pillar, which it defines in terms of "promoting healthy marriages" (Bush 2002). Praising PRWORA's devolution of authority and responsibility to the states to find ways to move persons from welfare to work, the plan identifies the federal government's role in marriage promotion as providing financial incentives to states to "find new and effective ways to encourage healthy marriages in appropriate circumstances." The plan also envisions that state governments will be "working together with private and faith-based organizations" to develop successful programs that will be "disseminated" to other states (Bush 2002, 2).

Some members of Congress have voiced caution about whether the federal government has any business to use welfare policy as a vehicle to promote marriage, "which is a personal and private choice" (Baucus 2002). Nonetheless, as of this writing it appears likely that a final reauthorization bill approved by Congress will be similar to the Bush plan and legislation approved by the House of Representatives in making the promotion of healthy marital families and responsible fatherhood the express purpose of TANF and in including funds for demonstration projects aimed at promoting those ends.<sup>7</sup>

State and local governments also seek to promote healthy marriage and responsible fatherhood and to use partnerships with nongovernmental actors (especially faith-based groups) to do so. For example, in Oklahoma, a Bible Belt state with a self-described "family-values culture"—as well as the second-highest divorce rate in the nation—Governor Frank Keating created the Oklahoma Marriage Initiative and allocated \$10 million of TANF funds to meet his pledge to reduce the divorce rate by one-third (Anderson 2002, 335, 336). Several governors have signed marriage proclamations, proclaiming the importance of marriage to the public (U.S. DHHS 2002). Florida passed the Florida Marriage Preparation and Preservation Act of 1998, becoming the first state to require teaching marriage skills as part of the high school curriculum.<sup>8</sup> The act also gives a discount on marriage licenses to couples who take a premarital education course, couples who do not have a three-day waiting period. And Florida and some other states have created premarital education materials to be distributed to all marrying couples (U.S. DHHS 2002; Ooms, Bouchet, and Park 2004). Other state efforts aim more directly at legal reform to "reinstitutionalize" marriage and foster marital permanence: Arkansas, Arizona, and Louisiana, for example, have "covenant marriage" statutes,

which permit couples to opt for a form of marriage in which divorce is more difficult to obtain; similar legislation is under consideration in other states (Ooms, Bouchet, and Park 2004).

All these governmental efforts to promote marriage draw on the social health arguments advanced by the marriage movement. As a video provided by Utah's Governor's Commission on Marriage puts it: "The duty of government is to protect and foster the common good. Strong marriages are key to improving both personal and social well-being."<sup>9</sup> There is a basic optimism that there is a set of skills, values, and knowledge needed to have a strong, healthy marriage and reduce conflict and divorce, and that these skills can be taught (Hendrick 2002; Horn 2002).

### *The Marriage Movement: How Marriage Promotes Social Health*

The social health argument for marriage holds that families play a vital role in social reproduction, that is, nurturing and raising children to become good citizens and lead good lives. As Wade Horn puts it, "Families are the primary institutions through which we protect and nurture our children, and upon which free societies depend for establishing social order and promoting individual liberty and fulfillment" (Horn and Bush 1997). The vital role of families in social reproduction is not a new insight or one that is unique to the marriage movement. Indeed, there is considerable common ground among feminist, liberal, and civic republican views about the important place of families in fostering the preconditions for self-government (McClain 2001a). However, like the civil society argument, the social health argument stresses that it is not families as such but the institution of marriage and the marital family that are the "seedbed from which healthy children and, ultimately, a healthy society spring" (Horn 2001). For example, Florida's legislature found: "Just as the family is the foundation of society, the marital relationship is the foundation of the family."<sup>10</sup> Marriage promoters argue that marriage is "not just a private relationship" but also a "social institution," indeed, a "social good and therefore a legitimate concern of the state" (Marriage Movement 2000, 6). Thus government has a legitimate interest in strengthening marriage and in favoring it over other forms of family.

The marriage movement offers several justifications for why society should restore a marriage culture and government should promote mar-

riage. I glean these from a variety of books and reports written by prominent figures in the marriage movement and sponsored by affiliated organizations, such as the Institute for American Values; the Center for the American Experiment; the University of Chicago's Religion, Culture, and Family Project; and the Coalition for Marriage, Family and Couples Education (Waite and Gallagher 2000; Marriage Movement 2000; Whitehead and Popenoe 2001).<sup>11</sup> Governmental pronouncements echo many of these claims:

1. "Married adults, women as well as men, are happier, healthier, and wealthier than their unmarried counterparts" (Horn 2001). Put in the currency of social capital: Marriage is "a unique generator of social and human capital" (Marriage Movement 2000, 10). In referring to benefits for "women as well as men," marriage promoters seek to refute the common claim that men benefit from marriage, but women do not, and to highlight newer social science literature indicating mutual benefit (Waite and Gallagher 2000).
2. "Marriage protects the well-being of children"; "Children do better, on average, when they are raised by their two own married parents" (Marriage Movement 2000, 8). Marriage promoters contend that abundant social science evidence supports this claim.<sup>12</sup> This argument might suggest that marriage in and of itself is the key to comparative benefit for children, but the claim is more refined: current rhetoric about promoting marriage claims that children fare better in "healthy" marriages than in "unhealthy marriages" and that the goal is "loving," "healthy," or "low conflict" marriages (Horn 2002). Therefore, if protecting the well-being of children should be the primary goal of family policy, government should favor and promote healthy marriage.
3. "Divorce and unwed parenting generate large taxpayer costs." This is a point about the externalities generated by particular family forms: "higher rates of crime, drug abuse, education failure, chronic illness, child abuse, domestic violence, and poverty among both adults and children." Such problems bring "higher taxpayer costs in diverse forms including: more welfare expenditure; increased remedial and special education expenses; higher day-care subsidies; and additional child-support collection costs." (Marriage Movement 2000, 9–10)
4. "Marriage is society's way of engaging the basic problem of fatherhood—how to hold the father to the stronger mother-child bond" (Popenoe 2001). Why is marriage necessary? "Being a father is universally

problematic for men in a way [motherhood] is not for women. Put simply, as marriage weakens, fathers stray” (Popenoe 2001).<sup>13</sup> Otherwise, “left culturally unregulated, men’s sexual behavior can be promiscuous, their paternity casual, their commitment to families weak” (Popenoe 2001). The gender-neutral version of this argument is that marriage offers “the only realistic promise of permanence”: married couples stay together more often and longer than cohabiting couples. (Marriage Movement 2000, 11)

One additional proposition serves as an overarching justification for government and society to renew a “marriage culture”: the idea that government should help people fulfill their deepest human desire, which otherwise might be thwarted or “shattered” (Marriage Movement 2000, 22). “Although Americans haven’t stopped seeking or valuing happy and long-lasting marriages as an important goal, they are increasingly likely to find that this goal eludes them” (Whitehead and Popenoe 1999, 3–4). Evidence of this gap between goals and experience includes several phenomena: the high divorce rate, the prevalence of cohabitation and nonmarital child rearing, the declining percentage of people who say they are in “very happy” first marriages, and increasing pessimism among young people, especially young women, about the chances for a happy and long-lasting marriage (Whitehead and Popenoe 1999).

