

The Federal Bureau of Marriage?

by Stephen Baskerville

Following its resounding successes in stopping drug use and eliminating poverty, the government now sets out to save marriage.

All sorts of social pathologies, from violence, to substance abuse, to teen pregnancy, to suicide, can be traced to fatherless families. To deal with this, Congress is now preparing to enact Bush administration proposals to promote healthy marriages. This gives the impression that politicians are addressing a problem that has become too conspicuous to ignore. In fact, they are avoiding it. The very agencies asked to promote healthy marriages have for decades been entrenched in the divorce and child-support system, which depends on the breakup of marriages.

Thirty years ago, with no public discussion of consequences, no-fault divorce laws effectively ended marriage as a legal contract and precluded couples from entering binding agreements to raise children. Deception was involved from the start. Laws advertised as allowing divorce by mutual consent actually created unilateral divorce, permitting one spouse to dissolve a marriage without accepting any liability for the consequences.

It would have been different if the new laws had removed government from marriage altogether and rendered it a wholly private contract, as libertarian Wendy McElroy has proposed. Instead, government developed new instruments to intervene in families.

Three decades of unrestricted divorce have created a public-private complex of judges, lawyers, psychotherapists, mediators, counselors, social workers, child support agents, and others with a vested interest in perpetuating divorce. Whatever pieties these practitioners voice about the plight of

fatherless, poor, abused, and violent children, the fact remains that their livelihood depends on a steady supply of such children. The children of divorce fill government coffers, fuel political patronage, expand police powers, justify surveillance of citizens, and create a host of problems for officials to solve — to which is now added the problem of creating more healthy marriages.

It All Began With Welfare

The marriage initiative ostensibly targets the poor, a group which has a higher concentration of fatherlessness. It is easier to justify government intervention into the lives of the poor because poor single mothers make a claim on government welfare. But remedies that begin with the poor have a way of spreading.

Once we turn attention to the middle class and mention divorce, we enter a political realm that has been obscured. Bringing up middle-class divorce reveals the difficulty, and perhaps dishonesty, in the question of whether government can restore marriage, because government itself has already abolished it.

In many ways, divorce has become the middle-class extension of welfare, creating single-parent homes among the affluent. In fact, all the major institutions of the divorce

regime — juvenile and family courts, child support enforcement, domestic violence units, child protective services, and recent programs to promote fatherhood — were created as ancillary to welfare. No-fault divorce extended these services to the middle class because that was where the money and political power were.

As with welfare, the main clients of the divorce regime are mothers. Academic studies consistently document that two-thirds to three-fourths of divorces are filed by women,

Laws advertised as allowing divorce by mutual consent actually created unilateral divorce, permitting one spouse to dissolve a marriage without accepting any liability for the consequences.

usually without legal grounds. The proportion may be higher when children are involved. Attorney David Chambers writes in *Making Fathers Pay* that “the wife is the moving party in divorce actions seven times out of eight.” Shere Hite, the popular researcher on female sexuality, found that “ninety-one percent of women who have divorced say they made the decision to divorce, not their husbands.”

This is not surprising given the emotional and financial incentives the industry offers mothers to divorce, including automatic custody plus windfall child support. A Canadian-American study found that “who gets the children is by far the most important component in deciding who files for divorce.”

The official view that fatherless children are products of paternal abandonment does not bear scrutiny. No scientific evidence indicates that large numbers of fathers are deserting their children, and, when pressed, no responsible authority asserts it. Governments are removing the children. It is difficult to overestimate the importance of this. Identifying fathers as the culprits has not only justified draconian enforcement measures against them, it has also allowed for policies that contribute further to fathers’ absences. Virtually every problem handled by the divorce apparatus, including child custody, child-support enforcement, child abuse, and even juvenile crime, is premised on the absence of the father. The first principle of the divorce regime is, therefore, to remove the father.

The Ministry of Love

All the cliches about custody battles obfuscate serious questions about the use of divorce to extend state power into private life.

