MARRIAGE AND THE FAMILY:
THE SOCIAL AND ECONOMIC COSTS

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I. Introduction

In 1965, Senator Daniel Patrick Moynihan wrote about the detrimental outcome of family breakdown. In an age of increasingly progressive public policy, Moynihan sparked an intense debate on the implications of family disruption, welfare dependency, and race. Over forty-five years after the Moynihan Report, family policy in America continues down a path of pragmatism and relativism without consideration to the broader cultural implications. One example, unilateral and no-fault divorce laws, which began to spread across the states in the late 1960s, represented a major shift in marriage and family life and significant unintended consequences arose from these policy changes. Currently, state legislatures across the country, are debating marriage and family policy, with six states passing laws supporting same-sex marriage or unions, and several other states banning same-sex marriage and other kinds of same-sex unions. In addition, the Supreme Court recently struck down the Defense of Marriage Act which defined marriage between a man and a woman.

As in the policy debates of Moynihan’s era, there is no shortage of those who argue on opposite sides of the policy spectrum. Typically these debates rest on fairness and justice grounds versus religious and moral conviction. Yet, very often little consideration is given to the broader societal implications or the myriad limitations to even begin to understand what impact these policy changes entail. Public policy debate, since the progressive movement began in the early 20th century, often begins with the assumption that government has the ability to “solve” any and all economic, social, or cultural “problems.”

Researchers from multiple disciplines have investigated the impact of family breakdown on society. The effects on children have garnered attention as research examines the psychological impact of one versus two parent families, the incidence of teenage pregnancy,
juvenile crime rates, a drop off in educational attainment, and declining birthrates in advanced industrial countries. Additional research indicates family breakdown has economic consequences in terms of increased poverty which often manifests in significantly lower income for female single-headed households. While both the definition of marriage and family and the economic impact of family breakdown remain fundamental policy issues, two principal questions require further consideration:

1. What constitutes marriage and family, and does it matter how this institutional arrangement is defined for society as a whole?

2. To what extent has government policy contributed to family breakdown, and what is the economic cost of this breakdown?

What follows is an attempt to answers these questions by first analyzing whether it matters that marriage is understood to mean the traditional relationship between a man and a woman, and then by comparison we examine the impact of divorce policy on society and the economy. The broader effect is examined for the United States, but we focus on the specific economic impact in North Carolina. It is useful to compare the implications of far-reaching social policy on the family, namely divorce law and same-sex marriage law, because both of these policies represent a significant departure from the traditional family structure. Yet more importantly, both of these policy changes demonstrate major shifts in social policy for pragmatic reasons. With the benefit of decades of analysis, clearly no-fault divorce policy has caused numerous negative outcomes that no one anticipated. Thus, it bears further analysis as to the expected and unexpected outcomes of same-sex marriage laws as they, too, represent a monumental shift in social policy.
The remainder of this paper is divided into three main sections. First, we examine what constitutes marriage and how this understanding of marriage influences the role of marriage and family in society. Next, we review the economic consequences of no-fault divorce policy and then focus on the economic impact within North Carolina. Finally, we discuss the limitations, unintended consequences, and potential harm of government policy by examining the link connection far-reaching social policy between no-fault divorce policy and same-sex marriage laws. A conclusion follows.

II. What is Marriage and Family?

The Evolution of the Debate

In January 2013, during his second inaugural address, President Obama became the first American President to use the term “gay” in reference to sexual orientation as he said, “Our journey is not complete until our gay brothers and sisters are treated like anyone else under the law. For if we are truly created equal, then surely the love we commit to one another must be equal, as well” (Tumulty, 2013). The fact that President Obama drew attention to this issue and championed equal rights is hardly surprising, given the importance of the current debate on the status of marriage in the United States. While the controversy surrounding the proper interpretation and treatment of marriage is not new, current events continue to push the issue into the spotlight. As of mid-2013, ten states allow same-sex marriages, and five other states allow civil unions between individuals of the same sex. In 2009, only four states allowed such a marriage. In just four years, the number of states allowing same-sex marriages more than doubled. Furthermore, traditional marriage is also under scrutiny. The Center for Disease Control and Prevention reported the 2009 divorce rate at fifty-three percent. As a result of the amount of divorces and the number of single women giving birth, more and more children are growing up
in single parent homes. The importance of the current debate over the definition of marriage, and consequently, the family, cannot be overstated.

Without question, the state of marriage is changing. Stephanie Coontz’s (2005) book *Marriage, a History* details the various forms that marriage has taken. In her well-researched book, Coontz examines institutions of marriage throughout cultures and eras, coming to the conclusion that although marriage and the family structure is changing in the United States, there has never been a universal definition of marriage. In 1949, George Peter Murdock, an anthropologist by profession, suggested a definition of marriage that included sexual activity, living together, and cooperating economically as the criteria for marriage. While this definition appears to match many of the qualities of modern marriages, the definition is viewed as “too restrictive.” Another definition proposed by the Royal Anthropological Institute of Britain suggested that the proper definition of marriage was “a union between a man and a woman such that children born to the woman are recognized legitimate offspring of both partners.” However, this definition of marriage was also viewed as too restrictive, because there are numerous exceptions to the rule, thus demonstrating the multiplicity of marriages that have existed in various cultures (Coontz, 2005, pp. 26-27).