### *Justifying Government’s Role: The Pursuit of Happiness or Child Well-Being?*

The marriage movement uses the language of personal happiness as a motivating reason for society and government to take steps to shore up marriage. But its call to renew a marriage culture also entails a changed understanding of marriage, one more compatible with the civic virtue ideal of a strengthened marriage culture, or “familial culture.” Indeed, marriage promoters suggest a paradox: in a “high-divorce society,” because Americans view marriage as a private contract for personal happiness, rather than as a permanent commitment, this happiness proves elusive because “we become less willing to invest ourselves fully—our time, resources, dreams, and ultimate commitments—in the institution of marriage” (Popenoe, Elshtain, and Blankenhorn 1996, 293, 300). Moreover, a related claim is that too many married couples divorce merely because

they are unhappily married. A better course, at least in low-conflict marriages in which there are children, is to stay together and work things out. Indeed, marriage promoters reassure readers that research shows that many unhappy couples who stay together, instead of divorcing, find themselves happy several years later (Waite and Gallagher 2000).

The marriage movement focuses both on teaching skills to increase marital happiness and reduce divorce and on “reinstitutionalizing” marriage in the sense of strengthening marriage’s place as the central public institution for ordering sexuality, reproduction, and child rearing. Carl Schneider (1992) speaks of family law’s “channeling function” in using marriage as a social institution to order these human activities; marriage molds men and women to limit individual freedom for the sake of achieving family bonds. Channeling techniques include social approval and reward for marriage, and social disfavor of competing institutions. Thus, the marriage movement favors reinstitutionalizing marriage through reversing the trend of extending legal protections and marriage-like benefits to nonmarital relationships, a trend argued to make marriage less important or attractive. Another important component of reinstitutionalizing marriage is to renew the idea of the *permanence* of marriage. The marriage movement, through such measures as a covenant marriage, seeks to restore a thicker social meaning of marriage, one that reintroduces the idea of marriage as an important, indeed vital, *social institution*, with norms of commitment and self-sacrifice, not merely a personal, private contract, terminable when it no longer makes one happy (Gallagher 1996; Spaht 2002).

An important goal of the marriage movement is not so much helping people achieve their deepest desires as it is to reconstruct those desires, to change the way they think about finding happiness through and within marriage. That is, the marriage movement supports the pursuit of happiness, rightly understood. At stake is the social meaning of marriage, as well as the reconstruction of social norms and social roles within marriage. Thus, education in the “skills and knowledge” important to “healthy marriage” might include not simply conflict resolution tips but also education in social norms, such as that marriage means a commitment to work things out, rather than divorce, and a willingness to invest in one’s family even at personal cost. As such, this goal of the marriage movement raises intriguing issues about government’s proper role in fostering the pursuit of happiness and in shaping social institutions and steering the behavior of persons within such institutions.

An animating premise of the marriage movement is that the gap between most persons' desire for a happy, long-lasting marriage and their ability to have such a marriage provides a good reason for government to promote marriage. But beside the appeal to the pursuit of happiness is the claim that government should promote marriage because it is a *social good* that fosters human capital and leads to increased health, wealth, and community well-being: "Healthy marriages benefit the whole community. Conversely, when marriages fail, huge personal and public costs are generated" (Marriage Movement 2000, 16). Thus, this claim grounds government's interest both in promoting goods and in avoiding harms and views government's proper role as helping people pursue human goods—a view with a long history in political philosophy.<sup>14</sup> Contemporary treatments of marriage also appeal to the human goods and the ends it fosters, such as intimate association, love, relational responsibility, commitment, and the nurture of children (Regan 1993).<sup>15</sup> Some arguments for why marriage should extend to same-sex couples emphasize allowing them to partake in the goods marriage provides (Ball 1997; Wriggins 2000).

One common public reaction to discussion about government seeking to promote marriage is to claim that marriage and family life are wholly "private" matters and none of government's business. This view is wrong, both as a matter of practice and as a matter of principle. In our constitutional order and in the law of domestic relations, there are two strands in tension with each other: first, the tradition that government has a proper interest in families, and, second, the tradition of governmental noninterference, that is, that families enjoy a protected realm of privacy that government should not enter. These strands reflect the dual nature of families as having both a private and a public dimension. Because of the important social functions associated with families, families cannot be left wholly free of regulation, and thus marriage cannot be viewed purely as a private contract (Bix 2000). Thus, in our constitutional order parents and government are dually responsible for children: parents enjoy a fundamental liberty—both a right and a responsibility—to direct their children's rearing and education, yet government also has the authority and responsibility to foster the healthy development of children (McClain 2001b). Addressing feminist critiques that privacy rights create spheres of dangerous unaccountability that leave women and children subject to private violence, I have argued that it is a misconception of the principle of governmental noninterference with personal decision making about intimacy and family to conclude that government may not regulate intimate and family

relations to protect individuals against abuse (McClain 1998, 1999). This reflects the basic tension between viewing families as a unit and as composed of individuals who may have rights against each other and rights to be protected by the state.

Governmental regulation of families, in my view, is a component of government's responsibility to undertake a formative process (or formative project) to foster persons' capacities for democratic and personal self-government.<sup>16</sup> Such a formative process requires both governmental action (e.g., supporting families through providing resources and benefits) and governmental restraint (e.g., noninterference with the exercise of rights of intimate association and parental rights). The capacity to form and sustain intimate relationships is an important component of self-government. Similarly, the human capabilities approach posits a responsibility of government to help persons achieve (as Amartya Sen puts it) certain "functionings" that they have "reason to value" (Sen 1992, 4–5). Martha Nussbaum, for example, includes "affiliation," that is, "being able to live for and in relation to others," as a central human "functional capability" that should be a goal of public policy (Nussbaum 1999, 41).

In principle, I find the idea of government making available education to foster relationship skills to be compatible with the idea of fostering the capacities for personal self-government. No doubt, this type of relationship education for children and adolescents is more readily defensible than for adults, given the state's traditional educative and *parens patriae* powers regarding children and adolescents. Indeed, proponents of relationship training speak of it as a needed "fourth R," joining "Reading, wRiting, and aRithmetic" as basics of the curriculum, training in the "emotional literacy" needed to succeed in life.<sup>17</sup>

What if relationship education for adults may help them achieve happier, less conflictual, more stable intimate relationships, and (as some proponents argue) may even have more general application to such domains as the workplace and civic life?<sup>18</sup> There is good evidence, for example, that too much conflict and arguing are a reason both men and women frequently give for their decisions to divorce; disproportionately for low-income couples and for women across the economic spectrum, domestic violence is also a frequent reason. Another reason is a lack of premarital preparation (Johnson 2001, 15–16, 28–30, 33–34). Marital education proponents claim that training in relationships skills, such as how to handle inevitable stress and conflict, can reduce levels of unhappiness as well as divorce. If it is true that many relationship problems stem from a lack of

knowledge about how to handle conflict, then government facilitating education in these skills seems acceptable. Similarly, stress and conflict can result in domestic violence, which is a major barrier to its target's well-being and self-government (particularly for women, who are disproportionately its victims). If government seeks to foster training in how to handle stress and conflict to reduce domestic violence, this goal certainly seems legitimate.

Why not encourage more thoughtful, reflective decisions to marry and help people toward more successful relationships? Nussbaum speaks of government's interest in helping foster persons' capabilities so they can "choose well" (Nussbaum 1990, 203), just as Ronald Dworkin's model of ethical individualism supports government fostering persons' capacity for reflective decision making (Dworkin 1996, 26). Dworkin also defends the idea of government encouraging responsible decision making when intrinsic values (such as the sanctity of life) are at stake (Dworkin 1993). Are such intrinsic values at stake in forming families and pursuing marriage? Or, short of that, are there public values at stake that would justify government fostering persons' capacity for reflective, responsible decision making?

