

# Deconstruction of Marriage: The Swedish Case

ALLAN CARLSON\*

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## I. INTRODUCTION

In his controversial essay, *The End of Marriage in Scandinavia*, anthropologist Stanley Kurtz asks, “Will same-sex marriage undermine the institution of marriage?” He answers, “It already has.”<sup>1</sup> Examining

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\* Allan Carlson is President of The Howard Center for Family, Religion & Society in Rockford, Illinois. He holds his Ph.D. in Modern European History from Ohio University. His books include *THE SWEDISH EXPERIMENT IN FAMILY POLITICS: THE MYRDALS AND THE INTERWAR POPULATION CRISIS* (1990); *THE “AMERICAN WAY”: FAMILY AND COMMUNITY IN THE SHAPING OF THE AMERICAN IDENTITY* (2003); and *CONJUGAL AMERICA: ON THE PUBLIC PURPOSES OF MARRIAGE* (2007). This paper was initially presented for the conference “Marriage Debates” held at UCLA School of Law, April 21-22, 2006.

1. Stanley Kurtz, *The End of Marriage in Scandinavia: The ‘Conservative Case’ for Same-Sex Marriage Collapses*, WKLY. STANDARD, Feb. 2, 2004, at 26.

data from Sweden, Norway, and Denmark, Kurtz concludes that “[m]arriage in Scandinavia is in deep decline . . . [a]nd the mainspring of the decline—an increasingly sharp separation between marriage and parenthood—can be linked to gay marriage.”<sup>2</sup> He adds that this linkage belies the “conservative” argument that allowing same-sex marriage would restore respect and enthusiasm for traditional matrimony.<sup>3</sup>

Critics of the essay have pointed to the weakness of its statistical analysis. They have noted, for example, that Sweden’s formal recognition of “registered partnerships” in 1994 occurred *after* the rate of unmarried cohabitation increased, and that seventy percent of Swedish cohabitants do marry after their first child is born.<sup>4</sup>

A deeper problem with Kurtz’s argument, however, is its limited historical context. In fact, the deliberate deconstruction of marriage in Sweden began over seventy-five years ago. It was, and remains, part of an ideological project to socialize broad aspects of economic life through a profound transformation of the family and home. Prior to the 1930s, Sweden’s Social Democrats, like other European socialist parties, had focused their political energies on conflicts in the factories between workers and capitalists. The new ideological tactic, launched in the early 1930s, sought, in historian Yvonne Hirdman’s words, “to smuggle socialist forms into the capitalist society until they finally brought down the entire economic system from the inside.”<sup>5</sup> Looking at the same developments, legal scholar Jacob W. F. Sundberg sees the “Socialist government in Sweden set[ting] itself a goal perfectly analogous to that which loomed for the [Russian] Bolsheviki [in the 1920s]: carry socialism to its logical conclusion in the field of family law.”<sup>6</sup>

In short, the deliberate political elimination of marriage as a meaningful legal and social institution was far advanced in Sweden before same-sex marriage even became an issue. Ironically, this project actually began as part of a campaign to raise the Swedish birthrate.

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2. *Id.* at 27.

3. *Id.* (“[The analysis] that supposedly helps validate the ‘conservative case’ for gay marriage—i.e., that it will encourage stable marriage for heterosexuals and homosexuals alike—does no such thing.”)

4. See, e.g., M.V. Lee Badgett, *Prenuptial Jitters: Did Gay Marriage Destroy Heterosexual Marriage in Scandinavia?*, SLATE, May 20, 2004, <http://www.slate.com/id/2100884/>.

5. Yvonne Hirdman, *Utopia in the Home*, 22 INT’L J. POL. ECON. 5, 29 (1992).

6. Jacob W.F. Sundberg, *Recent Changes in Swedish Family Law: Experiment Repeated*, 23 AM. J. COMP. L. 34, 42 (1975).

## II. CRISIS IN THE POPULATION QUESTION

The turn of Swedish Social Democracy toward a scientifically guided re-engineering of marriage, family, and home had roots in the late 1920s. A circle of young intellectuals formed in Stockholm, committed to radical change. It included economists Erik Lindahl, Ingvar Svennilson, Pierre Guinchard, and Alf Johansson, and architects Sven Wallander, Gregor Paulson, Sven Markelius, and Uno Åhren. Relative to marriage and family, the key figures were economist Gunnar Myrdal and his wife, Alva, who at that time was a student of literature. She described this circle as embracing “young radical people who want to be free to criticize anything—they don’t care about their careers . . . . I simply love these people. Especially our architect friends . . . . They form in Sweden the avant garde of constructive social radicalism.”<sup>7</sup>

