What has Government Done to Marriage?

Ryan Brown

Public Finance

 12-13-16

There are 1138 statutes in the United States that treat married couples differently from non-married couples (Holtz-Eakin, 2004). Besides these direct interferences, government distorts marriage decisions both by financing other institutions that play similar roles to marriage and by maintaining monopoly control over the **enforcement** of marriage contracts, **content of marriage contracts**, and **records** of marriages. Marriage plays many important economic and social roles, which is why it’s so important to understand the distortive effects of government policy on marriage. Traditionally, sociologists have viewed marriage as an institution that establishes exclusive sexual rights, and by extension delineates parentage of children, as well as provides an institution in which to raise children. These functions can be economically analyzed, as can other more traditionally economic roles of marriage. The distribution of resources, the specialization, and division of labor between spouses established by marriage avoids high transaction costs that would prohibit monetary exchange from arriving at the same solution marriage. Marriage provides a means of taking advantages of certain economies of scale, signaling mechanisms for firms that might provide different goods to married or unmarried couples, or charge different prices when they have a different cost structures for groups with different marital status. Most notably, marriage is a consumer good where to people’s love is sanctioned by society and/or a religious institution.

Marriage is hard to put into a box: it’s a consumer good, a capital good, a legally binding agreement, and a type of organizational structure much like a corporation. But all of these roles of marriage are hampered by government intervention. In this paper we intend to walkthrough three general broad types of government intervention into marriage and outline distortions. The three types of intervention are broadly: 1. Monopoly Control, 2. Direct Taxation and Subsidization of different types and functions of marriage, and 3. Crowding out of marriage by subsidizing other institutions to take on the same rolls. There is only one solution to government distortions of marriage, privatization of marriage and competition among competitors, the cessation of subsidies or taxes on marriage, and withdrawal of subsidies from institutions that compete with the family.

**1. Monopoly.**

 In order to establish the government is a monopoly provider of marriage we should first establish that it is possible for other institutions to provide the good. If only the government ever provided the good then it’s possible that’s it is just the most efficient provider and no other competitors arose to challenge it. Historically, marriage has been provided, primarily by social or religious convention, not centralized government. Marriage’s primary benefit has always been allowing couples to follow religious tradition (Matouschek and Rasul, 2013). It wasn’t until the 1800’s in America that it became common for states to issue marriage licenses at all (Goldsmith, 2006). As proponents of marriage privatization are fond of pointing out, George and Martha Washington were married without any type of state sanction (Goldsmith, 2006). Even after marriage licenses became common the state was not appealed to as a real authority on marriage. Instead of seeking hard to obtain divorces, married couples, whose marriage had run its course, simply went separate ways, either not mentioning their married life or calling themselves widows. They often remarried, getting new state licenses with no state reprisal. (Nussbaum, 2010)

 The providing marriage entails providing three services: Records of marriage, enforcement of marital law/contracts, and provision of ceremonies. Government clearly has a monopoly on the enforcement of marital law, they maintain tight control over courts that produce enforceable law at all. Governments also establish, unilaterally the standard rules that apply to married couples instead of allowing couples who are marrying agree to what rules they want to bind their marriage. By extension they have a monopoly on keeping records of marriages since people only want records of the legally binding marriage relationships they have entered; the government keeps a record of this by default, at no charge to the couple, and so it would be a waste to pay a 3rd party to keep a record unless the government did an exceptionally bad job of it. There is also a network effects barrier that stops a 3rd party from competing with the government on record keeping, it only becomes useful if lots of people use it since one of the main uses of records is to find family history and living distant relatives. Many companies like ancestery.com, familysearch.org and myheritage.com make money by compiling badly organized government records (and other records), making them easily searchable then selling a subscription for access to the information, this is much less cost intensive then setting up a system where they keep the initial records themselves since the government already had the information in its records. Records are also useful for verifying you are married to organizations who offer special prices or packages to married couples, this is again a situation where network effects give the government an advantage since companies with a large base list of married couples would be more widely recognize and attract more people to register. However, record keeping is not the most important area where government intervention damages efficiency, rather it is in the establishment of specific standard marriage agreements and monopoly enforcement of such agreements.

 Ideally, marriage should be a legally binding agreement between husband and wife. Historically, this is not always how marriage has been treated. In the ancient past polygamy was the norm as a result of women being viewed as property to be owned by men; marriage was simply the name of the form ownership took. As capitalism developed in society, and wealth began to accumulate, inheritance became more and more important, and a woman would sometimes be the only heir to an estate. To accommodate for these cases often such an heiress would marry into another rich family, so that her husband might become the heir to her father’s wealth, and the two fortunes united. In these cases, complex contracts were drawn up in order to specify the property and power relationships between the two families, overtime contractual marriage became the norm. In this way, the development of private property systems, as well as capital accumulation introduced the idea of marriage as a contractual relationship between a husband and wife into the societal mainstream, were both parties had equal legal standing to enter into an agreement with each other. This was the first step towards any type of equal standing between men and women in society. (Mises, 1951)