The moment a divorce petition is filed, every family member surrenders his or her personal life to the scrutiny and control of public officials. Without children, the consequences are usually minimal. Divorce becomes socially destructive only when it involves children, and the same is true of its politics: once government takes control of children it can subject parents to an inquisition into their personal

lives.

When divorce required a showing of fault, such intrusions came only after convincing a court of law that one party broke the rules. No-fault divorce dispenses with this. One parent, almost always the father, immediately loses custody. From that point, unauthorized contact with his children renders that parent subject to arrest. Few stop to think about what is happening here. A court has summoned a citizen who was minding his own business and taken away his children.

Not only is unauthorized contact with his children now a crime, but other aspects of his private life, such as his movements and finances, also become subject to criminal penalties. What amounts to a customized criminal code is wrapped around the father by the court, subjecting him to arrest for behavior that is legal for any other citizen, such as attending a soccer game where his children are present. This is all without being accused, let alone convicted, of a crime.

A father summoned to divorce court typically has a few hours notice of a hearing that may last a few minutes, and at which he may be permitted to speak a few seconds. Yet during this hearing he will lose all rights over his children, receive a schedule of a few days a month when he may see them, and be ordered to pay child support. By law, his name is immediately entered on a federal register, his wages are garnished, and the government has access to his financial information, private papers, and home.

That parent no longer has any say in where his children reside, worship, or attend school or day care. He has no necessary access to their school or medical records, nor any control over what medications or drugs are administered to them. He can be enjoined from taking them to a doctor or dentist and told what religious services he may (or must) attend with them, and what subjects he may discuss with them in private.

He is also subject to questioning about his personal life that attorney Jed Abraham, in *From Courtship to Courtroom*, has termed an “interrogation.” Fathers are asked how they

Whatever pieties these practitioners voice, the fact remains that their livelihood depends on a steady supply of such fatherless children.

feel about their children, what they do with them, where they take them, how they kiss them, how they feed and bathe them, what they buy for them, and what they say to them. A father’s habits, conversations, writings, and purchases are all subject to examination and control. His visits with his children can be monitored and restricted to a “supervised visitation center.” Anything he says to his spouse or children can be used against him in court. Family counselors and personal therapists can be subpoenaed to testify. His children can be compelled to inform on him.

Child support is under the purview of the Administration for Children and Families, the same division

of Health and Human Services that is promoting healthy marriages. As heavy-handed methods become conspicuous, the ACF has devised public relations campaigns that emphasize its gentler, therapeutic side. This allows the state machinery to penetrate deeper into private lives. David Ross, head of the Office of Child Support Enforcement in the Clinton administration, proudly changed the mission statement of his office to include enforcing emotional support. "Child support is more than money," says the National Child Support Enforcement Association. "Child support is also love, emotional support, and responsibility." Love and emotional support thus become enforceable mandates.

Ronald Mincy and Hillard Pouncy of the Brookings Institution describe a program in which fathers are required to deal with their feelings about their children. At one point, says director Gerry Hamilton, "clients must write their own obituaries as they would be written by their children. This exercise is very moving. This helps non-custodial fathers understand why contact with their children is so important."

Even as the government drives fathers away from their children, it portrays itself as bringing them back. With the slogan "They're Your Kids. Be Their Dad!" ACF sponsors media advertisements with actors depicting fathers abandoning their children for no apparent reason: "When Vanessa's daddy walks out the door today, he's never coming back." The truth is that most fathers are absent because the government makes sure they stay absent. "It's hard to stay close to your kids when you don't live with them," the ad continues, "but you can do it."

An Administration for Children and Families campaign makes clear that the relationship it most wishes to foster is between fathers and federal agents. Activities funded by ACF include helping low-income fathers learn to interact more effectively with the child support enforcement system. Programs to promote responsible fatherhood likewise disperse grants to local governments and groups to reunite fathers with their children. Yet to reunite them, one must first separate them, whereupon they can be reunited on the government's terms.

