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No-Fault Divorce–The End of Marriage?

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In an insightful article published in the March 2005 edition of *Crisis* magazine, Stephen Baskerville argues that America’s embrace of easy divorce is the most significant reason that marriage is now threatened and, by some measures, hanging by a thread.

Baskerville, a political scientist at Howard University, points to the 2004 election as evidence that many Americans understand that marriage is in peril. “America is in revolt over marriage,” Baskerville explains. “Some 17 states have now passed amendments to protect the definition of marriage, and more will follow.” Baskerville credits the same-sex marriage controversy with building considerable support for President Bush’s reelection and “has also shaken the decades-long loyalty of African Americans to the Democratic Party.”

Beyond all this, Baskerville also sees signs of hope in cultural developments such as Bill Cosby’s comment on family morality and his call for African American males to reassume responsibility as husbands and fathers. Similarly, the political ground is truly shaking when voters in Massachusetts–by an 85-percent margin–called for fathers to be given equality in custody decisions.

“Only a short time ago, few would have predicted such a public uprising in defense of marriage and the family,” Baskerville notes. At the same time, he argues that the most significant enemy of marriage is divorce. “The most direct threat to the family is divorce on demand,” Baskerville bravely argues. “Sooner or later if civilization is to endure, it must be brought under control.”

The story behind America’s love affair with no-fault divorce is a sad and instructive tale. As Baskerville documents, no-fault divorce laws emerged in the United States during the 1970s and quickly spread across the nation. Even though only nine states had no-fault divorce laws in 1977, by 1995, every state had legalized no-fault divorce.

Behind all this is an ideological revolution driven by feminism and facilitated by this society’s embrace of autonomous individualism. Baskerville argues that divorce “became the most devastating weapon in the arsenal of feminism, because it creates millions of gender battles on the most personal level.” As far back as 1947, the National Association of Women Lawyers [NAWL] was pushing for what we now know as no-fault divorce. More recently, NAWL claims credit for the divorce revolution, describing it as “the greatest project NAWL has ever undertaken.”

The feminists and NAWL were not working alone, of course. Baskerville explains that the American Bar Association “persuaded the National Conference of Commissioners on Uniform State Laws [NCCUSL] to produce the Uniform Marriage and Divorce Act.” Eventually, this led to a revolution in law and convulsions in society at large. This legal revolution effectively drove a stake into the heart of marriage itself, with inevitable consequences. In effect, no-fault divorce has become the catalyst for one of the most destructive cultural shifts in human history. Now, no-fault divorce is

championed by many governments in the name of human rights, and America's divorce revolution is spreading around the world under the banner of "liberation."

Baskerville gets right to the heart of the matter, labeling no-fault divorce as a "misnomer." In reality, the "no-fault" language was taken from the world of automobile insurance. These new divorce laws did not really remove fault from the context of divorce, but they "did create unilateral and involuntary divorce, so that one spouse may end a marriage without any agreement or fault by the other." As Baskerville explains, "Moreover, the spouse who divorces or otherwise abrogates the marriage contract incurs no liability for the cost or consequences, creating a unique and unprecedented legal anomaly."

In many cases, the reality is even worse. In effect, no-fault divorce means that the courts now assist the violator of marriage vows. Any spouse can now demand a divorce for any reason and be assured that the courts will award the divorce—and will often grant disproportionate favor to the party seeking the divorce.

As Judy Parejko, author of *Stolen Vows*, argues, no-fault divorce means that legislators created an "automatic outcome" in issues of divorce. "A defendant is automatically found 'guilty' of irreconcilable differences and is not allowed a defense," Parejko notes.

Researcher Barbara Dafoe Whitehead, author of the influential book, *The Divorce Culture*, points to the therapeutic seduction of the culture as a contributing factor. "According to therapeutic precepts," she explains, "the fault for marital breakup must be shared, even when one spouse unilaterally seeks a divorce."