 As marriage gradually took on more and more the form of a contractual legal relationship between husband and wife (that both parties must agree to), government’s attempted to redefine marriage from a contract into a legal status in the eyes of the state. Government’s first ventures into marriage were to make the terms husband in wife functionally no different than terms like “Noble,” or “Subnormal-mentality,” married simply became a status that denoted different legal rights then un-married (Garret, 2009). Under this regime marriage was no longer a contract, and even if both parties agreed to nullify what they still may have seen as an agreement they both made with one another, they couldn’t end it without government’s consent. (Scott and Scott, 1998). As a matter of fact, any sort of alterations to the standard agreement husbands and wives made was not recognized by any courts. Under common law any type of prenuptial agreement was seen as a husband trying to get out of support for his wife he was legally obligated to provide[[1]](#footnote-1) (Trebilcock and Keshvani, 1991). So marriage changed from a contract based on individual rights between husband and wife, into a method for state intervention into the most private parts of life. For most of history government marital status was used primarily to punish people for having sex outside of marriage. (Sunstein and Thaler, 2008). For most of U.S. history prenuptial agreements that dealt with how things were distributed in a divorce were annulled as being against “public policy” (Trebilcock and Keshvani, 1991) and "encourage[ing]" or "promote[ing] the procurement of divorce.” (Qaisi, 2001). It wasn’t until Posner v. Posner, a case in the Florida Supreme Court in 1971, that we upheld any bindingness of prenuptial agreements (Trebilcock and Keshvani, 1991). To this day we have the legal tradition that, even if a couple agrees to abide by a particular agreement it is only upheld in so far as “it complies with a state's statutory requirements.” (Qaisi, 2001).[[2]](#footnote-2) It is becoming more and more common that we return to the older legal tradition were marriages are seen as contracts instead of statuses (Scott and Scott, 1998)

 The reasons given for today’s closer adherence to the model of marriage as contract have ceded almost nothing, maintaining that the government has its historical authority to define the institution as it sees fit. The government has designed modern alimony to allow both parties to be “independent” upon divorce, prenuptials are upheld most of the time in order to foster responsibility (Trebilcock and Keshvani, 1991). The real reason for the growing tradition of seeing marriage as a contract that is modifiable from relationship to relationship was the women’s rights movement. As labor markets expanded, providing more employment opportunities for women, they became able to leave relationships with abusive husbands, serial adulterers, or with neglectful husbands and demanded the rights to do so (Nussbaum, 2010), in order to allow this the government started the slow trend of treating marriages like other contracts again.

 Despite the growing trend not all those who wish to enter into a different marriage contract then is the norm are allowed to do so. The most notable examples of this are Islamic communities in the United States today. Islamic Law requires the husband give his wife “Mahr,” which is essentially a dowry. Generally part is given to her (or her family) when they are married, and another part is given to her upon divorce or the death of the husband (Sometimes it is all given at only one time or another). It exists to protect a husbandless wife from destitution. (Qaisi, 2001) 'aqd al-kita (the Islamic marriage contract) is not always held as a valid contract. In general, courts have ultimately upheld 'aqd al-kita’s, though often only on appeal. Sometimes these contracts aren’t upheld on the grounds that they are two vague[[3]](#footnote-3) other times they are not upheld on public policy grounds[[4]](#footnote-4) (Qaisi, 2001). Many political conservatives have even made the argument that enforcing Islamic marriage contracts is the establishment of religion or enforcing the performance of a religious act (Qaisi, 2001).

While the law certainly isn’t as controlling as it used to be, or as hostile to the idea of marriage being a contract, it is still certainly a monopoly. Courts have only recently begun to recognize “cohabitation agreements” (Scott and Scott, 1998) as binding, and those only fill one of the three purposes marriage does, the social acceptance that comes with ‘real’ marriage and the ability to signal that you’re married aren’t provided (nor are government subsidies that come with being married). Even if the Government did technically allow other institutions to issue certificates of marriage technically, those alternatives would effectively be crowded out since because government only recognizes their own licenses the only way you could get government benefits would be to have a government license. Likewise since this causes the government’s version to be the most common, and since private organizations who give benefits for married couples are required to recognize government married as married, it would become very difficult to convince private institutions to recognize your private certificate as also legitimate marriage. There are those like Daniel Crane who propose that we should all just ignore the state and have religious institutions marry us according to whatever standardized contract they believe should be put in place (2005), but even in these cases the government would wave around its final arbiter of disputes card and nullify any differences the religious (or otherwise different contracts) have from the standard government contract. Even in the current system where we have some latitude with prenuptial agreements the state restricts the supply of those aloud to draft those alterations to marriage agreements through state bar associations. For all intents and purposes, the government has a very real monopoly on marriages even though they’ve loosened their grip to allow more variation in the contracts they allow you to enter.

By establishing their ‘rightful’ authority to be the only institution to license marriages and the final arbiter of their meaning, the government establishes their authority to insert themselves in the most private parts of our lives. There are those like the Heritage foundation’s Ryan Anderson who argue that every society (seemingly using society interchangeably with government) regulates male and female sexual relationships (Anderson, 2013) as if it’s an enormous positive. It’s this assumption about the government’s place in human sexuality that opens the door to many of this country’s most terrible policies. Control of marriage enabled Jim Crow laws that prohibited interracial marriage.(Nussbaum, 2010), eugenics laws that allowed for compulsory sterilization of habitual criminals (Nussbaum, 2010). There have been courts that have tried to stop people from marrying on the grounds that they would be incapable of caring for children (Nussbaum, 2010). Even recently we’ve had laws that prohibit the incarcerated from marrying (Nussbaum, 2010). Back when it was illegal to have sex outside of marriage it may have been easier to misuse the monopoly in these ways, but we haven’t completely removed the government’s ability yet.