The Feds and Families

Looking at the marriage initiative, left-liberals ask why a conservative administration is involving the federal government in something as private as the family. There is irony in these liberals defending the family against the government. Yet many Democrats are certain to go along, because all politicians tend to go along with programs that bring money. Domestic violence programs, for example, enjoy strong bipartisan support, because they distribute federal money to states and localities. Attorney General John Ashcroft and Health and Human Services Secretary Tommy Thompson are strong advocates of federal measures on domestic violence. It is not only public officials. We can look forward to nonprofit groups, churches, counseling programs, and marriage-saving schemes coalescing into a marriage-program lobby.

Joe Laconte describes in *First Things* how governments have established offices to broker agreements between social service agencies and congregations. One project creates one of the nation's most ambitious mentoring programs for at-

risk children. Churches receiving federal payments to serve as father substitutes will not eagerly surrender that job to real fathers who are likely to do a better job of it. Health and Human Services and the United Methodist Church are seeking to link the 2,200 YMCAs in the United States with the child support offices in their communities. At the very time churches are relinquishing their role as guardians of what is supposedly a sacred covenant, they are being recruited as government informers.

Secretary Thompson recently announced \$2.2 million in grants to faith-based groups to improve the financial and emotional well being of children. Deputy Health Secretary Wade Horn, head of the Administration for Children and Families, says the grants reach out to those who need help in acquiring the skills necessary to build relationships.

Yet only 25 percent of the funds will promote marriage; the remaining three-fourths is for enforcing child support.

Most fathers are absent because the government makes sure they stay absent.

Child-support programs would seem to be at cross-purposes to the promotion of marriage, because child support subsidizes divorce. Yet the Marriage Coalition in Cleveland, an ostensibly faith-based organization which claims to be saving marriages, will receive \$200,000 to help collect child support.

A major extension of government power over private life is taking place here. One federal ruling holds that parenting is a right "far more precious than property rights" which "undeniably warrants deference and . . . protection." Yet such apparently unequivocal principles are ignored by courts administering no-fault divorce. The common law has also long recognized, in the words of former Supreme Court Justice Byron White, a "realm of family life which the state cannot enter." Yet current divorce law gives officials the power to intervene in homes at the mere request of one parent, not because the other parent is suspected of a legally recognized offense, but because of ordinary family differences.

Prior to the divorce revolution, legal authority over children had been recognized to reside with their parents until the parents had done something to forfeit it. "For centuries it has been a canon of law that parents speak for their minor children," observed former Supreme Court Justice Potter Stewart. "So deeply embedded in our traditions is this principle of the law the Constitution itself may compel a state to respect it." Yet the state has now institutionalized precisely the opposite principle: that "the child's best interest is perceived as being independent of the parents," in the words of a major child support enforcement contractor, "and a court review is held to be necessary to protect the child's interests."

This phrase, the child's best interest, sounds deceptively benign. Yet it gives the government the power to define this interest over the objections of parents who have done noth-

ing to forfeit their rights. "Such a criterion is dangerous because it renders the claims of all parents to their natural children tenuous," writes Robyn Blumner of the American Civil Liberties Union.

Many accept this practice on the assumption that a judge must decide what is best for children when the parents cannot agree. But empowering one parent to turn control of children over to state officials because of routine family disagreements eliminates private life and invites collusion between officials and that parent.

Follow the Money

The "best interest" standard also transforms judges into dispensers of patronage who can appoint evaluators of both parents and children. Here we begin to glimpse the political dynamic that will be fueled by the funding proposed by the Bush administration.

Family courts are controlled by bar associations. To satisfy their members, judges can hire them at public expense or at litigants' expense. "Lucrative patronage positions," writes legal scholar Herbert Jacob, "are generally passed out to the judge's political cronies or to persons who can help his private practice."

A judge can even order litigants to hire his friends, on pain of incarceration. Legally unimpeachable citizens who give neither grounds nor consent for a divorce are ordered to pay attorneys and psychotherapists they have not hired for services they do not want, and may be jailed for not complying. A father can be ordered to sell his house and turn the proceeds over to attorneys he has not hired for a divorce he did nothing, legally speaking, to bring on.