An early product of their collaboration was the Stockholm Exposition of 1930, where the architects and designers demanded a profound break with the past. Europe was evolving into a vast and complex urban-industrial organism, they argued. The ideals and social structures of Sweden’s rural and village heritage would have to give way to a new order, one consciously engineered. In their overturning of inherited structures, they would be radical. In their attachment to science, they would be rational. And in their embrace of “free, independent, living art,” they would craft a new aesthetic. All would be in service of social revolution. Their manifesto, *Acceptera*, concluded: “accept the aforementioned reality! Only through that do we have the chance to govern, to have the power to change things and shape a culture which is a flexible instrument for life.”<sup>8</sup>

This new order, moreover, required “a higher type of human being,” toward the molding of which public policy would have to turn. They believed that home design and furnishings were critical to forming this new human type. Alva Myrdal adopted their style of social engineering

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7. Hirdman, *supra* note 5, at 30 (quoting Letter from Alva Myrdal to Eva and Arthur Burns (Dec. 1932), in ALVA MYRDALS ARKIV BREVSAMLING [Letter Collection], Arbetarrörelsens Arkiv [Labor Movement Archive]). On the origins of Swedish marriage and family policy, see ALLAN CARLSON, THE SWEDISH EXPERIMENT IN FAMILY POLITICS: THE MYRDALS AND THE INTERWAR POPULATION CRISIS 35-70 (1990). See also ANN-KATRIN HATJE, BEFOLKNINGSFRÅGAN OCH VÄLFÄRDEN: DEBATTEN OM FAMILJEPOLITIK OCH NATIVITETSÖKNING UNDER 1930-OCH 1940-TALEN 15-26 (1974).

8. See GUNNAR ASPLUND, ET AL., ACCEPTERA 186, 188, 198 (1931).

and, working with architect Sven Markelius, designed and saw through construction a Collective House in Stockholm. It involved a dramatic restructuring of the family. Industrialization, she reasoned, had already stripped marriage and the private home of most productive functions. Housework, child care, and consumption would now be transferred from the home to the collective as well. Myrdal's House featured small apartments largely composed of sleeping rooms and closets, complemented by a collective kitchen and dining room, a collective nursery for infants and twenty-four-hour care center for toddlers, and a central laundry, library, community room, and telephone center. Private family life, Alva Myrdal concluded, must be socialized in this manner for the good of all.<sup>9</sup>

In 1934, she co-authored with husband Gunnar the debate book *Kris I Befolkningsfrågan* ("Crisis in the Population Question"). The book turned conventional Swedish politics upside down. In *Kris I Befolkningsfrågan*, the Myrdals built the case for a socialist pro-natalism. All healthy couples, they argued, should want and bear *at least four children* so that the nation might survive. They dismissed conservative laments about declining morals, arguing that young people were simply responding to the new incentives found in a capitalist society. Children, once economic assets, had now become economic liabilities, the chief cause of poverty. Only a massive restructuring of family and state could restore harmony.<sup>10</sup>

Their positive program wove together feminist and socialist goals. Regarding the former, the Myrdals dismissed the full-time homemaker as a relic from the past. Employed mothers were now a "social fact," a rational trend beyond challenge or debate. Working women had the "right" to retain their jobs and income while bearing children, which public policy must ensure. While careful to endorse the continued utility of marriage, the Myrdals also insisted that births out of wedlock be treated as equal to those within marriage, particularly in regard to benefits. In place of dependency on fathers or husbands, all mothers would be dependent on the state.

This required socializing all costs of bearing and rearing children through universal child benefits. The Myrdals argued that the state should provide prenatal and maternity care and child health and dental services without cost. Public daycare should also be provided free of cost, along with clothing allowances, breakfasts and lunches at school,

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9. Hirdman, *supra* note 5, at 36, 39; *see also* Alva Myrdal, *Kollektiv Bostadsform*, 24 TIDEN 604 (1932); Alva Myrdal, *Kollektivhus*, HERTHA 9-16 (1933).

10. *See* ALVA & GUNNAR MYRDAL, KRIS I BEFOLKNINGSFRÅGAN 52, 98, 118-25, 151-70 (1934); *see also* CARLSON, *supra* note 7, at 81-88.

summer camps, and all levels of education. In addition, the government would deliver subsidized housing, specifically designed and constructed to accommodate working mothers and children. Taken together, these benefits amounted to a broad socialization of consumption. To pay for these benefits, tax reforms would redistribute income horizontally between the “child poor” and the “child rich,” and vertically between socioeconomic classes.<sup>11</sup> This project also required a “full employment” policy guaranteeing jobs for all men and women and state economic planning to ensure stabilized production levels for socialized consumption.