The Government’s monopoly on also creates meaningless political footballs, causing unnecessary conflict between people of different belief systems (Sunstein and Thaler, 2008). All those who hold strong opinions on marriage are forced to grovel before the state in order to have their view validated. They are forced to go to war with one another, put rational discourse aside in order to obtain state sanction. Marriage issues eat up valuable political capital that could be used on more vital issues if the government didn’t have its stranglehold on marriage. Homosexuals and fundamentalist conservatives may have a lot of common ground where they dislike state intervention, common ground that can’t be exploited because there is a fissure right where the common ground should be. The Religious are less able to witness after having a political war with homosexuals, and are less likely to provide charity or ministry to homosexuals. In many cases their beliefs stop them from ministering all together. In Massachusetts when the government expanded their definition of marriage to include homosexual couples Catholic Charities of Boston discontinue adoption services on the grounds that they couldn’t with a clear conscience put children in homosexual families, which they would have been required to do because of the government’s monopoly on the definition of marriage (Anderson, 2013). If it weren’t a government monopoly any charity could accept whatever marriages they wanted as valid or invalid (Sunstein and Thaler, 2008). The Homosexual community is also left in a state of enmity with religious institutions, making it harder for individual homosexual’s to be at home in their various religious communities, where they are now seen as enemies do to differing views about what one institution in society should decide they believe marriage is. On top of that whoever loses any given battle is left disenfranchised. If we can get the government too simply stay out of it, a lot of grief would be saved on all sides.

Defining marriage at all is always taking a religious stance. If the government says homosexual marriage is not marriage that is a religious stance, if government says homosexual marriage is marriage that is also a religious stance (Sunstein and Thaler, 2008). Defining it one way or another also curtails religious freedom since we’re required under current law to extend all benefits we give married couples to all married couples (Anderson, 2013). It’s surprising that religious institutions put up with government definition of marriage, given that most religious people believe that marriage is in God’s authority alone and is given to the church to administrate (Goldsmith, 2006). Historically, Christian tradition treats marriage as a religious institution, Catholicism sees it as a sacrament, and reformers saw it as church responsibility (Crane, 2005). Even some more modern Christians saw state marriage as meaningless paper, C.S. Lewis even ‘married’ a women he hardly knew, one Ms. Daviddman in order to facilitate English legal citizenship (Crane, 2005). Privatization would restore marriage to churches, and devout believers could choose which marriages ought to be recognized, churches would be free to arbitrate disputes in cases like divorces, etc. (Crane, 2005). Currently, whether government tries to or not they distort which religious institutions are legitimate or not, firstly, the state decides which people can perform marriages, entrance tends to be relatively open, but we can conceive of some ministers in certain religions being unable to perform state recognized ceremonies. Beyond that, Florida requires you wait three days to get your marriage license if you haven’t gotten pre-marital counselling (Hawkins and Nock, 2002) in addition to causing over investment in these services, this means that government has power over traditionally religious functions, deciding what does and does not qualify as actual pre-marital counselling, choosing certain church services as qualified and others as not. This could result in a decline in the supply of religious services (decreasing churches role in society) if few churches have their pre-marital counselling recognized, and it likely increases prices for those who still use the church for pre-marital counselling. It even increases costs to those who don’t get the state’s approved counselling (maybe those too poor to afford government monopoly psychiatrists).

Government Intervention also damages the signaling functions marriage play’s in the economy. 8% of businesses offer employees marriage preparation programs, 10% offer marriage enrichment programs and 25% offer counselling for marriages in crisis (Hawkins and Nock, 2002). There are a variety of reasons a company might do this, one would be as simply a non-taxable part of an employees pay. Another might be that healthy marriages result in more productive workers. In any case not allowing different types of marriage contracts makes it more difficult to provide these services on a specialized basis. It’s also possible that those with Islamic marriage contracts are more productive with more marriage counselling then those with Jewish marriage contracts, so a business person on the market would provide more marriage counselling to the Islamic person (this is just an example, it could very well be the other way around, it could be that homosexual couples benefit the most from having the healthiest marriage). But the government makes sure there is exactly one type of marriage contract. This is only one example of how more variation in marriage contracts would be helpful. Insurance companies for instance charge joint rates to married couples. One possible reason might be married couples have different preferences so they are sold a different package. Another possibility might be there are different cost structures for different family structures, maybe married couples take fewer risks so insuring them is less expensive then insuring single people. By allowing more variation you create more room for people to be better served by the market. The government creating one single marriage contract destroys this potential market signaling function. (Jones, 2006). It also gives companies an incentive not to allow fraud. A company that allows someone to marry their ailing mother to get health benefits extended to her is unlikely to be seen as trustworthy if they allow it to happen often, and companies will take these reputations into account when deciding what benefits to extend (Jones, 2006).

Marriage also signals other things. It’s used to signal true love to whoever you are making the commitment to (Matouschek and Rasul, 2013). It may seem that the current system does this just fine, but if there is a potential choice to make (do you want to sign a standardized national marriage contract, the one her church provides, his church?) it forces the couples to understand better what it is the other one is proposing, it fosters better information transferred between the two and a better understanding of what the contract requires in cases where it is broken (Garret, 2009)

It signals that you are off the marriage market to others (generally done by things like rings, ceremonies, anniversaries). Those signs actually help other members of society to help enforce the contract in non-legal ways, putting social pressure on you not to lie to your wife for instance. This role of society is amplified through smaller social groups. If you get married by your church instead of the government the more likely there is to be a more local bond putting social pressure on you to remain in the relationship (Scott and Scott, 1998). In light of these three types of signaling functions marriage plays it’s important to remember that If a marriage is to signal anything it must have a minimum term of commitment (Scott and Scott, 1998), which these contracts are more likely to have, since they are more likely to put in place real penalties for breaking the contract thus making divorce less likely (we’ll talk about this more a little later).