Judges also appoint "attorneys *ad litem*" to ostensibly represent the children's interests. These officials are notori-

At the very time churches are relinquishing their role as guardians of what is supposedly a sacred covenant, they are being recruited as government informers.

ous for cronyism and for advocating the removal of fathers. In 2001, a two-year investigation into court appointments in New York state by a special inspector general found "cronyism, politics, and nepotism" in appointments of attorneys *ad litem* and other officials. In March 2000, four Arkansas senators were convicted on federal racketeering charges connected with contracts for attorneys *ad litem* and child support enforcement.

The patronage clients most likely to benefit from the Bush proposals are psychotherapists, who likewise serve mostly to provide a rationale for removing fathers. "The marriage of law and psychology has reached the heights of disproportionate power for the psychologists . . . in the family courts," writes Margaret Hagan in *Whores of the Court: The Fraud of Psychiatric Testimony and the Rape of American Justice*. Psychologist Sanford Braver calls such expert advice little more than guesswork. He writes, "There is absolutely

no credible evidence that these [methods] are valid predictors of which spouse will make the best primary parent. In fact, there is no evidence that there is a scientifically valid way for a custody evaluator to choose the best primary parent."

Braver attributes their obvious father-hostility to gender bias, but pecuniary interest may be a sounder explanation. He quotes one evaluator to the effect that almost all his business would be lost were not fathers routinely removed.

Already ubiquitous in custody proceedings, psychotherapy has been developing a new market as an alternative to litigation. This has also made it appealing to the federal marriage promoters. Many states now require divorcing couples to undergo counseling, mediation, and marriage education of the kind being mandated by the Bush administration. Not only is there no proof that such programs reduce divorce, it is fairly obvious that they thrive on it. According to the Administration for Children and Families, "Marriage education is a research-based approach that teaches couples how to build and maintain healthy, stable marriages and handle marital distress and breakdown." The last word slips in the government wedge, since all the counseling in the world is superfluous so long as one parent can simply take the children and leave.

"Mediation was pitched to the public as a service that would reduce the costs of litigation," writes Judy Parejko, herself a mediator, in *Stolen Vows*. "It sounded really good. But such well-intentioned messages served to cover up that no-fault was inherently forced divorce."

Parejko describes how her colleagues actually encouraged divorce. She claims her court-affiliated work was terminated by a judge and she was locked out of her office for trying to repair marriages. "They were in the business of mediation, charging a hefty fee for their settlement work," she writes, "and without a steady flow of customers, their business would dry up."

Half the jurisdictions in America now mandate marriage education during divorce. "The programs offer instruction in how to behave during a divorce and afterward, for the benefit of the children," explains the *New York Daily News*. Such provisions convey the appearance that officials are trying to minimize divorce; in fact, they shift blame onto the parent who fails to cooperate with it. "The fact that one parent didn't want the divorce — or that one of them had broken the promises they'd made when they were married — these were issues I was supposed to ignore," writes Parejko.

The administration claims its marriage measures are "voluntary" — that is, unless you want to keep your children. Conducted by professionals with a financial stake in divorce, these programs add clients to the gravy train and further transfer control of children to the state. Revealingly, the Canadian Bar Association pushes for coerced parent education, so parents who are involuntarily divorced must also be involuntarily educated into acquiescing in the loss of their children: "The CBA urges the federal government to require parents to take mandatory parental education before they are permitted to pursue court proceedings involving their children."

At first glance, it appears the government is requiring

parents to attend the classes before it will permit the divorce; a closer look at the careful wording reveals precisely the opposite. The court can still summarily remove the children, and parents who want them back must first accept government instruction in how to behave toward those who have taken them away. "We want to pull away from the idea that parents have rights in relation to their children," says Jennifer Cooper of the CBA's family law section, which represents 2,200 divorce lawyers.

Noting that mobs of unhappy dads who haven't seen their children for months or years now picket the homes of judges, the *Guardian* newspaper recommends that the pro-

The healthy marriages project appears to be largely a vehicle for expanding the already formidable child-support enforcement apparatus.

testers be silenced with instruction: "The system first needs to educate parents and provide a range of services, such as mediation and parenting classes."