If relationship skills are generally valuable to persons' lives going well, and even to good citizenship, why make marriage the occasion for such education? Also, while in principle the idea of premarital education is compatible with the sort of formative project I endorse, there may be issues raised by the content of the curriculum, both when government writes it, and when it leaves the script to nongovernmental actors (Yudof 1983; Greene 2000). Facilitating the relationship decisions of persons considering marriage differs from trying to persuade persons who may not be seeking to marry to do so. Facilitative premarital education aimed at helping persons make a thoughtful decision may result in some couples deciding not to marry, particularly when this process reveals risks of a conflict-filled or dangerous relationship (Stanley 2001). By contrast, creating a "pro-marriage" welfare office, on the premise that marriage leads to "independence," likely sends a message that government takes the view that those who apply for public assistance should work *and* marry. This message could feel coercive and also be harmful, given the high percentage of welfare recipients who have experienced physical violence and nonviolent abuse within marriage or intimate relationships, especially at the point that they try to move from welfare to work (Burt, Zweig, and Schlichter 2000).

Is marriage's supposed role in fostering adult happiness sufficient to render educating citizens about marriage an urgent imperative, or, as the Florida legislature puts it, "a compelling interest"?<sup>19</sup> Neither the marriage movement nor state marriage initiatives rest governmental authority merely on this basis. Instead, it is society's interest in the successful rearing of children—and the negative consequences of failure—that makes marriage a public institution: "The need of every society for successful child-rearing is why marriage has been a public institution and a focus of religious concern. . . . Without children, it is much more difficult to envision the institution of marriage as something that requires public attention and regulation" (Popenoe 2002, 200).<sup>20</sup>

Thus, the structure of the social health argument for marriage seems to be that government has a legitimate interest in helping people achieve an important personal goal—and even steering others toward that goal if they do not seek it—when achieving it benefits society and failing to achieve it has serious personal and social costs.<sup>21</sup> Not surprisingly, some marriage proponents make an analogy between the marriage crisis and public health crises. They use the language of epidemics to refer to the rates of nonmarital births and divorce and to the negative health consequences of the marriage crisis.

Ultimately, the public health argument, with its claims that intact marriage between two biological parents is the best proxy for child well-being, is an empirical one, and I disclaim any attempt to evaluate the social science evidence on which it rests. But because it relates to the question of equality among families—both marital and nonmarital—I should mention that there is not the unanimity or consensus among social scientists that the marriage movement suggests. Rather, a phenomenon may be at work that is reminiscent of the phenomenon sociologist Judith Stacey described in the "neo-family values campaign" of the 1990s: a group of social scientists cite repeatedly each other's work in what becomes a feedback loop, so that a certain set of claims is presented as "uncontested" and the consensus view, even if there is credible social science to the contrary (Stacey 1996, 83–104).

That the social science underlying the case for marriage—and against divorce—is not uncontested, and that the stakes are high for establishing a consensus position, became clear from the media attention given to eminent psychologist Mavis Hetherington's book *For Better or for Worse: Divorce Reconsidered*. Hetherington argues, based on a thirty-year study of families, that "much current writing on divorce—both popular and

academic—has exaggerated its negative effects and ignored its sometimes considerable positive effects” (Hetherington and Kelly 2002, 5). Voices in the marriage movement were quick to caution of a “backlash” against taking divorce seriously and to take issue with some of the book’s claims, even as other social scientists praised Hetherington’s rigorous research (Peterson 2002, 1A; Duenwald 2002, F6). Thus, while social scientists across the spectrum agree with the proposition that “on average” children fare better in an intact, two-parent family, this “on average” may be misleading as a prediction about particular children in a range of circumstances and may encourage a false determinism (Cherlin 1999). Over-emphasis on family form as such misses the importance of variables like the emotional tenor of families and the quality of the parent-child relationship. Rather than using (heterosexual) marriage as the sole proxy for child well-being, a better approach is to learn what sorts of family conditions contribute to child well-being and consider how government and civil society may help to foster them.

### *Should Government Promote Marriage to Civilize Men?*

Marriage promoters contend that one justification for promoting is that society needs marriage to socialize, or civilize, men. A common assumption in discourse in the marriage movement is that the mother-child bond is less fragile and less dependent upon marriage than is the father-child bond. For example, *The Marriage Movement: A Statement of Principles* observes that “as a matter of mere biology, men can sire a virtually unlimited number of children, but a man can provide daily care, protection, love, and financial support to only a few children.” Marriage “closes this gap between a man’s sexual and fathering capacities” (Marriage Movement 2000, 7). James Q. Wilson’s book *The Marriage Problem* draws on evolutionary biology to argue that “[m]arriage is a cultural contrivance designed to prevent weak paternal roles” (Wilson 2002, 30).

The gender role assumptions about the danger posed by unsocialized men and the domesticating role of women are striking. They also invite the question: If men need marriage more than women do, what cost will a marriage promotion program have in terms of women’s equality and self-government? Wilson and others speak of a “male problematic” that promoting marriage is thought to address: father absence, or men’s inclination (rooted, in part, in evolutionary biology) toward procreating without

taking responsibility for children. By contrast, the “female problematic” is women’s inclination toward procreating and rearing children, even in the absence of adequate resources and commitment by fathers and at the expense of self (Browning et al. 2000, 68–69). This, too, is a problem that promoting marriage is thought to address (Wilson 2002, 62–63). The disaggregation of marriage, reproduction, and parenting, the marriage movement contends, threatens to undo the socially useful role of fatherhood and unleash men in more destructive directions (Popenoe, Elshstain, and Blankenhorn 1996, 303). Of course, this argument about socializing men ultimately relates to the well-being of children, since the fear is that without marriage, society lacks an effective glue to bind fathers to children.

This domestication argument, as a justification for governmental promotion of marriage, has several flaws. First, feminist analysis urges skepticism about appeals to “nature” or to sex differences as a justification for policy, given a long history of such appeals to justify sex-based restrictions on women’s citizenship and of gender hierarchy in families and civil society. Second, this portrait of men insults their capacity to be morally responsible agents and reinforces women’s familiar role of being morally responsible for themselves and for men in the areas of sexuality and family (Cornell 1998, 131–40).<sup>22</sup> Third, evidence of some men’s practices of responsible fathering outside of marriage cast doubt on the claim that only marriage can secure such commitment. Fourth, as I shall discuss later, if men need not only marriage but such hallmarks of masculinity as being the head of household, then marriage promotion directly conflicts with women’s equality.

There is a long history in the United States of government fostering sex inequality within marriage, through the sex-linked duties and rights associated with the status of being a husband or wife. In addition, underlying state domestic relations law, as well as federal marriage policy, was a public philosophy that viewed proper gender ordering and performance of these sex-linked duties within the “republican family” as contributing to public order and good citizenship. In particular, the idea of domesticating men through establishing them as responsible heads of households was an animating premise of much marriage policy (Cott 2000).

Today, the rhetoric appeals more to social health, to evolutionary biology, and to a “male problematic,” but the common thread is domesticating, or taming, men. Indeed, even those voices in the marriage movement most supportive of sex equality, such as theologian Don Browning, who calls for a “critical” marriage culture, identifies this “male problematic”

(acknowledged in theology as well as evolutionary biology). He views marriage as the best institutional framework for anchoring male commitment (Browning et al. 2000).