Another benefit that marriages traditionally confer is the ability to establish a division of labor and specialization between husband and wife that allows for more to be produced then if both parties simply produced separately. This likely occurs because on the day to day level of household chores, employment, and just enjoying each other’s company, money has very high transaction costs and would reduce the ‘utility’[[5]](#footnote-5) of many of the activities if money were used instead of ‘contractual’ obligation or a sort of implicit barter. Government intervention limits the ability to take part in this exchange. Laws relating to alimony don’t explicitly take into account investments that yield non-monetary returns. For example if the husband and wife take traditional roles, the wife is likely investing heavily in domestic duties, while the man is investing heavily in work. The standardized government contract doesn’t take this into account when splitting resources after a divorce. A wife after a divorce has specialized in skills that outside of marriage have few returns, while the husband has specialized in a job has high returns out of the context of marriage. On the market, the negotiation of actual contracts would take this into, promising to take into account the opportunity costs that the marriage resulted in in the case of a divorce (Trebilcock and Keshvani, 1991). Over time contracts and arbitration organizations would develop in such a way that the most popular are the ones that have the most efficient means of calculating how much each contributed to the marriage and how much is non-transferable to the outside world in the case of a divorce, and have the rules that fairly compensate both of them in that case. The free market would have a vested interest in balancing the couples privacy against getting completely accurate information about the investment’s in the marriage, something the government can’t do (Scott and Scott, 1998).

If the government tried to move in this direction for everyone the result would be that in certain cases women were given special treatment. The government would also create an incentive for traditional gender roles, “legitimizing the subordinate role of women in society,” (Antony, 1999). It’s only by allowing variety in the contracts and arbitration regimes that we can approach fairness in divorce arbitration over different types of marriages. The current system discourages any division of labor along these lines (Scott and Scott, 1998), since the wife could easily get short changed by a husband leaving the relationship. Often the husband gets enormous benefits at the beginning of the marriage from a wife’s domestic labor, only to leave when his wage raises, depriving her of the benefit’s she expected (Antony, 1999). It’s also possible for the opposite to happen, with wives simply divorcing a husband if his value over time fails to appreciate, she can have honed domestic ability and remarry someone with a higher income. The market is the best solution for these issues as it would establish contracts that would protect both wives and husbands from this type of behavior. There’s plenty of evidence that this is a major role of marriage, from the 1970’s to today, as women’s wages have climbed marriage has steadily fallen (Bertrand and Kamenica, 2013). If we allowed private markets to protect this type of investment through contracts and their enforcement we might see more socially beneficial family division of labor. While no fault divorce might be a useful system for couples that don’t plan to highly divide labor, government’s movement to the system universally discourages those family structures (Sunstein and Thaler, 2008) as well as some marriages that would have taken place had there been alternatives that would have protected more traditional family investments (Matouschek and Rasul, 2013). Allowing couples to decide together to change the contract partway into the marriage might also prevent some divorces which is not currently an option (Antony, 1999).

Another commonly overlooked role of marriage is as insurance. As long as the marriage contract penalizes someone who breaks it or leaves enough, you insure there is someone to take care of you in unforeseen circumstances like injury or old age, you ensure a family for potential children allowing for the production of children (Antony, 1999). But this all depends on marriage having a high enough penalty to leave, if it doesn’t have that penalty it can’t fulfill this role. There is plenty of evidence that modern divorce laws don’t have a high enough penalties to fill these rolls (Scott and Scott, 1998). Not only is government completely incapable at arriving at the correct penalties for leaving, those penalties vary from couple to couple and from group to group.

The current system also breeds a great deal of uncertainty. It’s unclear when government will and will not enforce premarital agreements. “The traditional approach results in the "unfortunate judicial practice of invalidating any divorce planning contingency provisions," often voiding the entire premarital agreement.” (Qaisi, 2001). On top of that it is unclear even how marriage laws will be enforced in general without any sort of agreement ahead of time, which increases uncertainty, making more risk averse people less likely to marry (Trebilcock and Keshvani, 1991). The more risk averse tend to be women, since they are more likely to be investing in the resources not transferable outside the marriage relationship (Trebilcock and Keshvani, 1991). A contract based system is more likely to create informed consent and allow both parties to not make mistakes about what they are getting into (Garret, 2009). Further with the government monopoly on the definition of marriage rules vary from place to place, so if you move the entire basis on which you entered into marriage may change. While there are some extreme examples of this, like moving from the U.S. to Iran where any married woman would have completely different rights then in the U.S. the problem exists even when moving between states where if a divorce takes place the marriage can mean different things (Garret, 2009). It can also change over time due to constantly changing courts and legislators. That’s something you couldn’t do as a private arbitrator who provided an actual, real, and immutable contract. Divorces would also likely take less time under a contractual system since the terms are spelled out ahead of time (Jones, 2006), and the organizations that thrive are the ones that don’t unnecessarily waste their clients time.

There is clearly the demand for these alternate types of marriage arrangements. Federalism has created a couple different types of systems. For instance, Indiana used to be a divorce haven for couples fleeing from states like NY and Wisconsin. Over time states like south Dakota and Connecticut also became divorce haven’s, partly in order to attract residents who would spend money while waiting for the legal residency period to be up so they could get their divorce, other states maintained strict laws in order to attract more religious residents (Nussbaum, 2010). Today we don’t just have different systems seeking user across state lines, we have single states offering reciprocal beneficiaries, designated beneficiaries, domestic partnerships, and civil unions (Meyer, 2010), due to the enormous demand by homosexual’s for marriage. 9 states have such statuses available (Meyer, 2010). Around 1.2 homosexual million would marry (Holtz-Eakin, 2004) if allowed universally, the fact that we can’t identify them as married currently does hurt signaling and the ability of businesses to extend the best products at lowest prices possible.