Taken together, this combination of feminist and socialist goals would mean the movement of all Swedish women out of their homes, an end to the “male breadwinner” and “homemaker” roles, and the new employment of mothers in the collectivized tasks of child care, early education, meal preparation, and cleaning. As the Myrdals summarized, “the population question is so transformed into the most effective argument for a thorough and radical socialist remodeling of society.” It meant that “social relations in our land” must “be altered” so that citizens would willingly bring enough children into the world to renew the nation.<sup>12</sup> This also meant shaping a new “ideal” family:

In the new family, . . . the [former] housewife will stand as a comrade alongside her husband in productive labor. During the working hours, the seven or eight hours in the middle of the day, the family shall be divided so as to adapt to industrial society’s broader division of labor: working adults must be at their jobs; the children must play, eat, sleep, and attend school. Common housing, shared free time, together with that elusive, subtle, personal relationship that is, we maintain, a key element of the family, will remain. However, *maintaining a private household, individualistic parental authority, and the housewife’s sheltered life will not remain. These must be removed from the picture as the family’s adaptation to modern life requires.*<sup>13</sup>

Relative to marriage, these ideologically-driven changes would mark a curious diminution in status and function. On the one hand, the Myrdals still praised marriage as the most likely source of larger families, called for marriage at earlier ages, and even recommended that the state introduce low interest marriage loans. On the other hand, their program would strip marriage of virtually all remaining functions, except procreation.

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11. See CARLSON, *supra* note 7, at 88.

12. MYRDAL & MYRDAL, *supra* note 10, at 285, 117; see also IVAR IVERUS, VERSUCH EINER DARSTELLUNG, DER ZUSAMMENHANGES ZWISCHEN BEVÖLKERUNGS ENTWICKLUNG, FAMILIENPOLITIK UND ÖFFENTLICHEN MEINUNG IN SCHWEDEN 35, 90-91 (1953).

13. MYRDAL & MYRDAL, *supra* note 10, at 319 (emphasis added).

An end to the roles of “breadwinner” and “homemaker” would mean the demise of complementarity and an end to a distinctive division of labor within the home. The socialization of everything from infant care to meal preparation further left the home as an empty economic shell. Finally, where marriage had once meant the dependency of husband on wife, wife on husband, and children on parents, the new scheme would instead make all adults and all children dependents of the state.<sup>14</sup>

### III. FROM IDEAS TO POLICY

In response to the Myrdals’ book, the Social Democratic government created the Royal Population Commission of 1935. Gunnar Myrdal—now also a member of the Swedish Senate—emerged as its leading member, with Alva Myrdal as a frequent consultant. The Commission produced seventeen major reports, including investigations and recommendations on taxation, maternity allowances, sterilization, contraception, abortion, nutrition, clothing, the legal status of working women, “depopulation” of the countryside, the family and socialism, daycare, summer camps, and demography. All but the *Slutbetänkande* (“Final Report”) were either drafted or closely controlled by Gunnar Myrdal.

The Commission’s central ideological statement was the *Betänkande i Sexualfrågan* (“Report on the Sexual Question”), released in 1936. Gunnar Myrdal claimed almost exclusive authorship.<sup>15</sup> The “sex report” actually represented an abridged, updated, reorganized, and more politically sensitive version of *Kris i befolkningsfrågan*. It argued that fertility decline was due to the rationalization of sex life among the Swedes, facilitated by contraception. Under a capitalist industrial order, children had become the chief cause of poverty. Only a new program combining social reform, income redistribution, and full sexual enlightenment could restore a birthrate ensuring the Swedish people’s survival.<sup>16</sup>

Relative to marriage, the sex report had two messages. On the surface, it affirmed that maximizing the married portion of the adult population was in society’s best interests. Since “serious” social and

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14. See ANN-SOFIE KÄLVEMARK, MORE CHILDREN OF BETTER QUALITY?: ASPECTS OF SWEDISH POPULATION POLICY IN THE 1930’S (1980); Ann-Katrin Hatje, *Political and Gender Perspectives on Alva Myrdal’s Social Engineering. The Example of Pedagogic Childcare in the 1930’s and 1940’s* (2002) (unpublished paper).