Would a contemporary public philosophy about marriage rest on traditional gender role assumptions? I agree with Browning that *if* government is to play a role in creating a “critical marriage culture,” then sex equality should inform such a public philosophy. But can the supposed “male problematic” be solved in a way compatible with sex equality? And is solving the “female problematic” done only through promoting marriage? For example, one logical inference from the claim that the mother-child bond is strong, even apart from marriage, and less precarious than the connection between women and men, might be that we should premise family policy (as Fineman argues) on supporting that bond (Fineman, this volume, 1995).

### *Masculinity and Marriage: Do Men Need “Traditional” Marriage?*

The social health argument suggests that men need marriage to be productive, responsible fathers and citizens, in a way that women do not need it to be responsible mothers and citizens. It also acknowledges that men benefit more than women from marriage. Sociologist Steven Nock concludes, in his book *Marriage and Men’s Lives*: “Men reap greater gains than women for virtually every outcome affected by marriage.” Men seem to benefit “by simply *being married*.” By contrast, he finds: “When women benefit from marriage, it is because they are in a satisfying relationship” (Nock 1998, 3). While some authors suggest that it is the solicitude of wives for husbands’ well-being that makes the difference (Wilson 2002; Waite and Gallagher 2000), Nock stresses a different factor: marriage’s role in conferring masculinity. In societies around the world, Nock argues, marriage plays a unique role in helping men achieve and establish masculinity, a precarious task in all societies (Nock 1998, 43–52).

If men need marriage to establish masculinity, do they need traditional or “normative” marriage as Nock defines it, in which “[t]he husband is the head, and principal earner, in a marriage” (Nock 1998, 6) to do so?<sup>23</sup> If being the head of household and principal earner is necessary for men to develop and sustain masculinity, should government promote such marriages and such masculinity? What relationship does this “normative

marriage” bear to “healthy marriage”? As Philip Blumstein and Pepper Schwartz’s well-known study, *American Couples*, found, decision-making authority usually correlates with income earning, and thus the term “head of household” also connotes leadership and authority within the household (Blumstein and Schwartz 1983). Indeed, in more recent work, Schwartz concludes: “The linchpin of marital inequality is the provider role—or, to be precise, the provider complex, a combination of roles that give the man the responsibility for financially supporting the family’s life-style and the woman all the auxiliary duties that allow the man to devote himself to his work.” Schwartz reports that the provider role brings with it an expectation of appreciation, which is akin to obedience: “The more the provider provides or the harder he works to do so, the more he feels entitled to emotional returns and provision of services” (Schwartz 1994, 111–13). Thus, as a legal matter, marriage no longer entails a status relationship in which husbands have a duty to provide and may expect from wives services and obedience, but the “provider complex” carries with it this type of expectation.

Certainly some contemporary research about men and marriage bears out the thesis that men’s role in “normative marriage” continues to be viewed as that of “provider and protector,” and that men’s failure to live up to that role plays a part in men’s flight from marriage and fathers’ absence from their children (Anderson, Browning, and Boyer 2002, 269–70). In particular, some scholars identify this dynamic among inner-city, low-income African American men (Wilson 1996).<sup>24</sup> Elijah Anderson’s ethnographic studies of inner-city African American men’s values suggest the salience of the inability to fulfill the provider role—an ideal of manhood—in explaining why young men do not marry and why they separate fathering children from marrying. Anderson’s book *Code of the Street* gives dramatic testimony to an expectation that accepting the responsibility for the breadwinner role—being a “decent daddy”—brings with it a normative entitlement to another traditional masculine role, “head of household,” that is, the perk of being in control within the family (Anderson 1999). The report *A Statement from the Morehouse Conference on African American Fathers: Turning the Corner on Father Absence in Black America* contends that slavery and its legacy have robbed African American men of a chance to fill the role of provider and breadwinner and describes men’s contemporary debilitating bitterness, anger, and pain over their continuing inability to be providers and their living at the margins of family life and society (Morehouse Research Institute and Institute for American Values 1999).<sup>25</sup>

By contrast, research on low-income men's and women's views of responsible fatherhood indicates that the provider role is not the defining trait of what makes a "good father": "Both married and unmarried parents rank emotional involvement and guidance above economic support" (Waller 2002, 67). This research suggests that inability to be a patriarch in the home does not lead to abdication of paternal responsibility and that it would be constructive to support models of fatherhood premised more centrally on nurture (Dowd 2000).

While shoring up men to be providers features prominently in the general discourse of responsible fatherhood, when the subject is black fathers (who are disproportionately poor), the task is seen as urgent. For example, Congress aims, through promoting "responsible fatherhood" and marriage among low-income men, to help such men become better providers for their families, a traditional hallmark of masculinity and fatherhood. And yet, left unexamined is whether it is possible to do this without (consciously or unwittingly) shoring up male dominance and control within the household. An unanswered question is the connection between traditional marriage—and the male provider/head of household role—and healthy marriage. What if traditional marriage directly conflicts with many women's aspirations for equality and economic independence within marriage? Is inequality within marriage a reason for the "decline" of marriage? Is equality within marriage antithetical to promoting a marriage culture?

### *Marriage (E)quality, Women's Independence, and the Marriage Crisis*

The marriage movement, generally, recognizes that women's expectations of sex equality (or gender equity) and their diminished reliance upon marriage for economic survival have contributed to the weakening of a marriage culture. For example, in the documentary *Marriage: Just a Piece of Paper?* the narrator, Cokie Roberts, reports that women's greater independence creates "tremendous confusion" about men's roles. She poses the question: "Can men and women be reconciled to each other? Is marriage part of the work of reconciliation?"<sup>26</sup> Concerns for equality and economic independence may also be one explanation for why women disaggregate motherhood and marriage. Thus, Kathryn Edin (2000) found that a reason low-income mothers separated childbearing from marriage was

that, while they viewed their early twenties as the best time to have children, they did not wish to marry until later in their twenties, when they had established enough economic independence *through market work* to ensure bargaining power within marriage and to avoid economic dependency. Rather than viewing marriage as a means to achieve economic independence (as Bush's welfare plan does), they viewed some degree of economic independence as a necessary precondition for a successful marriage, that is, one in which they had sufficient power to avoid subservience and economic dependency. This strategic behavior among low-income mothers has a parallel in the poll data reported by the National Marriage Project: in both cases, young women associate marriage with economic vulnerability and gender inequality, and they try to take measures, either delaying or avoiding marriage, to secure equality and independence within marriage (Whitehead and Popenoe 2002).

Thus, women's expectations of gender equality and marriage quality, and their experience of gender inequality in marriage, appear to be significant factors leading to disenchantment with marriage and ultimately to divorce. These factors seem to hold true across class lines and across race. Surveys often point out the fact that most married people accept the premise of equality within marriage, for example, with respect to domestic labor, but that the actual practice falls short. When wives view this as unfair—but husbands do not—this can lead to marital instability (Nock 2001; Nock and Brinig 2002).<sup>27</sup> For example, in the growing number of marriages in which spouses are equally dependent upon one another's earnings, such economic interdependence without a fairer division of labor may lead to more marital instability *unless* husbands change by doing more housework and recognizing their wives' greater efforts (Nock 2001).

