

ABSTRACT:**MARRIAGE IS A BASIC GOOD, DISCERNABLE THROUGH REASON, AND IS ENTITLED TO RECOGNITION AND PROTECTION BY THE STATE**

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The thesis of this essay is that *marriage and the family constituted thereby is not solely a religious object, nor solely a secular one*. Marriage's legal protection and defense requires religious liberty. However, basic though it is to all social and political freedoms, religious liberty is not enough. Marriage is a basic human good, not a matter of faith tied to any creed. Therefore, it is *good reasons* or *reasonableness* that justifies the legislator or lawgiver in recognizing the one kind of alliance – the connection between a man and a woman – which we call “marriage”. The defense of marriage implies a call for the recognition of marriage and the enforcement of its obligations by secular law — not only by religious bodies or the individual exercise of conscience or the individual application of ethics. There is a public interest in the secular *legal* deference to marriage.

Mainstream Western history does not, upon first examination, appear to support the thesis of this article. The law of marriage (legislatively enacted or judicially developed) as we have received it, comes from the religious formulae of one creed. History shows that there has been a strong relationship between the law of marriage and religions. Religions have provided rules and background statements for the secular laws of marriage. These ways of unfolding the law have even reached Chile, whose history of marriage law is taken as a case study in this paper. Yet, this conversation between religion and the law of marriage seems to be reaching an end-point with the movement for a change in the secular definition of marriage. The argument is now widely heard that policy makers and legislators cannot rely any more on religions for the defense of marriage, not even as expressions of a tradition or convention. Marriage requires a secular-legal defense, based on a justification which appeals to its general reasonableness. Section II of this article develops these points.

Where and how to find a policy-making tool, a foreground, for the defense of marriage? In Section III, this article suggests it is reason, more exactly practical reason, to which we should resort in order to find and define or justify the secular institution of marriage. Practical reason allows us to identify what marriage *is* and what it *is not* by its reasonableness. That is, by its being the most suitable and the best way for men and women to fulfill the good of freely self-giving to each other, to unite themselves in a common way of living, in the only possible form of unity that would make their love exclusive, and if the union is blessed with children, that would secure their nurturing and education. Practical reason also gives grounds for understanding the binding character of the nuptial promise and the juridical inner-dimension of the family. Reason is also the most appropriate intellectual tool with which to construct the case against non-marital

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unions' becoming legislatively or judicially approved as marriages. If not justified by reason, the approval of non-marital unions as marriages would probably result in social damages worse than that which no-fault divorce introduced. Such approval could also threaten religious liberty by coercing citizens to accept as *right* what reason shows is *wrong* and thereby impeding and undermining their right to live in the same secular society with others.

In conclusion, the use of practical reason, as identified by Plato, Aristotle, certain Roman stoics, and Christian Ethics, would mean the application of a safe and available-to-all way of identifying and defending the institution of marriage, religious and secular at the same time.