There are several takeaways from Coontz’s book relevant to the current discussion revolving around marriage. To begin with, the central argument of Coontz’s book is that modern American marriages are based on love, though this is a relatively recent phenomenon. The fact that Coontz points to one factor alone, love, as the foundation of modern marriage is crucial to understanding the current argument revolving around marriage. In addition, though marriage has changed based on cultural context, there are principles of marriage that are almost universal in appearance. Finally, Coontz suggests that the shifting forms of marriage, including same-sex
marriage in the United States, are “inevitable.” Coontz’s final words to the reader are as follows: “We can never reinstate marriage as the primary source of commitment and caregiving in the modern world. For better or for worse, we must adjust our personal expectations and social support systems to this new reality” (Coontz, 2005, p. 313). Coontz’s two assumptions, that “love is the central reason for marriage” and that changes in the form of marriage are uncontrollable, are often assumptions found in the arguments of those advocating for same-sex marriages, while the almost universal characteristics of marriage point to a certain cultural purpose to which same-sex marriage does not conform.

The modern family structure, and its implications for marriage, has also changed due the large number of single-parent families that intentionally organize with only one parent. Rosanna Hertz (2008) studied over eighty women who willingly chose to become mothers. She writes, “The liminal state is a period of shifting back and forth between remaining in search of a partner and moving forward to having a baby, bypassing marriage” (p. 35). Later she continues, “the term marriage is used here as a stand-in for long-term monogamous partnerships, whether heterosexual or homosexual.” The redefinition of marriage goes along with the aforementioned restructuring of the family. Elsewhere, Hertz writes: “Motherhood is now readily available to gay women” (p. 231). While Hertz is just one author, she is a microcosm of the effects of the marriage debate: marriage and family cannot be separated; when one changes, so does the other.

One question that arises from the work of Coontz and Hertz is what affect does this evolving view of marriage and family have on society? Howard Moody argues, “Americans will see that all the fears feistied on us by religious zealots were not real. Heterosexual marriage will still flourish with its statistical failures. The only difference will be that some homosexual couples will join them and probably account for about the same number of failed relationships”
(Moody, 2004). Moocy suggests that society will face no adverse consequences. However, the
evidence of family policy and limitations of government calls into question Moody’s 2004
prediction. The advance of same-sex marriages in the United States has implications that move
beyond the idea of fairness and justice.

What is Marriage?

From the beginning, the consequences of “defining marriage” must be taken into account.
If marriage is something, it is not something as well, thus defining marriage results in the
exclusion of ideas and beliefs. This runs counter-cultural to the notion that “exclusion” is
inherently harmful, when in reality, the exact opposite is true. A pithy aphorism goes something
like this: “The greatest form of inequality is treating unequal things equally.” Simply put, same-
sex marriages and marriages between a man and a woman are not equal. Outside of the United
States, some homosexuals acknowledge this truth. A gay Frenchman protesting the bill that
legalized same-sex marriage in France had this to say: “Why must we say gay and straight
couples are the same? They are not equal” (Lopez, 2013).

Heterosexual marriages differ from same-sex marriages in purpose, method, and fruit.
Katherine Young studied the features of marriage across sixty-two culturally diverse societies.
Her conclusions are that marriage: “1. Encourages procreation under special conditions; 2.
Recognizes the interdependence of men and women; 3. Defines eligible partners; 4. Is supported
by authority and incentives; 5. Provides mutual support not only between men and women but
also between them and children” (Young & Nathanson, 2007, p. 140). Lynn Wardle (2011)
suggests that gender integration is a core purpose of marriage. Males and females are inherently
different. Marriage serves to bring these two genders together. Proponents of a gender-
integrative view argue that males and females are complementary. Without both, the marriage is incomplete.

Furthermore, natural law seems to suggest that heterosexual marriages and same-sex marriages are fundamentally unequal. It is not biologically possible for same-sex marriages to produce children. While same-sex couples can adopt children and lesbian couples can undergo artificial reproduction, a same-sex couple cannot have children on their own. Proponents of homosexual marriage argue that including childbirth into the definition of marriage is unfair. To be sure, not all male/female marriages result in childbirth, whether this is due to choice or infertility is dependent on the particular case. The common question posed by same-sex activists is, if married heterosexual couples don’t have children, should they be stripped of their marriage license? Here, the legal principle de minimis non curat lex (the law is only made for what usually obtains) comes into effect (Novak, 2009). Thus, setting procreation as a criterion for marriage would not exclude heterosexual couples without children because the natural outcome of sexual relations between a male and female is children. Same-sex marriages are unnatural in the sense that those relationships can never produce children. Procreation is not the only criterion for marriage, but it the natural result of a marital relationship.