15. See CARLSON, *supra* note 7, at 40; Hirdman, *supra* note 5, at 51, 140.

16. See ALVA MYRDAL, NATION AND FAMILY 117-18 (2d ed. 1965); see also BETÄNKANDE I SEXUALFRÅGAN 15-29; CARLSON, *supra* note 7, at 140-45; STATENS OFFENTLIGA UTREDNINGEN 1936: 59 [hereinafter SOU 1936: 59]; Hirdman, *supra* note 5, at 52.

psychological problems were associated with late marriage, the report also urged that Sweden work to reduce the average age of marriage by several years.<sup>17</sup>

At a deeper level, though, the sex report embraced changes that would sever the historic relation of marriage to sexuality and procreation. To begin with, the Population Commission sought to “rehabilitate morally” premarital and extramarital sexuality. Specifically:

Nowadays when two young people fall in love and cannot marry for economic reasons, in most cases this does not interfere with entering into sex relations with each other. These premarital relations entered into between socially equal individuals cannot be summarily condemned for ethical reasons, according to the opinion of the Commission.<sup>18</sup>

Moreover, the Population Commission fully embraced contraception and urged repeal of existing laws prohibiting the sale and distribution of birth control devices. It recommended the use of the pessary and the condom as the most satisfying and effective techniques, and called as well for extensive sex education among children and youth. The Commission specifically blessed contraception within marriage:

[T]he Population Commission has reached the opinion that birth control practiced from a sense of responsibility is of positive value by making it possible for young people who . . . have reached the age of responsibility for their actions to marry and not bear children until such a time in the future as they can do so without too great economic risk. If we want to develop earlier marriage among the country’s mature young people, the Commission holds that it is of the utmost importance that full knowledge of safe and harmless contraceptive methods be made available to them . . .<sup>19</sup>

The Population Commission claimed that only this embrace of sexual enlightenment and toleration for extramarital sexuality could build “a new foundation” for a positive solution to the birth-rate crisis. More fundamentally, as enacted in 1938, these changes effectively severed the historic legal bonds between marriage and sexuality and between marriage and procreation as well, marking a turning point in Swedish marital law.

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17. See MYRDAL, *supra* note 16, at 35, 161; SOU 1936: 59, 70-82.

18. MYRDAL, *supra* note 16, at 194-95 (quoting Report on the Sexual Question, SOU 1936: 59).

19. *Id.* at 195 (quoting Report on the Sexual Question, SOU 1936: 59).

#### IV. ERA OF THE SOCIALIST HOUSEWIFE

The next twenty-five years witnessed a reaction to this sexual and social radicalism. While Sweden remained neutral during World War II, the country was on a war footing between 1939 and 1945, and a nationalist pathos spread over public life.<sup>20</sup> Within Sweden's Social Democratic movement, a different form of women's politics came to the fore. Alva Myrdal's combination of equity feminist goals and socialist means gave way to the era of the socialist housewife. Centered in the Women's Council of Sweden's labor unions (the "LO") and in the Social Democratic Party's Women's League, the housewives interpreted women's liberation to mean *freedom from* toil in the factories. Progress for them meant gaining sufficient family income to allow the wives and mothers of the working class to rear their own children at home. They celebrated maternity as the highest of callings and the good home as the heart of the working class family.<sup>21</sup> The reaction was so intense that even Alva Myrdal co-authored a book that gave some positive attention to the full-time mother and homemaker.<sup>22</sup>

Policy shifted in a conservative direction as well. In 1938, the LO and the Swedish Federation of Employers reached their historic *Saltsjöbaden* agreement on wages. It quietly embraced the concept of the "family wage" for fathers, one that would sustain a full-time mother in the home. Working mothers were discouraged. In 1947 and 1948, Sweden's Parliament rejected the Myrdals' call for "in kind" family benefits. Instead, the Social Democratic government created "child allowances" that provided a direct cash benefit to all families with dependent children. Swedish school girls took mandatory classes in home economics and child care. "Sex education" texts in the schools praised marriage as the only legitimate setting for fulfilling sexuality. Fertility rose to near an average of three children per family. As late as 1965, only three percent of all Swedish preschool children were in nonmaternal day care.<sup>23</sup>

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20. See HATJE, *supra* note 7, at 47-58.

21. See YVONNE HIRDMAN, *DEN SOCIALISTISKA HEMMAFRUN* (1992); Hirdman, *supra* note 5, at 21-25; Ylva Waldemarson, *Att föra kvinnors talan. LO:s kvinnoråd 1947-67*, in *KVINNOR MOT KVINNOR* 75, 75-105 (Christina Florin et al. eds., 1999).