It should not be denied, as Schwartz recognizes, that many women seem content to bargain for what she calls the provider complex, giving men the primary responsibility for breadwinning and giving themselves a supporting role. And yet even in these more traditional relationships, evolving notions of equality may lead to wives' resentments because of contradictory expectations of husbands: even as such wives expect their husbands to be good providers—which requires men to invest in employment—their absorption of cultural ideals of equality leads wives to expect men to contribute more to sustaining family life (Schwartz 1994, 125).

There is a practical dilemma that the marriage movement must confront: if women decreasingly marry to secure economic independence through affiliation with a husband's income, what will induce women to

marry and stay married? If women's ability to achieve economic independence without marriage leads some women not to marry, what public policies to promote marriage—short of rendering women less economically independent—could respond to this change in women's behavior? For example, the tougher work requirements in the 1996 welfare reform law seem to be lowering low-income women's rates of marriage, and researchers suggest that one reason may be women's increased economic independence (Bernstein 2002, A1).

In an earlier, coauthored article, Wade Horn identified a sharp tension between women's economic independence and marriage:

The problem is that strategies for promoting fatherhood and marriage are, to a very large extent, in conflict with those that seek to help single mothers achieve self-sufficiency through work. Indeed, a welfare system that helps single mothers become employed, but ignores the need to promote fatherhood and marriage, may serve only to enable unmarried women to rear children without the presence of the father. (Horn and Bush 1997)<sup>28</sup>

At the time of his appointment to the Department of Health and Human Services, Horn distanced himself from the position (taken in that article) that government should address this problem by favoring married low-income couples over single mothers for means-tested benefits. He went on to suggest that the tension may dissolve if government promotes both women's work *and* marriage. Critics of current welfare proposals have offered many practical reasons that marriage promotion is not sound antipoverty policy and will not foster poor women's economic security (Coontz and Folbre 2002). But there is also a normative conflict: as some feminist scholars argue, if marriage-promoting welfare policies “instantiate[] marriage as the *sine qua non* of worthy citizenship,” they directly inhibit some women's construction of motherhood as “independent” from marriage (Mink 2002). This sort of independence conflicts with the marriage promotion goals of welfare reformers and of the marriage movement.

### *Will Sex Equality Be in the Recipe for Promoting “Healthy Marriages”?*

The marriage movement appears to recognize that sex equality is a feature of the contemporary landscape, as the coinage “equal regard marriage”

indicates. Yet prescriptions that take sex equality seriously are in short supply. Illustrative of ambivalence about sex equality, *The Marriage Movement: A Statement of Principles* reassures that “supporting marriage . . . does not require turning back the clock on desirable change, promoting male tyranny, or tolerating domestic violence” (Marriage Movement 2000, 3). And it seeks to help “more men and women achieve a caring, collaborative, and committed bond, rooted in *equal regard* between spouses” (3). But the rest of the statement offers no guidance as to the relationship between “equal regard” and sex equality, and it provides no concrete proposals for how to understand or constitute “healthy marriages” in light of contemporary expectations of sex equality and fairness. Its guiding principles for a plan of action make no mention of addressing gender inequity and make no admonitions to married couples to quest for more egalitarian marriage as a means of strengthening marriage.

In the one passage directly addressing household division of labor, the statement urges:

Do not discourage marital interdependence by penalizing unpaid work in homes and communities. Couples should be free to divide up labor however they choose without pressure from policies that discriminate against at-home parenting and other activities that serve civil society. (Marriage Movement 2002, 18)

This gender-neutral appeal says nothing about who should perform the unpaid labor. Feminists might readily suspect that, without any cultural transformation, this division of labor is a coded affirmation of women’s role as unpaid caregivers.

Popenoe is more explicit in resolving the gender crisis, or “gender confusion,” by advocating a model of modified traditional gender roles, whereby although both men and women invest in education and career, once children are born, women are encouraged to leave work for the first few years of a child’s life and to work part-time until the teenage years. Popenoe roots this proposal in sex differences; indeed, critiquing an ideal of androgyny, he reports a concern that men may avoid marrying and having children “if they are going to be asked to give up their independence and over-engage in ‘unnatural’ nurturing and caretaking roles” (Popenoe, Elshtain, and Blankenhorn 1996, 254–61).

This appeal to gender specialization brings to mind economic models of marriage and the idea that men and women bring different capacities

and skills to marriage and differentially invest in it. Some marriage promoters argue that role specialization in domestic versus market activities benefits children, parents, and society. But the person who makes this investment in domestic activities, sacrificing other forms of investment, may be vulnerable at divorce. Hence, they argue, the key is to reform divorce laws to reward such investment and to shift power to those who are committed to permanence (Parkman 2002, 74–77; Gallagher 1996, 233).

That “equal regard” marriage may also be consistent with belief in gender-differentiated roles is clear from frequent statements by persons in the marriage movement—such as Wade Horn himself—who embrace “equal regard” but reject, and even mock as “androgyny,” a notion that mothers and fathers should share equally in all child-rearing activities (Pear 2001; Blankenhorn 1995, 117–23).<sup>29</sup> And yet some in the marriage movement, notably Browning, interpret “equal regard” as requiring “equal access” by mothers and fathers to “the responsibilities and privileges of both the public and domestic realms” (Browning et al. 2000, 328). Although Browning, like Popenoe, draws on evolutionary biology for identifying the “male problematic,” his solution does not appeal to “natural” differences to justify different roles. While Browning and his associates, like others in the marriage movement, advocate achieving work-family balance through a sixty-hour workweek (in a two-parent family), they make clear that equality should be a guiding principle (Browning et al. 2000, 327–28).

Since much of the focus in policy discourse about marriage promotion is on the low rates of marriage among African Americans, the Morehouse statement’s approach to the “crisis” in gender relations between African American women and men warrants attention. It recognizes the importance of marital *quality*, calls for “gender and family healing,” and embraces “equal regard between husband and wife” (Morehouse Research Institute and Institute for American Values 1999). The statement, however, gives no guidance on how *equality* is to feature in a program of gender healing.

Studying gender conflict between black women and men, Donna Franklin identifies genuine equality and mutuality between men and women as a goal not easily achieved in general, but made even more difficult in America by the experience of being black (Franklin 2000). Measured against cultural norms of femininity and female deference, African American women—who, historically, have worked both for the survival of African American families and communities and for wages—appear too

“independent” and matriarchal. Parallel to male bitterness and anger over inability to fill the cultural ideal of the provider role is female anger and distrust toward men. Franklin argues that “the issue of male dominance remains one of the primary sources of tension in black marriages, especially when the wife is the principal wage earner” (Franklin 2000, 210).<sup>30</sup> Wives typically are wage earners and also shoulder the burden of the “second shift” of home and family work. Franklin suggests that this strain in black marriages may explain why black women and men report less marital happiness than other groups.

A governmental program of teaching skills and knowledge will likely fail to address these problems if it does not include some attention to the issues of gender conflict, to the link between marital quality and equality, and to supporting models of marriage not premised on male provider/female caregiver. Similarly inadequate will be programs focusing on making men more “marriageable,” another goal of marriage promoters. On the one hand, public policy aimed at fostering economic empowerment of low-income men *and women* on the premise that it might facilitate their marrying is not objectionable, since research finds that one significant reason that people do not marry is a lack of economic resources, either their own or that of their potential partner (Waller 2002). On the other hand, economic empowerment aimed at making men more “marriageable” will not address the other reasons identified by Edin for mothers not marrying, such as women’s lack of trust in potential marriage partners (for instance, due to infidelity), domestic violence, and the desire for sex equality within marriage. She concludes that, although enhancing labor market opportunities for low-skilled men would address the affordability and respectability concerns of these mothers, “other factors, such as the stalled sex-role revolution at home (control), the pervasive mistrust of men, and the high probability of domestic abuse, probably mean that marriage rates are unlikely to increase dramatically” (Edin 2000, 30).