Consequently, many gay citizens argue that their rights are being infringed because they are being denied marriage. A common argument compares the belief that marriage is inherently gender integrative to the belief that individuals of different races should not marry each other. Homosexuals view themselves as enduring similar persecution to African Americans during the civil rights movement. President Obama’s logic follows the same pattern. In his second inaugural address, he compared the protests for gay rights to protests for civil rights. Shelby Steele, an African American scholar, responded to claims that laws prohibiting same-sex marriage are the
same as anti-miscegenation laws: “same-sex marriage is simply not a civil rights issue. It is not a struggle for freedom. It is a struggle of already free people for complete social acceptance” (Young & Nathanson, 2007, p. 150).

Creating a distinction between heterosexual and homosexual marriages is not arbitrarily discriminatory. It is a distinction based on the nature and purpose of marriage. The words of Rutgers University sociologist David Popenoe point to the distinction: “The burden of social science evidence supports the idea that gender-differentiated parenting is important for human development and that the contribution of fathers to childrearing is unique and irreplaceable” (Anderson, 2013, p. 3). While it is understandable that gay couples want the government to recognize their relational status, a denial of marriage rights is not discriminatory but based on the longstanding understanding of marriage. As aforementioned, defining marriage automatically results in the exclusion of certain ideas about what it means to be married.

**The Role of Government in Marriage Policy**

The words of President Obama give rise to another important question: should the government have any role to play in the protection or promotion of marriage? While the institution of marriage predates the institution of government, the government has an important reason to protect the institution of marriage because protecting marriage results in the common good of the country. Marriage is perhaps the greatest form of commitment an individual can make in modern day society. “Till death do us part” is not a phrase easily carried out. Marriage promotes the qualities of social cohesion, fidelity, and intimacy. Coontz explains several characteristics of marriage: “Today married people in Western Europe and North America are generally happier, heathier, and better protected against economic setbacks and psychological depression than people in any other living arrangement” (Coontz, 2005, p. 309). Marriage
promotes familial relations. Marriage, and the resulting offspring, is necessary for the perpetuation of society. Thus, the government should attempt to provide incentives for marriage because marriage fosters characteristics such as faithfulness and support that strengthen the foundational building block of society - the family.

Often, the current debate on same-sex marriage changes the focus of the argument. Marriage has become more about an individual’s desires than about the needs of the family and the children therein (Anderson, 2013). The recent changes in French law regarding marriage equality provide a valuable look into this fight for “equality.” France has long been more liberal in social policy than the United States. In 2012, when the French legislature began considering a law that would legalize same-sex marriage there was a large public outcry concerning the bill. At the heart of the opposition (from both gay and straight individuals) was the rallying cry that children are to be considered, and the family unit as a whole, over the desires of individual marriage rights. The French homosexuals who opposed the proposed policy change emphasized that marriage has to be, and should be, just as much about children as it is about individuals. Eighty-three percent of the French population supported a referendum on the subject. However, on February 2, 2013, the legislature passed a bill that defines marriage as an agreement between two individuals rather than only a man and a woman. Same-sex marriages, though radically differing in scope from heterosexual marriages, have been granted equality. One gay Frenchman had this to say regarding equality “equality is not a good thing by itself. There are bad forms of equality. We call that conformism, uniformity, banality” (Lopez, 2013). In France, the national policy now treats heterosexual marriages that produce children the same as homosexual commitments.
In 2005, Canada legalized same-sex marriage, following several years of court battles where same-sex couples sued the government for a violation of civil rights. Several years after the fact, two Canadian professors, Katherine Young and Paul Nathanson, extensively explored the logic and consequences of the decision, ultimately coming to the conclusion that the government erred in passing such policy. Young and Nathanson argue against the decision on the grounds of international law, cross-cultural evidence, Canadian laws regarding discrimination, and the consequences of the decision. While these certainly do not constitute an exhaustive list of reasons to oppose the same-sex marriage law, they do shed light on some of the potential outcomes to expect in the United States.

A fundamental argument that Young and Nathanson make involves the right of children. These scholars utilize international law, examining the Universal Declaration of Human Rights. While international law should not trump the United States constitution, the articles in the human rights Declaration that are analyzed involve children, specifically the right of children to “as far as possible... know and be cared for by his or her parents.” Other instances in the Declaration support the premise that children have the right to know their biological, differing-sex parents. There are several parallels to the French argument against creating “marriage equality” for an unequal marriage. At the center of these arguments is the right of the child in a basic familial framework. This argument is not intended to raise the rights of children above those of parents, but given the well-documented impact of children who grow up in families with a male and female parent, this opportunity should not be denied a child at the outset. Children, who have to be biologically produced as the product of a male and female, support the claim that same-sex marriage is inherently different from marriage between a man and a woman. Advocates of homosexual marriage, while arguing that homosexual couples should have the right to adopt and
rear children, cannot use children as a justification for marriage, because, quite simply, homosexual couples cannot produce children of their own accord.