22. ALVA MYRDAL & VIOLA KLEIN, *WOMEN'S TWO ROLES: HOME AND WORK* (2d ed. 1968); see also Gro Hagemann, *The Housewife Dilemma: Women's Two Roles Revisited*, at 3 (Mar. 6, 2002), [http://www.pcr.uu.se/conferenses/myrdal/pdf/gro\\_hageman.pdf](http://www.pcr.uu.se/conferenses/myrdal/pdf/gro_hageman.pdf).

23. See YVONNE HIRDMAN, *MED KLUVEN TUNGA* (1998); see also Hirdman, *supra* note 5, at 97.



## V. “RED SWEDEN”

However, the late 1960s experienced new waves of radicalism. So-called Eurocommunism was on the march, while Red Brigades terrorized Italy and West Germany, and France was torn apart by the New Left riots. Meanwhile, Christian values—summarized by one analyst as “responsibility, sacrifice, altruism, and the sanctity of long-term commitments [such as marriage]”—gave way rapidly across Western Europe to a “secular individualism” focused on the desires of the self.<sup>24</sup>

Sweden also entered into what feminist historian Yvonne Hirdman calls its “[R]ed [Y]ears,” 1967-1976.<sup>25</sup> At their heart was a massive “gender turn” that would further alter the nature of marriage in Sweden.<sup>26</sup> In 1968, a joint report by the Social Democratic Party and the LO abandoned the “family wage” ideal and concluded that “there are . . . strong reasons for making the two-breadwinner family the norm in planning long-term changes within the social insurance system.”<sup>27</sup> The next year, Alva Myrdal chaired a major panel, “On Equality,” for the Social Democrats. Its report concluded that “[i]n the society of the future . . . the point of departure must be that every adult is responsible for his/her own support. Benefits previously inherent in married status should be eliminated or transferred to children”<sup>28</sup> The Myrdal Report insisted that true “natural” differences between women and men should pose no barrier to reform; state action should make such innate distinctions insignificant.<sup>29</sup> The Report also called for a tax policy based on individual earnings, without preference for *any* “form of cohabitation,” Myrdal’s new and deflating term for marriage.<sup>30</sup>

24. Ron Lesthaeghe, *A Century of Demographic and Cultural Change in Western Europe: An Exploration of Underlying Dimensions*, 9 POPULATION & DEV. REV. 411, 429-30 (1983).

25. Yvonne Hirdman, *The Importance of Gender in the Swedish Labor Movement: Or: A Swedish Dilemma*, at 9 (2002) (unpublished paper, Stockholm University and Swedish National Institute of Working Life).

26. The last spirited defense of the socialist housewife appeared in 1964. NANCY ERIKSSON, *BARA EN HEMMAFRU* (1964).

27. Jane Lewis & Gertrude Åström, *Equality, Difference, and State Welfare: Labor Market and Family Policies in Sweden*, 18 FEMINIST STUD. 59, 67 (1992).

28. THE WORKING GROUP ON EQUALITY, *TOWARDS EQUALITY: THE ALVA MYRDAL REPORT* 82 (1971).

29. *See id.* at 17, 64, 82-84.

30. *Id.* at 38.

Accordingly, in 1969, the Swedish government resolved to fundamentally reform its marriage law.<sup>31</sup> The Minister of Justice created a Committee of Experts and issued his Directives. The Committee was to consider whether there was still even a need for marriage law, and if so, how it should be reconfigured. A key principle would be neutrality toward living arrangements. Specifically, the Minister urged that the difference between “marriage” and “non-marriage” be sharply reduced:

In my opinion, a new legislation ought as far as possible to be neutral in relation to the different forms of living together and different moral views. Marriage has and ought to have a central position in the family law, but one should try to see that the family law legislation does not contain any provisions which create unnecessary hardships or inconveniences for those who have children and build families without marrying . . . . Provisions concerning married individuals should generally be given such form that the spouse can retain a large measure of independence during marriage.<sup>32</sup>

The Committee was to consider the diminished importance of marital status in Sweden, the new imperative of “personal fulfillment,” the rising demand for divorce, declining public interest in material property in favor of pensions, annuities, and other claims on the welfare state, and the elevation of gender equality into the cornerstone of Swedish social policy.<sup>33</sup>