### *Why Government Should Foster Marriage (E)quality*

If government is to promote “healthy marriages,” will it take any position on whether equality is an ingredient in the recipe for such marriages? Given the link between marriage quality and equality, a model of marriage as equal partnership would seem to be a promising way to avoid the problems of dominance and hierarchy that have impaired women’s equal

citizenship and have contributed to the marriage “crisis.” Not only is this a just corrective to a long history of governmental promotion of sex inequality within marriage, but it also may be a practical approach to some of the tensions facing contemporary families in juggling domestic, market, and other responsibilities.

There is considerable evidence that a new, more egalitarian model of intimate relationships may be emerging both as a practical and as a normative matter. The legal structure of marriage has evolved to embrace norms of gender equality. And some family law scholars argue that, even though role differentiation continues in practice, there is an emerging social norm of equality, or equal partnership (Carbone 2001; Scott 2000). Francine Deutsch’s *Halving It All: How Equally Shared Parenting Works* (1999) finds that those husbands and wives across the economic spectrum who adopt a model of equal parenting view it as the fair thing to do, as well as the most practical arrangement. Feminist ideology is neither a necessary nor a sufficient requirement for reaching an arrangement of equality. Thus, couples may adopt an equal parenting arrangement out of a sense of fairness, or to avoid repeating the patterns of their parents’ marriage or their own prior marriage(s). Moreover, a powerful motivator leading men to agree to an equal partnership is love for, and a desire to preserve the relationship with, a female partner who insists on equality. Pepper Schwartz found similar motivations in her study *Love between Equals*: “People seek an egalitarian relationship because they want fair treatment, respect, and the right to have equal voice in creating and maintaining a fulfilling marriage” (Schwartz 1994, 125–26).

One recent survey of American attitudes toward marriage, conducted by Browning and his associates, found that 55 percent of persons surveyed thought that a model of marital love as a matter of “equal regard and mutuality between husband and wife” best correlated with a successful marriage; “only 38 percent hold that love as self-sacrifice is the key.” But the survey also found some striking gender differences: women chose the equal regard and mutuality model more often than men (61 percent to 48 percent); men (44 percent) chose the self-sacrifice model more often than women (33 percent). Moreover, the survey notes that the gender differences in the black community were “stunning”: “76 percent of women in contrast to 33 percent of men selected mutuality, whereas only 14 percent of women in contrast to 48 percent of men thought love as self-sacrifice correlates with good marriages” (Browning 2001, 49–50). Addressing these

gender and race-gender differences, the surveyors were not sure *whose* self-sacrifice the male respondents had in mind in embracing sacrifice.

From these data, Browning concludes that for Americans “mutuality is in; self-sacrifice is going out,” and that mutuality is more important to women, “possibly as a consequence of both feminism and the entry of women into the workplace.” But, he further cautions, it is not clear whether Americans “have the skills to live a love ethic of equal regard” or have the “supporting social conditions to live this ethic.” Indeed, he posits that the high rates of divorce, nonmarital birth, and cohabitation suggest that the skills and social conditions are not in place. Significantly, he further concludes that women and mothers want “equal regard marriages more than men,” and they may not be getting it, which may be “one explanation of why more women than men are initiating divorce” (Browning 2001, 50–51).

This gender difference is intriguing, given the historic and cultural equation of women’s care (especially maternal care) with self-sacrifice. Indeed, even as her groundbreaking book, *In a Different Voice* (1982), urged attention to the missing dimension of care in models of moral reasoning, moral psychologist Carol Gilligan cautioned that society must learn to resist the equation of female identity and caring with self-sacrifice.<sup>31</sup> Perhaps women themselves are resisting that model in the context of marriage. This again underscores the importance of focusing on the link between marriage quality and equality.

However, the marriage movement identifies the decreasing willingness to sacrifice (e.g., to invest in family life at personal cost or to stay together despite personal unhappiness) as evidence of the decline of a marriage culture and a cause for more divorce (Marriage Movement 2000, 18–19; Whitehead and Popenoe 2001). Another tenet of the marriage movement is that many divorces occur in “low-conflict” marriages, and that children would fare better if parents in such marriages would stay together. In a renewed marriage culture, one assumes, couples would stay together despite unhappiness, and more people would affirm (as only a small minority do today) that it would be better for children if unhappily married parents stayed together, except in cases of high conflict and abuse. These discussions do not address whether discontent with gender inequity is just another example of low-level conflict and unhappiness to be borne for the sake of the children, or whether a renewed married culture would aspire to less inequity.

Thus, if government's goal is to promote healthy marriages, and if it is interested in disseminating effective ways to do so, then it would seem that promoting equality within marriage, or equal regard, is likely to be effective and "get results." But if this is so, then perhaps the rhetoric should be not simply of restoring a marriage culture, but of promoting a transformed and reconstructed marriage culture. Indeed, Schwartz argues that peer marriage, a more egalitarian model than traditional marriage, is a vanguard for a new model of marriage and could be a promising way to improve marital stability, since it rests on deep friendship and on male engagement with children, and avoids the sorts of resentments that may arise from the provider complex (Schwartz 1994, 1998, 48). Support for this "do what works," or functional, argument for the link between marriage quality and equality is found in Hetherington's study of the relative stability of various types of marriages: a type she describes as "the cohesive/individuated marriage," expressive of the value of "gender equity" and the cultural ideal of the baby boomer generation, had the second lowest divorce rate in her study (Hetherington and Kelly 2002, 30–31).

Hetherington's study also found that the lowest divorce rates were found in traditional marriages, with the male breadwinner/female homemaker roles. This kind of marriage, she observes, "still works very well if a couple shares a traditional interpretation of gender roles" (31). Moreover, research in states with covenant marriage statutes finds that couples who are most attracted to this model of marriage, which is supposed to signify a deeper commitment to marriage permanence, are those who have more traditional attitudes about gender roles (Nock and Brinig 2004). But Hetherington also finds that "the Achilles heel of traditional marriage is change," and when one or the other partner begins to behave untraditionally, "trouble follows" (Hetherington and Kelly 2002, 31–32). Thus, traditional marriage is not conducive to stability if expectations change.

What implications follow from the foregoing analysis for public policy about "healthy marriages"? Should government "take sides" in favor of equality? In favor of tradition, or a "cultural script" of modified traditional gender roles? One gambit some in the marriage movement take is to avoid taking any express position on this issue and urge that good marriages depend upon a basic "tool kit" of communication skills that can be learned and used all across the political and religious spectrum.<sup>32</sup> Is this tool kit approach likely to be the position of DHHS as it helps people acquire necessary "skills and knowledge"? As noted earlier, Wade Horn has espoused the goal of "healthy, *equal regard* marriages," but his own critique

of androgyny indicates that many forms of gender-differentiated roles, or complementarity, are compatible with equal regard.