The Role of Family in Society

The family is a crucial entity in the creation and building of social capital. In her groundbreaking book *Love and Economics*, Jennifer Morse argues that the family is the foundational unit of society. At the heart of her argument about social theory is infant helplessness. She writes, “A free society requires self-restraining, self-monitoring, self-governing adults. But we are not born as adults” (Morse, 2008, p. 6). Thus, the family is essential to raising individuals who exhibit trust, cooperation, and self-restraint, qualities which American society is built upon and that the family inculcates into children. Another essential argument of Morse’s is that couples are better suited to the raising of children that single parents and also that male/female couples are the best suited to raise children (see below). Families, the cornerstone of societies, are best developed in a monogamous heterosexual relationship.

This understanding of families as the foundational entity whereby social capital is built is not a modern idea. The preeminence of marriage and the family can be traced to Aristotle. The family is the basis of the political order, and the state should be concerned with the first unit of social order. For Aristotle, family possessed features of governing and highlights the relational nature of our existence. While the familial structure of “father” ruling and child and wife being “ruled,” is both anachronistic and in some cases patently false, like a family, politics must arrange itself in such a way to practice both “ruling and being ruled.” Aristotle’s most preferred government, what he calls polity, best accomplishes “ruling and being ruled” by allowing citizens to take part in the dynamics of both. Like a family, politics must arrange itself in such a
way to promote both the well-being of its people and denote a clear understanding of how decisions are made (Aristotle, 1997, p. 9).

Rousseau offers a similar Aristotelian argument in the second chapter of *The Social Contract*:

The most ancient of all societies, and the only one that is natural, is the family: and even so the children remain attached to the father only so long as they need him for their preservation. As soon as this need ceases, the natural bond is dissolved. The children, released from the obedience they owed to the father, and the father, released from the care he owed his children, return equally to independence. If they remain united, they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention...

...The family then may be called the first model of political societies: the ruler corresponds to the father, and the people to the children; and all, being born free and equal, alienate their liberty only for their own advantage. The whole difference is that, in the family, the love of the father for his children repays him for the care he takes of them, while, in the State, the pleasure of commanding takes the place of the love which the chief cannot have for the peoples under him (Rousseau, 1968, p. 50).

Throughout Western Civilization, the traditional family was believed to be a fundamental unit responsible for establishing societal cohesion and order, and this relational structure was fundamental to the nature of man. The intervening millennia did not change the essence of this relationship and its importance for civilization to flourish.

Additionally, sociologists and political theorists have long written about the family unit as a foundational group whereby social capital is developed. Social capital is created by the ties within a family structure, and the cohesion there establishes the virtues of trust and reciprocity that are central to a well-functioning society. The sociologist James Coleman famously demonstrated the crucial role of two-parent families in establishing the social trust and unity that leads to childhood educational success, thus minimizing state dependency later in life. Robert Putnam notes that the decline in civic engagement and political participation coincided with the
loss of the two-parent family structure (Putnam, 2001). Finally, in his work on declining trust in communities Francis Fukuyama has noted the loss of “moral community” and increased poverty rates because of divorce (Fukuyama, 1995, p. 309).

II. The Economic Costs of Family Breakdown

Given this debate and the impact of non-traditional marriage discussed above, it is hard to consider the full implications of marriage without assessing the economic costs of family breakdown. As mentioned, public policy has shifted dramatically over the past fifty years on the issue of divorce, and these shifts have resulted in profound changes in the nature and structure of family life. Extensive research has examined important questions resulting from policy intended to make the decision to end a marriage easier. By 1983, a form of no-fault divorce existed in forty-eight states, and today no-fault divorce laws currently exist in all fifty states and the District of Columbia.

Three important questions arise when considering the implications of no-fault divorce in America. The first is to what extent did these policies affect divorce rates? Second, what is the economic impact of family breakdown resulting from divorce? Finally, what additional ramifications resulted from these policies that legislator’s did not anticipate? The answer to each of these questions helps explain not only the direct and indirect impact of divorce policy, but also the broad cultural implications of government policy designed to address social concerns.

The Impact of No-Fault Divorce on Divorce Rates

An extensive body of empirical research has addressed the question of how no-fault divorce impacts the rate of divorce. Researchers have tackled this question for decades and some have written extensive reviews of the literature (Allen & Gallagher, 2007; Ellman & Lohr, 1998). Much of this research points to two seminal studies, one by Leora Friedberg (1998) and a
follow-up study by Justin Wolfers (2006). Friedberg found, after examining a twenty-year dataset for all fifty states, that these divorce laws accounted for an approximate seventeen percent increase in divorces. Wolfers’ research uses the same dataset yet over a longer period of time, and he concludes that the divorce rates still increases but it does not persist (the increasing lasting only about ten years). Wolfers’ key contribution is that as divorce laws change, people seem to change their behavior in terms of how they choose a spouse or how soon they marry. While these two studies have garnered the most attention by scholars, several other researches have empirically investigated the effects of divorce policy.