The fact that 77% of young people in the U.S. believe it is too easy to obtain a divorce is good evidence that there is demand for more than one system (Hawkins and Nock, 2002). In fact three states, Arizona, Arkansas, and Louisiana have introduced covenant marriage options (Hawkins and Nock, 2002). Under covenant marriages you agree to undergo some marriage preparation, fully disclose all information that could reasonably affect the decision to marry, make a lifelong commitment to marriage, accept only limited grounds for divorce (“abuse, adultery, addiction, felony imprisonment, and separation for 2 years”), and marital counseling if problems threaten the marriage (Hawkins and Nock, 2002). This may not be exactly what’s demanded, it is a government alternative after all, but it is clear evidence that there is some demand for alternative marriage contracts that put tighter restrictions on divorce, and that they would arise and help fix these problems if we privatized marriage. There even seems to be demand for contracts that mix elements of both covenant and standard marriage, 61% want it to be harder to divorce then currently, 79.5 % think counselling before wedding is important, 91% think marriages are more likely to be successful if couples have some type of commitment to get help if marriage turns bad time, and 65.7% of people think long waiting periods for divorce help people to work out their issues (Hawkins and Nock, 2002). On the market each of these different mixes could potentially entered a marriage that required the things they want. People would also be more likely to do these things, since there would be social pressure by their social and religious groups to pick a respectable company and contract, which would likely be the ones that had the lower divorce rates, or the most reasonable alimony agreements, or things like requirements for counselling before divorce.

 There’s no real practical reason to believe the market wouldn’t establish this system. Religion is a much more complicated and divisive subject then marriage that has been fine left to the market (Struening, 2007) (Garrett, 2009). Certainly, there would be less expensive standardized contracts still, but there would be more room for choice among these even. There would also be more specialized and expensive contracts (Jones, 2006). Certainly there are things we can’t foresee that would arise, for instance, Jones argues that certain marriage companies’ contracts might be very expensive and become status symbols (Jones, 2006). Maybe drafting, and records of who is married, and arbitration would all be handled within a firm or maybe there would be different firms. The bottom line is that the market is the best organization to organize things.

It’s important to remember that we can never force someone to stay in a marriage against their will (Jones, 2006), such a thing would be akin to contractual slavery. What every marriage contract would have would be a clause that would explain the property transfer penalties (alimony most likely) that would occur upon breach. The biggest risk of privatizing any type of law is that people will favor the wrong type of law, in this case they might except promise theories of contract over property transfer theories of contract (Rothbard, 1982). But contractors privately working this out are more likely to come to the just law system then a monopoly government, who we must remember, did away with the idea of marriage as contract all together replacing with the system of married as status.

Certainly there would be problems to work out. Some argue that setting up this type of system would be too complicated since each contract and system would need to worked out from scratch, and as such things might start out expensive and uncertain (Garret, 2009). Responding to second things first, it certainly couldn’t be more uncertain then the arbitrary constantly changing system we have now (Garret, 2009). Even if it’s expensive at first, people will only pay when the price is low enough that they benefit, over time competition will drive prices down, and even initially, when it’s hard to organize and expensive, are you willing to bet that the market can’t do it at a lower price than the government?

**2. Taxation and Subsidy**

The Governmental Accountability Office divides the different government statutes dealing with marriage into 13 broad categories. Category 1 is entitlement programs, like Social Security, housing programs and food stamps. Categories 2, 4 and 5, all involve the treatment of government employees, particularly retirees and veterans. Category 3 deals with Taxes. Category 6 deals with immigration, which it should be noted, implies that our government’s policy distorts incentives for marriage all around the world. Category 7 deals with American Indians. Category 9 deals with Trade, Commerce and Intellectual Property. Category 9 deals with legal issues and rights, things like the evidentiary privileges we extend to married couples (Sunstein and Thaler, 2008). Category 10 contains laws dealing with crime and family violence. Category 11 deals with subsidies, particularly “Loan guarantees and payments in agriculture.” Category 12 is “Federal natural resources and related,” while category 13 is reserved for “Miscellaneous” (GAO, 2009). Notice how broad a range of incentives (or disincentives as the case may be) the government puts in place that we can expect would impact the number of marriages, the type of marriages and the demographics of those marriages. Some are utterly absurd, like a “landowners’ eligibility to negotiate a surface-mine lease with the Secretary of Labor” (Holtz-Eakin, 2004). Like all government intervention this is likely to cause marriages to be beneficial when they wouldn’t on the market, and not beneficial when they would be beneficial on the market. Given the limited scope of this paper the only direct influences on marriage we’ll be dealing with are the most prevalent. Tax law and entitlements.