What approach are states taking in materials prepared in connection with marriage promotion and preservation efforts? Beyond the common claim that government has an interest in “whether [a couple’s] marriage is long lasting and happy,” because successful marriages are the “backbone” of society, there is little said about the normative content of healthy marriage. The minimum content seems to be: a healthy marriage includes good communication and conflict resolution skills, and does *not* include domestic violence.<sup>33</sup> This minimum content in itself suggests an important recognition of the place of equality within marriage, since one salient feminist critique of the legal regulation of families has been its traditional toleration of domination and violence within families. Indeed, language of “public health” and of an “epidemic” accompanied feminist and legislative efforts to address domestic violence.

On gender roles and equality within marriage, in terms of distribution of decision making and household labor, the materials take different approaches. In Texas’s glossy brochure, “When You Get Married . . .,” similar to a premarital counseling questionnaire, ideas about gender roles and gender expectations appear as discussion items for which there is no “right” answer, just “whatever works for you” (Attorney General of Texas 2002). (For example: “A mother should not work outside the home unless her children are in school: agree, disagree, or undecided?”; and “the father should discipline the children: agree, disagree, or undecided?” [9]). By contrast, the video provided by Utah’s Governor’s Commission on Marriage, *Marriage News You Can Use*, features a clinical social worker expressing the view that, although mothers carry the baby, after birth, parenting should be an equal responsibility for mothers and fathers.<sup>34</sup>

Current marriage promotion proposals envision that a primary means of promoting marriage is funding the efforts of nongovernmental actors, especially faith-based groups. If so, it seems unlikely that these skills will be delivered in a “neutral” manner devoid of other value commitments. Some religious groups may share the sort of commitment to “critical familialism” urged by Browning; others may support a model of male “headship” and leadership. To bring up the obvious, not-so-hypothetical, concern for feminists and other proponents of marriage equality, what if government contracts with a faith-based group that believes, as one Catholic bishop expresses it, that it is crucial “to reach out to men and indicate to them that they have a special place in the eyes of the Lord as being the

head of their families” (Anderson, Browning, and Boyer 2002, 368–69)? Or contracts with Promise Keepers, whose leader instructs husbands that they must inform their wives that they are reclaiming their proper role of “leading the family,” and that, if wives object, “there can be no compromise here”; to wives, such instruction is to give the leadership back: “For the sake of your family and the survival of our culture, let your man be a man if he’s willing. . . . God never meant for you to bear the load you’re carrying” (Browning et al. 2000, 233–34).<sup>35</sup>

A pluralistic approach to governmental funding would open the purse to Promise Keepers and the Nation of Islam, along with feminist marriage advocates, domestic violence activists, and religious groups that reject a patriarchal model of family self-government for one premised on gender equality. In this way, government could be neutral about the division of power and roles within marriage. And, one might argue, given that not all couples seek to embrace an egalitarian model of marriage, this pluralism allows for persons with different values to find the kind of service provider that best comports with their own values. But I believe that direct funding of groups that espouse sex inequality as a model of family governance conflicts with government’s commitment to sex equality.

Sex equality, as I explain in other work, is a constitutional principle and a normative commitment of antidiscrimination laws (McClain 2001b). It is a “sovereign virtue”<sup>36</sup> guiding how government must treat its female and male citizens. The repudiation of coverture in family law and the ascent of a more gender-neutral model of rights and responsibilities of spouses evidence the reach of this public value into the realm of family governance. Moreover, sex equality is a norm in international human rights law.

Sex equality not only is relevant to public life but also has implications for family governance. At a minimum, it is inappropriate for government to embrace models of marriage premised on gender hierarchy (Case 2002). Furthermore, direct government funding of groups with a model of family governance premised on gender hierarchy and male leadership/female deference would be inappropriate and violate equality norms. Thus, if “armies of compassion”—faith-based groups—are to help in promoting marriage, there should be some attention to how important public values of sex equality feature in this enterprise.

Arguably, government may and should go farther and ensure that a commitment to sex equality is part of its educative efforts about healthy marriage. The minimal content of equality begins with a rejection of patriarchal governance in favor of mutual self-governance. Thus, rejecting

domestic violence and any male entitlement to exclusive decision-making power within the household come within this minimum content. Beyond this, as a general guiding principle, family law holds parents equally responsible for the material support and nurture of their children. In light of women's disproportionate responsibility for caregiving work and domestic labor, and the importance of this work to orderly social reproduction, I believe that if government engages in education about marriage, then it is appropriate to espouse an ideal of equal responsibility and inappropriate to steer couples to the sort of "natural" gender role specialization urged by some in the marriage movement.

Some may object that this would impose a governmental orthodoxy and thwart pluralism. In calling for sex equality as a constitutive principle in a public philosophy about families, I am not suggesting that government should dictate a particular division of labor within families (as it did with the sex-linked status of husbands and wives of an earlier era). Government may educate and persuade in favor of important public values; it may espouse an ideal of shared parental responsibility but not *dictate* who does the dishes or feeds the baby (Nussbaum 2000, 279–80). Government may and should promote the public value of sex equality and embrace it as relevant to family self-governance. But respect for intimate association, autonomy, and reasonable moral pluralism counsels some governmental restraint. Also, practical and prudential concerns about the monitoring of family life caution against using coercive measures and in favor of using facilitative and persuasive measures.

Nor am I suggesting that embracing equality means that gender becomes a meaningless category with respect to how persons understand themselves. My argument is that government may facilitate equality by offering a framework of family regulation within which one's sex does not carry with it gender-based entitlements and responsibilities. This framework allows individuals within families to work out in their own relationships what equality means to them.

Finally, cultural support for equality is also important. The social meaning of gender exerts a powerful pull even when couples try to achieve equal partnership. Whether or not they can find social support for equal partnerships affects their success in resisting what feels "natural," familiar, and expected (Deutsch 1999; Schwartz 1994). If the social meaning of gender is at work in how people choose family roles, then there are limits to what governmental efforts alone can accomplish in fostering equality. Fostering equality also depends upon cultural reinforcement of emerging

models of equality. Unfortunately, to date, such cultural reinforcement is not a feature of most calls to renew a marriage culture.

### *Conclusion*

In this chapter, I have argued that government may support marriage, as part of its facilitative role in regulating families. However, contemporary calls to promote marriage fail to reckon seriously with the issue of equality within families. I have not argued that respect for such equality requires that marriage be abolished. Rather, if government is to play a role in supporting marriage, then equality must feature in such a program. Measured against this requirement, contemporary proposals for governmental promotion of “healthy marriage” fall short.

I have confined my focus in this chapter to equality within families. Yet another relevant dimension of equality, equality among families, should also guide a governmental program of supporting marriage. This dimension of equality rules out the solution of reinstitutionalizing marriage by denying recognition to other forms of committed intimate relationships. It is appropriate for government to support marriage, but it may not use marriage as a proxy for the only family form worthy of governmental support and respect. Respect for equality among families—and for women’s and men’s personal self-government in the areas of intimacy and family—should inform a policy of supporting not only marriage but also other forms of family that can foster orderly social reproduction and allow realization of the values and goods associated with families.

### NOTES

1. The declaration “The Marriage Movement: A Statement of Principles,” written in 2000 and available at <http://www.marriagemovement.org/html>, calls for and explains the basic principles of the “marriage movement.” Its sponsors are the Institute for American Values; the Religion, Culture, and Family Project (University of Chicago); and the Coalition for Marriage, Families, and Couples Education.
2. In addition to “The Marriage Movement: A Statement of Principles,” other examples include the Council on Families in America, “Marriage in America: A Report to the Nation” (Popenoe, Elshtain, and Blankenhorn 1996, 293–318), and “Final Report of the Ninety-seventh American Assembly” (Browning and Rodriguez 2002, 181–99).