It is evident from Figure 1 that certain factors changed (or a number of factors) in the 1960s that led to a steep increase in the divorce rate. A thorough review of the recent empirical research suggests that no-fault divorce laws increased the divorce rate by as much as eighty-eight percent, yet even more telling is when controlling for couples with quality matching criteria, a permanent increase in divorce risk exists (Allen & Gallagher, 2007; Gruber, 2004).
The Economic Impact of No-Fault Divorce

The other major impact of family policy changing the incentives to divorce in the United States is the cost to taxpayers of family breakdown. Researchers have studied both the impact of divorce law on divorce rates and also the economic toll associated with divorce. In many respects, the latter is less controversial among scholars because there is a clear link to single-parent headed households and poverty. Some studies suggest that female headship in particular is associated with up to eighty percent of poverty (Hoynes, Page, & Stevens, 2006). Other research examines the costs associated with childhood poverty which again is often liked to growing up in a single-parent headed household. The economic impact of child poverty is not simply the immediate costs to taxpayers, such as the costs of crime or health expenditures, but also the lower earnings and lower productivity of these children when they reach adulthood. These costs are estimated at $500 billion annually or approximately four percent of GDP (Holzer, Schanzenbach, Duncan, & Ludwig, 2007).

For the purposes of this research, we carefully examine the economic costs of family breakdown on the state level, focusing our analysis on a conservative estimate of the costs to North Carolina. The methodology we use to estimate the costs for North Carolina is based on previous state-level research for all fifty states (Scafidi, 2008) and a recent case study analysis in Texas (Schramm et al., 2013). These two studies helped us identify the calculations necessary to ascertain the taxpayer costs to family breakdown. We focus our research on the direct costs associated with poverty, which is the most widely accepted consequence of divorce, yet the reason these estimates are conservative is that many additional negative effects of family breakdown have been cited (see below) but are not included in these direct costs.
Table 1 displays some of the costs incurred by North Carolina taxpayers to assist those affected by divorce. Using the framework constructed by Scafidi, et al., which looked at national costs for all fifty states, we analyzed comparable categories at the state level for North Carolina. This estimate is conservative also because many benefits such as housing assistance, the Earned Income Tax Credit, and even foregone tax receipts are not included. Those measures are difficult to access and pinpoint specifically to family breakdown. Nevertheless, this data explains the magnitude of the total burden borne by taxpayers attributed to divorce and family breakdown.
Table 1: Direct Taxpayer Costs of Divorce in North Carolina

<table>
<thead>
<tr>
<th>Government Program</th>
<th>Total Spent in North Carolina</th>
<th>Percent affected by divorce</th>
<th>Estimated amount spent on divorced people/families</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice system</td>
<td>$ 4,878,560,000</td>
<td>8.7%</td>
<td>$ 422,678,438</td>
</tr>
<tr>
<td>TANF</td>
<td>$ 69,029,114</td>
<td>31.7%</td>
<td>$ 21,882,229</td>
</tr>
<tr>
<td>Food Stamps</td>
<td>$ 2,430,133,033</td>
<td>31.7%</td>
<td>$ 770,352,171</td>
</tr>
<tr>
<td>Medicaid</td>
<td>$ 10,906,854,619</td>
<td>9.2%</td>
<td>$ 1,002,667,145</td>
</tr>
<tr>
<td>CHIP</td>
<td>$ 367,381,159</td>
<td>36.1%</td>
<td>$ 132,624,598</td>
</tr>
<tr>
<td>Child Welfare Services</td>
<td>$ 421,092,078</td>
<td>36.1%</td>
<td>$ 152,014,240</td>
</tr>
<tr>
<td>WIC</td>
<td>$ 205,027,952</td>
<td>31.7%</td>
<td>$ 64,993,861</td>
</tr>
<tr>
<td>I IHFAP</td>
<td>$ 81,046,985</td>
<td>31.7%</td>
<td>$ 25,691,894</td>
</tr>
<tr>
<td>Head Start</td>
<td>$ 162,350,125</td>
<td>36.1%</td>
<td>$ 58,608,395</td>
</tr>
<tr>
<td>School Lunch Program</td>
<td>$ 369,583,974</td>
<td>36.1%</td>
<td>$ 133,419,815</td>
</tr>
</tbody>
</table>

2012*† TOTAL                      $ 19,891,059,039                $ 2,784,932,787

*These data represent the costs from the most recent year available.

The programs examined in Table 1 are widely considered some of the most significant impacted by family fragmentation. The programs represented cost taxpayers in North Carolina $2.7 billion annually on divorced families. In several of the programs, it is estimated that almost one-third of the total program costs can be attributed to those families. These percentages were estimated for North Carolina using the detailed results from the fifty state-level analysis.

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mentioned above. The assumption used here is that the share of expenditures on government antipoverty programs that can be attributed to family breakdown is equal to the percent of poverty that results from these broken families (Scafidi, 2008). These numbers are again conservative because it is estimated that marriage would lift sixty percent of single-mother households out of poverty (Thomas & Sawhill, 2002), which would reduce the total persons in poverty and the total number of children in poverty by thirty-one percent and thirty-eight percent respectively. In North Carolina, sixty-six percent of children in poverty are living in a single-parent household.² It is likely that these estimates are conservative as well, because when analyzing the costs of divorce most research focuses on the impact to single-female headed households. While these households do represent the vast majority of children living in poverty, getting (and remaining) married does impact single-male households as well as their earning potential changes in a single-parent context.