Generally couples whose income is more evenly split then 70-30 suffer a marriage penalty and pay higher taxes while couples with a less even split then 70-30 end up paying less in taxes total then if they had been single (Joint committee on taxation, 2001). 57% of families incur a marriage penalty (Whittington, 1996). There are a number of reasons for the differences. The primary reason is that married couple’s income is taxed together and at a different rate then unmarried couples. Under any progressive taxation system marriage is penalized when couples treated as one party then when treated as a single person. The brackets for married couples are wider than the bracket’s for individuals, but not exactly twice as wide, so a couple who makes all their money from one person pays a lower rate than if that one person were single, but a couple who splits there income evenly pay a higher rate than if they were both single. Also note that non-monetary income from domestic work is untaxed, resulting in over-investment in that (Zelenak, 1993). While division of labor is good in some cases, this over encouragement is one of the things that helps to perpetuate traditional gender roles even in cases where they are not particularly useful (Struening, 2007). On top of this there is a special tax rates for single heads of households that lower then both the singles rate and the married rate, encouraging both out of wedlock children and divorce (Whittington, 1996).

Most couples would have more deductions if unmarried, both because certain economies of scale result in fewer deductible purchases and because they hit the limit on deductions sooner (Joint committee on taxation, 2001). For example the Earned income tax credit only counts for the first two kids, so if you’re unmarried it works for up to (Joint committee on taxation, 2001). Another way tax law discourages marriage (or encourages divorce) is the way it treats alimony, Alimony lowers total tax burden, since it’s deductible for the husband, and wife’s tend to pay a lower rate on it, since they tend to have lower total incomes (Whittington, 1996).

In 2001, a couple with one child and incomes of 15,000$ would face a marriage penalty of 4,417$ (Joint committee on taxation, 2001). On average there is a marriage penalty, of around 375$ (Whittington, 1996). Though it tends to be the upper and lower classes who pay the penalty, since they are the least likely to be using a traditional division of labor in marriage. In general the middle class pay 40$ less when married then if they were single, the lower class pays 41$ more, and the highest quintile over 1,500$[[6]](#footnote-6) more (Whittington, 1996), in extreme cases the penalty can range into 5 figures, can exceed ten percent of tax liability (Zelnak, 1993). This results in what some have called “Ideological subsidies,” since marriage is a more common institution among more advantaged classes of people, artificial benefits for it reinforce social stratification(Garret, 2009). The penalty also likely results in fewer marriages(Zelenak, 1993). It also tends to distort the peak season for marriages so people can pay their taxes as a separate couple for an additional year, people push marriages from December to January (Zelenak, 1993). However the main results of our tax policy seems to be that it de-incentivizes less traditional marriages, marriages among the rich, and marriages among the poor, while incentivizing marriages among the middle class and between people of significantly different income.

In terms of subsidies, the most famous historically may be the earned income tax credit. The earned income tax credit resulted in increased birth rates among non-white women in the 1990’s. The result being that it was a wealth transfer for having children, often out of wedlock and without a father. Most often it was collected by people who pay no taxes at all (Goldsmith, 2005), although later attempts were made to stop this practice by restricting the number of children you could benefit from it with. Other pro marriage subsidies include social security, which allows a spouse to collect up to 50% over their spouses benefits while they’re alive, and claim the whole thing if the spouse is deceased (Holtz-Eakin, 2004). Many similar benefits exist in programs like Medicare and Medicaid or in veterans benefits (Holtz-Eakin, 2004).

Most direct attempts to increase marriage though, are targeted at the poor, particularly welfare beneficiaries. The Assistance to Needy Families act (TANF), requires states enact plans to reduce out of wedlock marriage, encourages family caps for state welfare programs, and also encourages states to reduce marriage penalties (Mauldon and London, 2004). There aren’t many direct monetary subsidies for marriage in lower economic classes, though there are a couple According to Karen Struening there are “Three states that disregard a spouse's earnings for a limited number of months when determining eligibility or calculating grant amounts.” According to her Nine states offering financial incentives to welfare recipients who marry, West Virginia gives 100$ more to married women on welfare then unmarried women. Other states forgive child support debt of fathers who marry the mothers of their children (Struening, 2007).

Most attempts to promote marriage come through education though. 150$ million a year is spent on marriage and fatherhood programs. The Administration for Children and Family Services (ACF), spent 61$ million in grants from 2002 to 2005, and 26.8 million on research and program evaluation (Struening, 2007). Arizona, Florida, Maryland, Minnesota, and Oklahoma now provide incentives and subsidies for premarital education (Hawkins and Nock, 2002). Florida recently became the first state to require marriage education in high schools (Hawkins and Nock, 2002). At least one court has implemented mandatory premarital education programs for couples seeking marriage licenses within its jurisdictions (Michigan) (Hawkins and Nock, 2002). There have been marriage as a public good media campaigns to encourage marriage and discourage divorce have been implemented in Arizona, Arkansas, Colorado, Florida, Louisiana, Oklahoma, South Carolina, Texas and Utah (Struening, 2007). We could go on and on about how much money the government put’s into education on these subjects, most of which are targeted at underprivileged adults and high school students (Struening, 2007). But the fact is it doesn’t seem to have much of an impact (Mauldon and London, 2004), if anything it serves to intensify views people already hold without changing behavior (Mauldon and London, 2004).

 But, to the extent these programs (particularly the ones that give real incentives, instead of just education) what do we expect the results to be? Well, once income is controlled for children in homes with marriages instead of single parents have only a 3% lower rate of dropouts and only a 4% lower chance of becoming single mothers (Struening, 2007). On top of that it’s only the marginal marriages, the weak ones that we’re getting back together, so we can’t expect to be helping the children in these families. Beyond that 15-25% of women who make up the welfare caseload are battered and in abusive relationships (Struening, 2007), the government is essentially increasing the risk of women staying in these relationships, either for the cash or because we taught them how important the marriage was with the classes. The government also make it harder for them to leave as abusive husbands might take the additional cash as an additional incentive to stop a separation, which could very well increase violence. The best way to help these people would be to stop funding ineffective marriage education programs and lower tax burdens across the board, allowing more money to go to production, and allowing more of these people to find employment. However, there are not many programs of this type, even though we spend a lot of money encouraging marriage, the overall incentive is that marriage is discouraged not encouraged.