In other words, no-fault divorce laws actually assume that both parties are equally at fault, since no party could be innocent. The perverse assumption inherent in this argument is that if any individual is unhappy, someone else must necessarily be at fault. Once no-fault divorce became a reality, spouses found themselves simply informed of the fact that their marriage was effectively over. Many of these spouses were not even aware that the marriage was in trouble—and trouble is not even necessary.

Why did all this happen? How could an institution as fundamental and basic as marriage become transformed in less than a decade's time? Baskerville insists that no-fault divorce laws were not demanded by the public. "No popular clamor to dispense with divorce restrictions preceded their passage; no public outrage at any perceived injustice provided the impetus; no public debate was ever held in the media." As Baskerville summarizes: "In retrospect, these laws can be seen as one of the boldest social experiments in history. The result effectively abolished marriage as a legal contract. As a result, it's no longer possible to form a binding agreement to create a family."

Marriage is now compromised to the extent that it is difficult even to engage this culture with an honest discussion about marriage and divorce.

Divorce—once a matter of shame and tragedy—is now celebrated as a positive good. Barbara Dafoe Whitehead has documented the rise of what she calls "expressive divorce." Spouses simply assert a right to self-interest and self-actualization as a sufficient basis for abandoning a husband or wife, and even children. The "rights talk" lamented by Harvard law professor Mary Ann Glendon now replaces serious moral discourse, and those seeking a divorce can simply claim a supposed "right" to divorce without any basis for justification.

A basic dishonesty on the question of divorce pervades our political culture. Baskerville cites Michigan governor Jennifer Granholm as referring to divorce as a couple's "private decision." Granholm's comments came as she vetoed a bill intended to reform divorce law in her state. The danger and dishonesty of referring to divorce as a couple's "private decision" is evident in the fact that this supposedly private decision imposes a reality, not only on the couple, but also on children and the larger society. Indeed, the "private decision" is really not made by a couple at all—but only by any spouse demanding a divorce.

Perversely, the parent who demands the divorce "is also the one most likely to retain custody" of children, Baskerville laments. He suggests that no-fault divorce "amounts to a public seizure of the innocent spouse's children and invasion of his or her parental rights, perpetrated by our governments and using our tax dollars."

As if all that isn't bad enough, divorce has now become an industry. Some lawyers and law firms specialize in divorce

practice, and Baskerville describes the legal divorce business as “a multibillion-dollar industry” in which a vast number of persons hold a vested interest. He writes: “The political interests that abolish marriage in the first place have only grown more wealthy and powerful off the system they created,” adding: “Divorce and custody are the cash cow of the judiciary and directly employ a host of federal, state, and local officials, plus private hangers-on. More largely, the societal ills left by broken families create further employment and power for even larger armies of officials. So entrenched has divorce become within our political economy, and so diabolical is its ability to insinuate itself throughout our political culture, that even critics seem to have developed a stake in having something to bemoan. Hardly anyone has an incentive to bring it under control.”

That’s where the Christian church must enter the picture and provide leadership. Where are our pastors on the question of divorce? Why are so many pulpits silent on this issue? The obvious answer is fear and intimidation. Divorce has become so common that many Christian leaders fear creating a tidal wave of offense and resentment if they deal honestly with the issue—or address it at all. Accordingly, successive generations of Christians have now grown to adulthood believing that divorce is simply a lifestyle option. Where is the recognition that divorce is an affront to the glory of God and a sin that is expressly described in the Bible as an evil that God hates?

Without clear leadership from the pulpit, the issue of divorce has simply fallen through the cracks of church life, and many congregations effectively ignore divorce in their midst, as well as all the tragedy and brokenness that follow. In so doing, the Christian church has become complicit with the divorce culture and will bear God’s judgment for its failure of nerve.

We need a recovery of courage and candor on the issue of divorce—and in a hurry. Stephen Baskerville is right. Divorce is the greatest threat to the family in our times. We cannot expect this society to take us seriously as defenders of marriage if we are not the enemies of divorce.

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