The $2.7 billion spent annually by North Carolinians on divorced families is also a low estimate due to the impact of family breakdown on crime. Table 1 only shows the costs that divorce and family breakdown has on poverty in female headed households. Research indicates that children raised in single-mother households are more than twice as likely to engage in criminal activity as children whom grow up in a married household (Harper & McLanahan, 2004; Scafidi, 2008). Some of this research has been criticized due to selection bias, and it is difficult to pinpoint a direct causal relationship to family breakdown and youth crime. Yet, there is clearly a link that is hard to ignore.

Finally, other factors that are difficult to quantify, but likely have a significant economic cost, should be considered. As mentioned above, one of the most important roles of family in society is the development of social and community connections and the building of social

² National Center for Children in Poverty, 2010
capital (Bubolz, 2001). When only one parent is available to raise a child or children, it is very likely that less social (and possibly human) capital results which may have long-term implications on earning potential, social adjustment, and educational outcomes. Other research suggests that children of divorced parents perform more poorly on reading, spelling, and math and have higher drop-out rates in high school (Fagan & Rector, 2000). Additional research will need to further analyze these impacts.

III. The Limitations of Government in Social Policy

Several major consequences, both intended and unintended, will result if the government of the United States redefines marriage as was the case with no-fault divorce policy. It is likely that a definition of marriage that only consists of love and commitment will open the door for future rearrangements of family structure. As sociologists and historians assert, many cultures have seen polygamous and polyandrous marriages. If love is the only criterion for marriage, what argument can be made against such marriages? Furthermore, those who argue for rights fail to acknowledge that redefining marriage will restrict the rights of other citizens, because they will have to treat heterosexual and homosexual marriages the same. There are numerous examples where a lack of “tolerance” results in lawsuits or closing of businesses. For example, in Vermont, the Wildflower Inn was sued because it did not host a same-sex wedding reception. A bed and breakfast establishment in Honolulu was sued for not providing reservations to a homosexual couple. In New Jersey, a Christian beachfront property was found to violate state law because it refused to host a homosexual civil union (Kaufman, 2012). If same-sex marriage is normalized in the United States, incidents like these will only grow in number.

Defining marriage as a union between one man and one woman is not an attack on any group of people. The government has a role to promote the public good. As the family is the
foundational unit of society, it is necessary to the flourishing of society that marriage be protected. Of course, not all marriages last. Without a doubt, the family structure is changing in the United States. What matters, however, is how the United States government chooses to approach such change. The government could take the position advocated by Stephanie Coontz that such changes are “inevitable.” Yet, policy initiated on the “inevitable” criteria has little consideration for the widespread implications for such a decision.

**The Cultural Consequences of Divorce and Marriage Policy**

As examined above, the economic costs of family breakdown are significant. Clearly, policy that has made it easier to divorce (or at least catalyzed family breakdown) has resulted in major economic costs. It is necessary to further examine the broader cultural implications of these policies as well. Thus, comparing the widespread impact of divorce law with same-sex marriage law is a useful means of understanding the consequences (both actual and potential) of such major shifts in social policy.

Friedrich Hayek famously wrote about the limitations of individual or group (such as government) knowledge to make decisions on how to allocate resources in an economy. Knowledge in a market system is dispersed among millions of individuals and then communicated via the price system, and this information is impossible to attain by any one person of group of people. He notes:

If we can agree that the economic problem of society is mainly one of rapid adaptation to changes in the particular circumstances of time and place, it would seem to follow that the ultimate decisions must be left to the people who are familiar with these circumstances, who know directly of the relevant changes and of the resources immediately available to meet them. We cannot expect that this problem will be solved by first communicating all this knowledge to a central board which, after integrating all knowledge, issues its orders (Hayek, 1945, p. 524).
As Jonathan Rauch (2004) points out, Hayek in similar fashion wrote about society’s culture, tradition, and institutions that embody far more “cultural knowledge” that any individual can master. These customs and norms are passed down and survive due to a particular logic that cannot be removed at will, simply for pragmatic reasons, without unforeseen consequences.

Social policy and public policy more generally, is often viewed as simply a pragmatic approach to governing social decisions where the collective knowledge of a group is adequate to make decisions that impact the whole of society. The American progressive movement is littered with policy decisions based on this trust in reason irrespective of any previous decision-rules put in place or the broader cultural implications. Social policy is often myopic and viewed as enlightened and just. In a later work Hayek writes:

We flatter ourselves undeservedly if we represent human civilization as entirely the product of conscious reason or as the product of human design, or when we assume that it is necessarily in our power deliberately to re-create or maintain what we have built without knowing what we are doing. Though our civilization is the result of a cumulation [sic] of individual knowledge...man in society is constantly able to profit from a body of knowledge neither he nor any other man completely possesses (Hayek, 1979, pp. 149-150).