**3. Crowding Out**

 Besides government’s direct incentives relating to marriage, government has overtime taken more and more roles that had traditionally been reserved for the family. Any government attempt to provide a service leaves less demand for that service on the market. There’s no reason to believe families should be immune, as governments spend more and more resources on child care, a functioning family until becomes less necessary to care for children (Omori, 2009), so people are less likely to use it to fulfill the end of raising children. The same goes for direct socialization of the benefits of family, government charity or care for the elderly make the family less necessary since we can get many of the same benefits simply by being citizens.

 One way to think of children is as a long term capital good (Folbre, 1994). One of the many incentives for having children is that they’ll take care of you in your old age. Since the establishment of social security however you can gain the benefits of children as a capital investment without actually raising them. Since one of the incentives for marriage is a partner in raising a child, decreasing the incentive for child bearing would understandable decrease the incentives form marriage.

 Childcare is the other major usurpation of the role of the family, as government spends more and more resources assisting parents raise their children, it understandably becomes less necessary to enlist a partner in your parenting escapades. So we would expect out of wedlock pregnancies to increase, as well as divorces in families with children as the government expenditures in that arena have increased.

 In the end my conclusions are as follows. Government has mismanaged marriage itself, the institution would be better administered privately. Government has systematically discouraged marriage, and only encouraged it in all the wrong places.

Bibliography:

Anderson, Ryan. 2013. “Marriage: what it is, why it matters, and the consequences of redefining it” Heritage Backgrounder, No. 2775, Accessed: <http://s3.amazonaws.com/thf_media/2013/pdf/bg2775.pdf>

Antony W. Dnes. 1999. “Marriage contracts,” Contract Law and Economics chapter 17 Edited by [Gerrit De Geest](http://www.elgaronline.com/search?f_0=author&q_0=Gerrit%20De%20Geest) p. 864-886. Accessed: <http://encyclo.findlaw.com/5810book.pdf>

Bertrand, Marianne and Kamenica, Emir, and Pan, Jessica. 2013. “Gender identity and relative income within households,” National Bureau of Economic Research, Accessed through: <http://faculty.chicagobooth.edu/emir.kamenica/documents/identity.pdf>

Crane, Daniel. 2005. “A “JUDEO-CHRISTIAN” ARGUMENT FOR

PRIVATIZING MARRIAGE,” Cardozo Law Review, 27, No.3: 1221-1259. Accessed: <http://www.cardozolawreview.com/Joomla1.5/content/27-3/CRANE.WEBSITE.pdf>

Connoth, Craig J., Badgett, M.V. Lee and Sears, R. Bradley. 2011. “Spending on Weddings of Same-Sex Couples in the United States” Williams Institute, Accessed through: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Konnoth-FirstYearWeddingSpending-Jul-2011.pdf>

Folbre, Nancy. 1994. “Children as Public Goods,” The American Economic Review 84, No. 2: 86-90. Accessed through jstor: <http://www.jstor.org/stable/2117807>

## Garret, Jeremy. 2009. “Marriage Unhitched from the State: A Defense,” Public Affairs

## Quarterly, 23, no. 2: 161-180. Accessed through jstor: <http://www.jstor.org/stable/40441524>

General Accounting Office, 2004. “Update to prior report: Defense of Marriage act,” Accessed: <http://www.gao.gov/new.items/d04353r.pdf>

Gilder George. 1981. Wealth and Poverty, San Francisco California, ICS Press, 1993. Pp. 79-85

Goldsmith, Gardener. 2005. “An Artificial Baby Boom,” Mises Daily, Accessed Through: <http://mises.org/daily/1761/An-Artificial-Baby-Boom>

# Goldsmith, Gardener. 2006. “Don't Let Government Define Marriage (Or Optimal Child-Rearing Environments),” Mises Daily, Accessed Through: <http://mises.org/daily/2209/Dont-Let-Government-Define-Marriage-Or-Optimal-ChildRearing-Environments>

## Hawkins, Alan J. Nock, Steven L. Wilson, Julia C. Sanchez, Laura and Wright, James D. 2002. “Attitudes about Covenant Marriage and Divorce: Policy Implications from a Three-State Comparison,” Family Relations, 51, no. 2: 166-175. Accessed through jstor: <http://www.jstor.org/stable/3700202>

Holtz-Eakin, Douglas. 2004. “The Potential Budgetary Impact of Recognizing Same-Sex Marriages,” Congressional Budget Office, Accessed: <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/55xx/doc5559/06-21-samesexmarriage.pdf>

Jones, Colin. 2006. “A Marriage Proposal: Privatize It” The Independent Review, 11 no.1, 115-119. Accessed through: <http://www.independent.org/pdf/tir/tir_11_01_07_jones.pdf>

Matouschek, Niko and Rasul, Imran. 2013.  “The Economics of the Marriage Contract: Theories and Evidence” Journal of Law and Economics, 51, no.1: 59-110. Accessed through jstor: http://www.jstor.org/stable/10.1086/588596 .

