

The Truth About Marriage and Family

by Matthew Spalding

Pope John Paul II has exhorted the faithful "to proclaim firmly the truth about marriage and family, established by God, as an authentic service to society. Not doing so," he warns, "would be a grave pastoral omission that would induce believers to error, as well as those who have the serious responsibility to make decisions for the common good of the nation." In the United States, the truth about marriage is seriously imperiled by a series of state and federal court decisions that seek to change the basic parameters of this social institution.

The Slippery Slope

In 1993, judges in Hawaii said marriage was a form of discrimination, and that the state's marriage law violated the Hawaii constitution. In the face of this unprecedented circumstance the U.S. Congress passed a bipartisan federal Defense of Marriage Act (DOMA) in 1996 which was signed by then-President Bill Clinton. That law defines marriage for purposes of federal law as the union of one man and one woman and says that states can't be forced to recognize contrary definitions.

At the national level, more recently, the U.S. Supreme Court held in *Lawrence v. Texas* that homosexuals have the right to "seek autonomy" in their relationships and cited "personal decisions relating to marriage" as an important area of that autonomy. In his dissent, Justice Antonin Scalia warned that *Lawrence* "dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned."

Last November, the Massachusetts Supreme Judicial Court declared that traditional marriage upholds "persistent prejudices" and "works a deep and scarring hardship on a very real segment of the community for no rational reason." That court redefined marriage in Massachusetts to mean "the voluntary union of two persons as spouses, to the exclusion of all others," declaring that "the right to marry means little if it does not include the right to marry the person of one's choice." The legal challenge to marriage from these and other cases is clear. As a result, the threat of a nation-wide redefinition of the institution is now on the horizon.

Ending Marriage as We Know it

Think about what's at stake. The basic building block of society is the family, which is the primary institution through which children are raised, nurtured, and educated and develop into adults. Marriage is the cornerstone of the family. It produces children, provides them with mothers and fathers, and is the framework through which relationships among mothers, fathers, and children are established and maintained. This unique association provides social, economic and health benefits for children and adults, and brings significant stability, continuity and meaning to society, transferring basic cultural knowledge and civilization to future generations.

To redefine marriage so that it is not intrinsically related to the relationship between fathers, mothers and children undermines the institution by separating it from its very nature and purpose. Expanding marriage to make it supposedly more inclusive, no matter what we call it, necessarily ends marriage as we now know it by remaking the institution into a mere contract between any two individuals. This redefinition of marriage would entail the establishment of a new legal status quo, with implications that go well beyond the immediate court decision. With the establishment of homosexual "marriage" as a matter of right, a whole host of laws and regulations — that could well threaten religious liberty — will be triggered to assure nondiscrimination and equal treatment. Consider some of the possibilities:

1. New federal laws forbidding discrimination in hiring based on sexual orientation. Churches, synagogues, mosques, religious schools and faith-based charities, as well as secular organizations of every kind, would be subject to new levels of government scrutiny.
2. Individuals and organizations that uphold traditional marriage or have moral or religious objections to the practice of homosexuality will find themselves at odds with the new political ethos, and likely will be stigmatized as prejudiced and discriminatory. In some countries, speaking-publicly against homosexuality has been criminalized.

3. The redefinition of marriage will affect what children are taught in virtually every subject at public schools. At the very least, heterosexual and homosexual relations will be presented in public schools as fundamentally equivalent expressions of individual autonomy.

Stopping the Juggernaut

Can these things happen in the United States? The trends can already be seen in Canada. Despite the fact that Parliament had voted overwhelmingly to affirm marriage as the union of a man and a woman, several courts ruled that marriage is discriminatory. Ontario declared same-sex "marriages" legal about a year ago. The Supreme Court of Canada is considering the issue, and is expected to redefine marriage nationwide. Even before the House of Commons passed legislation to include sexual orientation in current hate crimes law, a local court ruled that a news-paper ad about homosexual "marriage" using biblical quotes was a human rights offense, and another upheld the suspension of a high school teacher who wrote letters to a local paper criticizing homosexuality.

Since May 17, Massachusetts has issued more than 2,500 marriage licenses to same-sex couples from 27 states and the District of Columbia, creating state-recognized legal standing to challenge DOMA nationwide. At least 20 similar lawsuits directly challenging marriage laws are pending in 11 additional states. Will DOMA withstand this judicial juggernaut? Under normal circumstances, the answer should be yes. Congress has the power under Article IV to prescribe the effect of the Full Faith and Credit Clause, which requires that the public acts, records and judicial proceedings in one state be recognized in the others. Many thoughtful legal scholars, however, believe that DOMA would not withstand activist judges using dubious interpretations of due process or equal protection to advance policy objectives.

If the U.S. Supreme Court follows the logical trend of its own precedents and jurisprudence of recent decades — from *Romer v. Evans* (1996) to *Lawrence v. Texas* (2003) — it would be inconsistent for a majority of the justices not to set aside DOMA and redefine marriage according to their previously stated opinions. In any event, the federal DOMA does not protect the nation from state judges like those in Massachusetts who misconstrue their state constitution to establish same-sex "marriage." Nor does it address various local jurisdictions that openly ignore and violate state marriage laws. We should be disturbed when judges circumvent the lawmaking process and assume legislative powers. But it is even more alarming when judges disregard thousands of years of experience, tradition, and precedent — not to mention the most basic and evident truths of human nature — to alter the definition of our primary social institutions.

God's Plan

Certain fundamental questions must be uniformly addressed and settled for the good of civil society. Marriage is one of those questions. As such, it is not only reasonable but also obligatory that traditional marriage be preferred and defended in law and, if necessary, protected in the U.S. Constitution. "No ideology can erase from the human spirit the certainty that marriage exists solely between a man and a woman," the Vatican's Congregation for the Doctrine of the Faith wrote in a document approved by the pope. "There are absolutely no grounds for considering homosexual unions to be in any way similar or even remotely analogous to God's plan for marriage and family."

"Marriage, as instituted by God," the U.S. Catholic bishops have declared, "is a faithful, exclusive, lifelong union of a man and a woman joined in an intimate community of life and love." At the 121st annual Supreme Council meeting in 2003, the Knights of Columbus adopted a resolution that the Order would "oppose any effort to alter the institution and sacrament of marriage to include unions between persons of the same sex." Earlier this summer Supreme Knight Carl A. Anderson issued an urgent call to action in support of efforts to amend the U.S. Constitution to preserve the institution of marriage, and prevent it from being redefined by judicial decree.

The U.S. Congress has taken an initial vote on such an amendment, the first step in resolving this turmoil. States are strengthening their laws, passing state DOMAs, and considering state constitutional amendments. The whole country is now in the midst of a national conversation about the very nature, purpose and status of marriage. This is an important moment for the United States and our culture, and marks only the beginning of a long-term struggle to preserve and protect marriage and the family. The outcome of this effort will shape the future of our society and the course of constitutional government in the United States. It will also largely determine the possibility in America of achieving what John Paul II once called "a new birth of freedom, grounded in moral truth."