Individuals, or narrow special interest groups, who seek to re-construct the social order, do not have the aggregate knowledge to do so and the consequences of trying can be far-reaching.

Rauch quotes Hayek at length and it is worth doing so here as well. Hayek continues in *The Counter-revolution of Science* by arguing convincingly that this knowledge problem in the policy realm, as in the market system, severely challenges the role of collective decision-making. Hayek continues:

It may indeed prove to be far the most difficult and not the least important task for human reason rationally to comprehend its own limitations. It is essential for the growth of reason that as individuals we should bow to forces and obey principles which we cannot hope fully to understand, yet on which the advance and even the preservation of civilization depends. Historically this has been achieved by the influence of the various religious creeds and by traditions and superstitions which made man submit to those
forces by an appeal to his emotions rather than to his reason. The most dangerous stage in
the growth of civilization may well be that in which man has come to regard all these
beliefs as superstitions and refuses to accept or to submit to anything which he does not
rationally understand. The rationalist whose reason is not sufficient to teach him those
limitations of the powers of conscious reason, and who despises all the institutions and
customs which have not been consciously designed, would thus become the destroyer of
the civilization built upon them. This may well prove a hurdle which man will repeatedly
reach, only to be thrown back into barbarism (Hayek, 1979, pp. 162-163).

Indeed, the ramifications of no-fault divorce law are a stark example of the limitations Hayek is
addressing. Social policy change is not simply an issue of fairness or justice. No-fault divorce,
initially seen as policy that would help and protect women stuck in difficult or abusive
marriages, has resulted in a culture of inequality and child poverty that was not anticipated.

In the case of divorce law, no one suggested that no-fault divorce would lead to higher
divorce rates or an increase in out-of-wedlock childrearing or child poverty. In addition, the
cultural implications are profound. Barbara Dafoe Whitehead expands on the culture impact
explaining:

Divorce is not the only force that has contributed to weaker family ties and more fragile
families, but it has been the most important in shaping a new cultural disposition about
the meaning of family breakup. Divorce has been damaging not only because it has
contributed to the widespread trend toward family fragmentation and the paternal
abandonment of children but also because it has won the influential adherents in the
society who defend family breakup as necessary for individual psychological growth and
freedom. When the divorce revolution began, no one could have predicted where it would
lead, how it would change the shape and content of family relationships...Thirty years
later we have acquired a substantial body of social learning experience and empirical
evidence on the impact of divorce on men and women, on children, and on the larger
society. And this body of evidence tells us that the cultural case for divorce has been
based on misleading claims, false promises, and bankrupt ideas (Whitehead, 1997, pp.
182-183).

Broad policy changes have significant consequences that are impossible to predict. Some
scholars have asked why, apart from the knowledge problem expressed by Hayek, were the
consequences of no-fault divorce laws unexpected. The answer goes back, in part, to where we
began this research and the implications for the same-sex marriage debate which is false theories of marriage (Allen, 2006).

Marriage does not boil down to good and bad unions but is rather a spectrum. Policy that simply views marriage in terms of either good or bad marriages is not useful as many marriages fall in the middle of that spectrum. Consequently, simply pragmatic policy, allowing an easy exit strategy for marriage, likely pushes more toward the option to exit. "Divorce reformers felt that marriage was the domain of lovers. Issues of specific investments, paternity, and the like simply were not considered. Lovers should be married, and haters should not be" (Allen, 2006, p. 978). Again, the unintended consequences and the cultural impact of a dramatic shift in social policy are profound and far-reaching.

The Future of Marriage Family Policy

In this research, we examined the role that government plays in shaping marriage and family institutions in the United States. Most importantly, the impact of social policy significantly impacts the incentives toward marriage and family formation, and these policies determine the broad cultural and economic ramifications of family breakdown. A clear understanding of how these policies have shaped marriage and divorce also provide necessary insight into the expected implications of same-sex marriage policy. It is not argued here that same-sex marriage policy will have the same economic impact as divorce policy, but the cultural ramifications could be even more substantial. Additionally, creating a new class of marriages and family structure establishes a new relational unit subject to the effects of family breakdown. This does not constitute an argument against same-sex marriage alone, but it does point to the uncertainty and potential harm that is rarely acknowledged.
The burden of proof as to the neutral impact for changing the nature and constitution of marriage is clearly on those who desire to re-shape the primary social unit (the family) that has defined western civilization for centuries. This research has examined the evidence for one major social policy shift, no-fault divorce, and has demonstrated the wide-ranging cultural, economic and social costs to such a policy change. By analyzing the impact of divorce policy, we can gain crucial insight as to the potential impact of same-sex policy. Critics of this connection point to research on homosexual parenting, for example, claiming there is no evidence of any negative effects. This research is roundly criticized as unscientific, and other more robust research (using a large randomized sample) finds children raised in a same-sex household are more susceptible to depression and criminal behavior than those raised in traditional families (Lund, 2013).