## Mauldon, Jane G. and London, Rebecca A. and Fein, David J. and Patterson, Rhiannon and Sommer, Heidi. 2004. “Attitudes of Welfare Recipients toward Marriage and Childbearing” Population Research and Policy Review, 23, no. 5: 505-640. Accessed through jstor: http://www.jstor.org/stable/40230878

Meyer, David D. 2010. “Fragmentation and Consolidation in the Law of Marriage and Same-Sex Relationships” The American Journal of Comparative Law, 58: 115-133. Accessed through Lexis Nexis: <http://www.lexisnexis.com/lnacui2api/api/version1/getDocCui?lni=50GV-WHW0-00CV-J04V&csi=155282&hl=t&hv=t&hnsd=f&hns=t&hgn=t&oc=00240&perma=true>

# Mises, Ludwig Von, 1951, Socialism: An Economic and Sociological Analysis, New Haven, Yale University Press. Translated by Kahane, J. 1962. Pp. 87-106.

Nussbaum, Martha. 2010. “A Right to Marry?,” California Law Review, 98, no. 3: 667-696, Accessed: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1085&context=californialawreview&seiredir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar_url%3Fhl%3Den%26q%3Dhttp%3A%2F%2Fscholarship.law.berkeley.edu%2Fcgi%2Fviewcontent.cgi%253Farticle%253D1085%2526context%253Dcalifornialawreview%26sa%3DX%26scisig%3DAAGBfm17zBmqDtJ1hg8ld2YpQIzpa8aJaA%26oi%3Dscholarr#search=%22http%3A%2F%2Fscholarship.law.berkeley.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1085%26context%3Dcalifornialawreview%22>

# Omori, Tatsuya. 2009“Effects of Public Education and Social Security on Fertility” Journal of Population Economics, 22, No. 3: 585-601. Accessed through: http://www.jstor.org/stable/40344747 .

# Qaisi, Ghada G. 2001. “A Student Note: Religious Marriage Contracts: Judicial Enforcement of "Mahr" Agreements in American Courts” Journal of Law and Religion, 15, No. 1/2: pp. 67-81, Accessed through: http://www.jstor.org/stable/1051515 .

# Rothbard, Murray, 1982 The Ethics of Liberty, New York, New York University Press. Pp. 133-146. Accessed through: <http://mises.org/rothbard/ethics.pdf>

Sunstein C. & Thaler R. 2008. “Privatizing Marriage,” The Monist, 91, no. 3: 377-387, Accessed through Academic search premier, Ebsco host: <http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,cookie,url,uid&db=aph&AN=35762333&site=ehost-live&scope=site>

Scott, Elizabeth and Scott, Robert. 1998. “Marriage as Relational Contract,” Virginia Law Review, 84, No. 7: 1225-1334. Accessed through jstor: <http://www.jstor.org/stable/1073673>

Staff of the Joint Committee on Taxation. 2001. “OVERVIEW OF PRESENT LAW AND ECONOMIC ANALYSIS RELATING TO THE MARRIAGE TAX PENALTY, THE CHILD TAX CREDIT, AND THE ALTERNATIVE MINIMUM TAX” Accessed: <http://www.jct.gov/x-8-01.pdf>

Struening, Karen. 2007. “Do Government Sponsored Marriage Promotion Policies Place Undue Pressure on Individual Rights?” Policy Sciences, 40, no. 3: 241-459, accessed through jstor: <http://www.jstor.org/stable/25474335>

# Trebilcock , Michael J. and Keshvani, Rosemin. 1991. “The Role of Private Ordering in Family Law: A Law and Economics Perspective” The University of Toronto Law Journal, 41, No. 4: 533-590. Accessed through: <http://www.jstor.org/stable/825741>

# Wang, Wendy, and Parker, Kim and Taylor, Paul. 2013. “Breadwinner Moms,” Pew Research Center. Accessed: <http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf>

Whittington, Leslie A. and James, Alm. 1996. "The Rise and Fall and Rise . . . of the Marriage Tax." *National Tax Journal* 49, no. 4: 571-89.

Whittington, Leslie A. (updated by Alm, James). 1999. “Marriage Penalty” Excerpt from: [National Tax Asscociation Encyclopedia of Taxation and Tax Policy](http://www.urban.org/books/TTP/), Second Edition, edited by Joseph J. Cordes, Robert D. Ebel, and Jane G. Gravelle. Accessed through: <http://www.taxpolicycenter.org/taxtopics/encyclopedia/Marriage-Penalty.cfm>

# Zelenak, Lawrence. 1993. “Marriage and the Income Tax,” Southern California Law Review, 67: 339-405 Accessed: <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1530&context=faculty_scholarship>

1. Occasionally prenuptial agreements dealing with lines of inheritance or childcare after a father’s death were upheld. [↑](#footnote-ref-1)
2. This source is talking in particular about religiously based agreements, however as we will see not even all purely secular prenuptials can be expected to be upheld. [↑](#footnote-ref-2)
3. Normally on the grounds that they are two vague to constitute a contract In Habibi-Fahnrich v. Fahnrich (New York Supreme Court) for instance the Mahr would have required the husband give half his possessions to the wife upon divorce. The court thought this was to vague, despite the fact that it would be entirely possible to write an agreement to accomplish the exact same goal using the terms net worth instead of possessions. (Qaisi, 2001) [↑](#footnote-ref-3)
4. Dajani v. Dajani used the argument that the agreement facilitates divorce and so should be void for public policy reasons. (Qaisi, 2001) [↑](#footnote-ref-4)
5. I hate using the term utility in this way, but I think it gets the point across without introducing any fallacies. [↑](#footnote-ref-5)
6. These numbers include the subsidies for marriage we’ll discuss further down [↑](#footnote-ref-6)