The *Washington Post* describes a measure in Virginia that makes parent education "mandatory for anyone, married or not, who goes to court over custody, visitation, or child support." Again, the fine print reveals how the measure, far from checking divorce, will insert additional layers of officialdom between parents and their children, and intimidate parents who object to having their children removed.

Innocence Is No Excuse

The potential for family therapy to become coerced psychotherapy is realized in the divorce regime's domestic-violence arm. There is evidence that custody, rather than violence, is the main thrust behind the exponential growth of this authoritarian power.

A judge quoted in the *New Jersey Law Journal* calls that state's domestic violence law "probably the most abused piece of legislation that comes to my mind." Massachusetts attorney Gregory Hession agrees: "The restraining order law is one of the most unconstitutional acts ever passed. A court can issue an order that boots you out of your house, never lets you see your children again, and takes your money, all without you even knowing that a hearing took place." So routine are knowingly false accusations that mothers now report being pressured into making them. Heidi Howard and Nev Moore were ordered by the Massachusetts Department of Social Services to take out restraining orders against their husbands, whom they insisted had not been violent, and attend battered women's classes, though they were not battered women. When they refused, DSS seized their children.

Government therapy that claims to be strengthening marriages can thus be used to destroy them and to institutionalize family members who resist. Fathers accused of no violence are ordered into anger management and batterers' education programs, replete with forced confessions reminiscent of Stalinism. Under a Massachusetts program called

Common Purpose, a judge ordered a minister to attend batterers' therapy, which required a confession. When the minister refused, he was jailed for six months.

A Pennsylvania father against whom no evidence of violence was introduced had his daughter seized by sheriff's deputies and was ordered to attend a class called "Men Who Abuse." He said, "I was told that I had to admit to being an abuser. When I refused, I was told that I would be kicked out of the class and charged with contempt and probably put in jail. So this means I have to lie and admit to something that I did not do. I have been told by other men who have been through this in this county that it will be useless to try to defend myself because it will just make it worse."

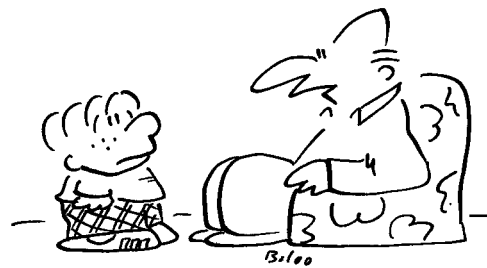
Child protection is a federally funded apparatus in which therapy and law enforcement eclipse due process. "Although spoken of in terms of social services," writes sociologist Susan Orr, "the child-protection function of child welfare is essentially a police action." Orr calls child protection "the most intrusive arm of social services," because it can confiscate children. Yet because the parents are seldom charged criminally, they cannot defend themselves in proceedings that are often secret and without record.

"The child protection system is built upon the notion that child maltreatment is remediable with the right therapeutic treatment," Orr writes. "By forsaking the courts of criminal law, in which determinations of justice and injustice are made and punishments meted out, child welfare agencies took on the much larger task of attempting to heal family members."

Deadbeat Dads

To judge from initial measures, the healthy marriages project appears to be largely a vehicle for expanding the already formidable child-support enforcement apparatus.

The dishonesty of the government's claimed child-support crisis has now been exposed in so many works there is no need to belabor it here. (See "The Myth of Deadbeat Dads," June 2002.) Significantly, our awareness of the alleged problem has come entirely from government officials. No public outcry ever preceded the creation of government machinery; the public never demanded that government take action; nor has any discussion of this alleged problem ever been held in the media. In fact, no public perception of such a problem even existed until public officials began saying it did. No government or academic study ever documented the existence of a child-support problem. The



"It's time you learned, son — in-laws and outlaws aren't necessarily opposites."

initiative has been taken throughout by government officials and quasi-governmental interest groups, whose power has greatly expanded as a result.

Prior to the creation of the federal Office of Child Support Enforcement and throughout its 28-year history, no study has ever been conducted on the reason for its existence. Several unchallenged studies have established that no problem in fact does exist.