Much of the economic costs of divorce are clear, and the role of no-fault divorce laws has increased the divorce rate. These data represent the results of social policy changes that are far-reaching and profound. Progressive government policy under the guise of justice or fairness, without concern for the unintended consequences, is a detrimental outcome of the progressive movement that has shaped public policy for decades. Policy makers would do well to shift from the myopic view of shaping legislation for the immediate benefit of special interests to the long-term impact on the culture of North Carolina and the United States. As Hayek reminds us, we are foolish to think that a few individuals have the wisdom to monumentally change the culture of a nation for the better by legislative decree.

Consequently, the question can be asked, what should government do to strengthen marriage and capture the myriad benefits to society of intact families? As stated in this research, where traditional marriage flourishes both adults and children are better off. Evidence suggests where children are raised by two married parents, both the adults and children live longer, have
lower rates of mental illness, and are involved in less crime and domestic abuse. If the goal of policy makers is to grow the number of intact families where children are raised by two married parents, legislators can enact effective policy to meet this objective.

First, policy makers should encourage childbearing within marriage and seek to reduce the number of unwed births. This can primarily occur through educational reforms. Most of the increase in unwed childbearing is occurring via cohabiting couples, and marriage preparation and education services could help move more of these couples to marriage (research suggests majority of these unmarried mothers are interested in marriage) (Warren, 2004). In addition, marriage education should be a part of teen-pregnancy programs. Many of these programs are already funded under the Temporary Assistance for Needy Families (TANF), and thus could easily include marriage education instead of simply pushing teens to delay pregnancy until their twenties.

An additional set of educational reforms that could strengthen marriage are those that focus on preventing unnecessary divorce. Warren, et al. (2004), note that over half of all counties in the United States have “court-connected divorce education or mediation programs.” These programs are likely the result of no-fault divorce laws that have increased the ease of terminating a marriage. Again, these reforms center on educational services that help change the incentive for easy divorce that exists within current laws. State level educational programs are also an important means where policy makers can have an impact on changing the culture of marriage. In Oklahoma, a study of divorced men and women indicated a significant percentage of “divorce remorse” suggesting education on the consequences of such a decision would likely impact a state with one of the highest divorce rates (Donovan, 2011). Other states have focused on reconciliation education especially among couples with small children. These efforts are
especially beneficial when targeted at couples that marry and begin raising families at a young age.

The final policy changes are those aimed at rebuilding a culture of marriage via the tax code. Since marriage has proven social benefits to both family units and the communities they reside, the decision to marry is (and should remain) economically beneficial to couples. In recent years, some of the tax disincentives to marriage were lessened but several marriage “penalties” remain. The Affordable Care Act (i.e. Obamacare) added to this tax burden. “When this law takes full effect in 2014, married couples will generally receive $1,500 to $10,000 less per year in health care premium support than cohabitating couples with the same combined income” (Donovan, 2011). Also, targeted policy at state-level tax changes can change the disincentives to marry versus cohabitate. In North Carolina for example, a marriage penalty still exists for those couples who both earn medium level salaries.

Policy makers will do well to pay attention to how legislation, in addition to no-fault divorce laws, provides incentives for family breakdown. It is clear that strong families are the bedrock of Western Civilization, and stable married families benefit individuals and communities in myriad ways. Government should focus on maintaining a culture consistent with a strong family structure without capitulating to the whims of special interests and those who view policy as simply a matter of contemporary notions or fairness or justice.
References


**About Dr. Peter Frank**

Dr. Peter Frank is the Jesse Helms Center Free Enterprise Fellow and a professor of economics at Wingate University, where he chairs the BB&T Program on the Moral Foundations of Free Enterprise. He is a member of the Southern Economic Association, the Society for the Development of Austrian Economics, and the Association for Research on Nonprofit Organizations and Voluntary Action. His work has been published in numerous newspapers and books. He has also presented at conferences including the 2010 International Society for Third-Sector Research in Istanbul, Turkey and the 2008 Conference of the International Society for New Institutional Economics in Reykjavik, Iceland. In 2011, he received a Fulbright Scholar grant to teach and study economics at the Academy of Economic Studies in Chisinau, Moldova. Dr. Frank received both a BA and MS in economics (Grove City College and the University of North Carolina at Charlotte, respectively) and a Ph.D. in public policy from George Mason University.

**About the Jesse Helms Center**

The Jesse Helms Center Foundation exists to promote traditional American values and the principles upon which our nation was founded and that Senator Jesse Helms advanced throughout his career. This is accomplished through education, public policy promotion, and historical preservation. Senator Helms often referred to our nation’s free enterprise system as the ‘Miracle of America.’ To him, it was one of the core elements that sustains our freedom and supports our founding values. With that focus in mind, the Jesse Helms Center Free Enterprise Fellow researches and writes on the importance of free enterprise related issues. The Jesse Helms Center’s programs are supported by private foundations, individuals, and corporations who recognize the value of the programs and the non-partisan commitment of the foundation.