3. Barbara Dafoe Whitehead and David Popenoe are the codirectors of the National Marriage Project, located at Rutgers University, New Brunswick. The annual reports are available at the project Web site, <http://marriage.rutgers.edu>.

4. Some groups in this movement include the National Fatherhood Initiative (of which David Blankenhorn, prominent in the marriage movement, is a former chair, and in which two current members of the Bush administration, Don Eberly and Wade Horn, have held leadership roles) and the Institute for Responsible Fatherhood and Family Revitalization (headed by Charles Ballard). Religious groups like Promise Keepers also stress responsible fatherhood.

5. Alternatives to Marriage Project, *Affirmation of Family Diversity*, and *Let Them Eat Wedding Rings*, available at <http://www.unmarried.org/family.html>.

6. For information on the study, see <http://crcw.princeton.edu/fragilefamilies>.

7. At this writing, Congress has extended TANF several times pending enactment of a reauthorization bill. The House of Representatives passed a bill, "The Personal Responsibility, Work, and Family Promotion Act of 2003," H.R. 4, which echoes the president's plan in including funding for promoting marriage and responsible fatherhood.

8. A handbook for marrying couples prepared by the Florida Bar Association reproduces some of the legislative findings in this act.

9. The statement appears on the jacket of the *Marriage News You Can Use* video provided by the Governor's Commission on Marriage and the Utah Department of Workforce Services. A Texas handbook, *When You Get Married . . .*, puts it: "Your commitment to your marriage is the backbone of our society." *When You Get Married . . .*, 2002 edition including updates from the Seventy-seventh Legislature, prepared by the attorney general of Texas under Texas Family Code Section 2.104, available at [www.oag.state.tx.us/newspubs/publications.html](http://www.oag.state.tx.us/newspubs/publications.html).

10. Chapter 98-403, included in a handbook prepared by the Florida Bar Association for marrying couples.

11. For example, as was noted (see note 1) "The Marriage Movement: A Statement of Principles" was sponsored by the Institute for American Values; the Religion, Culture, and Family Project (University of Chicago); and the Coalition for Marriage, Family, and Couples Education. The booklet "Why Marriage Matters: Twenty-one Conclusions from the Social Sciences" (2002) was produced by the Center of the American Experiment; the Coalition for Marriage, Family, and Couples Education; and the Institute for American Values. The Religion, Culture, and Family Project sponsored the television documentary *Marriage: Just a Piece of Paper?* and a related book (Anderson, Browning, and Boyer 2002). The Institute for American Values joined with the Morehouse Research Institute on African American Fathers on the report *A Statement from the Morehouse Conference on African American Fathers: Turning the Corner on Father Absence in Black America* (Morehouse Research Institute and Institute for American Values).

12. The Bush administration's welfare plan, "Working toward Independence,"

invokes this “abundant body of research” concerning outcomes for children in support of its claim that “it is simply wise and prudent to reorient our policies to encourage marriage, especially when children are involved (Bush 2002, 2, 19).

13. James Q. Wilson draws similar contrasts between (natural) motherhood and (problematic) fatherhood (Wilson 2002, 24–32).

14. For example, Aristotle’s work is a root of this idea (Barker 1958, 284).

15. John Witte finds that in the several theological traditions of Western Christianity, the goods of marriage are friendship, reproducing and caring for children, and channeling sexuality and deterring sin (Witte 1997).

16. There are many theoretical supports for this view of government’s role, including the human capabilities approach and strands of feminism, liberalism, and civic republicanism (McClain 1998, 2000). In my book *The Place of Families* I develop its application to the regulation of families (McClain 2005).

17. So states a pamphlet by the widely used PEERS program (Practical Exercises Enriching Relationships Skills), “It’s Time to Fully Prepare Our Youth for Life!”

18. One defense of this skills training draws on the philosopher Jürgen Habermas’s model of “discourse ethics” to support an argument that training in communication and conflict facilitates the sort of “communicative competence” needed in family life and other spheres of life, including the workplace and politics (Browning and Rodriguez 2002, 137–38).

19. Chapter 98-403.

20. The Council on Families in America expresses a similar conviction: “What brings us together is our concern for children. This concern leads us to focus on the state of marriage and family life in America” (Popenoe, Elshtain, and Blankenhorn 1996, 293–94).

21. As such, to invoke John Stuart Mill’s familiar distinction in *On Liberty*, it is an argument that society has jurisdiction over marriage because persons’ decisions and behavior concerning marriage may cause harm to others, and not merely to themselves.

22. This point has been made by feminists in the debate over regulating pornography and in analysis of the law of rape and of approaches to sex education.

23. Among the other elements are: “Marriage is a free personal choice, based on love”; “Marriage is a heterosexual relationship”; “Marriage typically involves children”; and “Sexual fidelity and monogamy are expectations for marriage” (Nock 1998, 6).

24. The report *Turning the Corner on Father Absence in Black America* makes this argument, invoking the work of William Julius Wilson (Morehouse Research Institute and Institute for American Values 1999).

25. This is also James Q. Wilson’s view (Wilson 2002). However, as some scholars observe, until the 1960s, marriage rates among African Americans were as high as and even higher than rates among whites, so slavery alone is not a sufficient explanation for contemporary differentials.

26. *Marriage: Just a Piece of Paper?* was a documentary shown on many PBS stations on February 14, 2002, produced at the initiative of the University of Chicago Divinity School's Religion, Culture, and Family Project. *Turning the Corner on Father Absence in Black America* declares: "The conclusion is inescapable: there is a crisis in gender relations in the Black community" (Morehouse Research Institute and Institute for American Values 1999, 17).

27. One study presents the notable finding that "marriages are strained when either partner does more traditionally female housework," while "marriages are strengthened by time spent in traditionally male tasks" (Nock and Brinig 2002, 186).

28. Feminist analysis of welfare policy reveals its reinforcement of women's dependency on marriage (Law 1983).

29. Feminist scholar Nancy Dowd (2000) reports findings that when fathers spend as much time nurturing as mothers, there are no significant differences in what they do; but generally, fathers do far less than mothers.

30. Orlando Patterson (1998) contends that studies find black women's attitudes on gender issues egalitarian and feminist, and black men's patriarchal.

31. More recently, Gilligan has applied this analysis to marriage dynamics (Davis and Gilligan 2002).

32. One prominent voice in the marriage movement, Diane Sollee, Coalition for Marriage, Family, and Couples Education, expresses this "tool kit" view (Anderson, Browning, and Boyer 2002, 372, 380–81).

33. For example, this is true of materials used in Florida, Texas, and Utah. What is absent, at least in the state materials I have seen, is any explicit embrace of marriage movement claims that couples should stay together in low-conflict marriages and divorce only in high-conflict and abusive marriages.

34. The jacket for the video indicates it is "provided by the Governor's Commission on Marriage and the Utah Department of Workforce Services." For information on Utah's marriage initiative, see [www.utahmarriage.com](http://www.utahmarriage.com).

35. Browning and his associates critique this view, attributed to pastor Tony Evans.

36. Ronald Dworkin (2000) describes equality—but not specifically sex equality—in these terms.

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