In the realm of child support, too, machinery created for the poor expanded to the middle class. The criminal enforcement machinery was initially promoted as a means to recoup welfare costs and help single mothers off welfare. Though it never had this effect, the program expanded exponentially following its creation in 1975. HHS figures show that welfare cases now account for less than one-fifth of all child-support cases, and the proportion is shrinking. The remaining four-fifths are non-welfare cases consisting largely of previously married fathers who are usually divorced involuntarily and who generally can be counted on to pay.

Designed to reduce government spending, the federal program has incurred a continuously increasing deficit. Promoted to help poor children whose unemployed fathers had allegedly abandoned them, the new machinery became a means to loot working fathers who had done no such thing and whose children were taken from them through no fault or agreement of their own. Child support enforcement is now a multi-billion dollar industry, with interlocking agencies on the federal, state, and local level, plus private contractors. Support levels are set by the same officials and contractors who collect child support. By forcibly separating

The realization that the engine generating fatherless children is not the fathers, but the state, takes on implications few have dared to confront.

fathers from their children and imposing impossible child support burdens, these officials can create the very delinquents on which their business depends.

The Office of Child Support Enforcement oversees a force of plainclothes agents who can issue arrest warrants and carry guns. They also have powers to gather financial and other information on private citizens, including surveillance of citizens who have no involvement in child support. Child-support defendants can be jailed without a formal charge or jury trial or attorney, and may be presumed guilty until proven innocent.

Horror stories are legion. Darrin White of Prince George, British Columbia, was denied all contact with his three children, evicted from his home, and ordered to pay more than twice his income as child and spousal support, plus court costs for a divorce to which he never agreed. White hanged himself. There is nothing unusual about this judgment, says former British Columbia Supreme Court Judge Lloyd McKenzie, who pointed out that the judge applied standard

guidelines.

There is also nothing unusual about the result. Scholars and journalists treat court-related suicide as a problem not of justice but, again, of therapy. Pierre Baume of Monash University found that in Australia more than 1,000 men aged 25 to 44 take their own lives yearly. He found that most involve child access problems. Yet in language typical of his trade, Baume attributes this finding to relationship break-ups. Fathers therefore need, not due process of law, but, once again, counseling and education on how to express their feelings.

When Augustine Kposowa of the University of California attributed a similar suicide rate in the United States directly to family-court action, three news outlets ignored this conclusion, reporting instead that fathers lack support networks.

The Fraud of Healthy Marriages

If we truly wish to restore marriage, we must change not males but laws. Yet we are refusing to face this politically unpleasant truth and filling the public payroll with therapists and police.

In encouraging marriage, the administration is promoting a fraud. It is luring young people into a contract which the government can tear up at any time. Men in particular who accept the government's invitation to marry can lose their children, their homes, their savings and future earnings, their freedom, and even their lives. Not only will the government extend them no protection for their commitment, it will criminalize them without even the due-process safeguards afforded to criminals.

Some evidence suggests men are becoming wise. The National Marriage Project at Rutgers University reports that men are increasingly unwilling to marry. Project director David Popenoe spins a therapeutically correct explanation, blaming a puerile fear of commitment. Glenn Sacks and Dianna Thompson in the *Philadelphia Inquirer* read the data instead as indicating an impromptu marriage strike: a refusal to start families by men who are aware it can mean a one-way ticket to jail.

What we are glimpsing here is part of a larger process by which the state has used family destruction to expand its reach. When fathers are eliminated, state officials assume their role as protector and provider. By removing fathers, the government creates a host of problems for itself to solve. If fatherlessness is behind most of today's social ills, the realization that the engine generating fatherless children is not the fathers, but the state, takes on implications few have dared to confront.

Much of the expansion in the size and scope of government over many decades has been justified by the problems now recognized as proceeding from fatherless homes. Both the welfare state of the Left and the expansion of incarceration pushed by the Right are furthered by the government's displacement of fathers. With hardly a word of opposition from left or right, the welfare-divorce machinery has become a self-perpetuating mechanism by which government engineers the expansion of its own power. The increase in this machinery is the silent revolution of the last century. n