In this spirit, Sweden’s Parliament approved in 1971 a fundamental reform of the income tax. It abolished the taxation of households through the joint income tax return premised on “income splitting” by married couples. This system had favored the one-income household

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31. The basis of modern Swedish family law was The Marriage Code of 1920, essentially unchanged through the 1960s. It built on the idea of the marital home as an economic partnership, with husband and wife equal in rights but different in function. Relative to property, the 1920 Code adopted the concept of “deferred community.” The prescribed marital property system rested on the idea of “separate administration but equal division for one and all.” The measure abolished the automatic co-ownership of property during marriage as well as the position of the husband as the dominant administrator. Rather, each spouse would control and administer the property that he or she owned at the time of marriage. The Code expanded the definition of marital property to include property acquired by inheritance during marriage. On the dissolution of the marriage through death or divorce or by mutual petition, all marital property would be divided equally, although in cases of divorce the courts retained the power to punish one or the other spouse for marital misconduct. Divorce required a finding of fault. Importantly, the Code laid upon the husband a special responsibility for economic support of his wife and children. Overall, the 1920 Code aimed at creating a relatively simple property system that minimized disputes and lawyering and encouraged gender specialization in the home. It was ideally suited to a people committed to nearly universal marriage and the avoidance of divorce. See D. Bradley, *Marriage, Family, Property and Inheritance in Swedish Law*, 39 INT’L & COMP. L.Q. 370, 373-78 (1990).

32. Sundberg, *supra* note 6, at 41 (ellipsis in original).

33. See Bradley, *supra* note 31, at 378-80; Feriborz Nozari, *The 1987 Swedish Family Law Reform*, 17 INT’L J. LEGAL INFO. 219, 219-20 (1989).

with a mother at home. More fundamentally, it had treated the family as an economic and legal unit, with its own rights and claims.<sup>34</sup> Under the tax reform, all persons would henceforth be taxed as individuals, without attention to marital status, dependents, employment, or income of a spouse. This gave Sweden the most “fully individualized taxation system” in the developed world. In the context of high marginal tax rates, this change also greatly benefited the two-income household and penalized the one-income breadwinner family.<sup>35</sup> In addition, it ended recognition of the married-couple family as a special economic entity. Analysts of modern Sweden are nearly unanimous in viewing this shift from joint to individual taxation as the most sweeping social change in Sweden over the last forty years, for it “more or less eradicated” the traditional home.<sup>36</sup> As the feminist analyst Annika Baude concludes: “If I were to choose one reform which has perhaps done the most to promote equality between the sexes, I would point to the introduction of individual income taxation.”<sup>37</sup>

On the basis of the Family Law Reform Committee’s work, Parliament approved two years later, in 1973, a new measure governing marriage and divorce. Although access to marriage expanded, the distinctive or special nature of marriage receded. Most existing legal impediments to heterosexual marriage disappeared; even half-brothers and half-sisters could now marry, as could aunts and nephews, uncles and nieces.<sup>38</sup> Only full siblings and persons related by blood in unilinear descent faced prohibition; bigamy and polygamy remained banned.<sup>39</sup> The minimum marriage age for both spouses became eighteen.<sup>40</sup>

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34. Maud L. Eduards, *Toward a Third Way: Women’s Politics and Welfare Policies in Sweden*, 58 SOC. RES. 677, 681-82 (1991); Anne Lise Ellingsæter, *Dual Breadwinner Societies: Provider Models in the Scandinavian Welfare States*, 41 ACTA SOCIOLOGICA 59, 62 (1998); Christina Florin, *Skatten Som Befriar*, in KVINNOR MOT KVINNOR, *supra* note 21, at 106, 113; Sven Steinmo, *Social Democracy vs. Socialism: Goal Adaptation in Social Democratic Sweden*, 16 POL. & SOC’Y 403, 430 (1988); *see also* Annika Baude, *Public Policy and Changing Family Patterns in Sweden 1930-1977*, in SEX ROLES & SOC. POL’Y 145, 154-55 (Jean Lipman-Blumen & Jessie Bernard, eds. 1979).

35. *See* Irene Dingledey, *International Comparison of Tax Systems and Their Impact on the Work-Family Balancing*, <http://iat-info.iatge.de/aktuell/veroeff/am/dingel00b.pdf>.

36. *See* Eduards, *supra* note 34; Ellingsæter, *supra* note 34, at 66; Steinmo, *supra* note 34.

37. Baude, *supra* note 34, at 171.

38. Nozari, *supra* note 33, at 221.

39. *Id.*

40. The old law required that men be twenty-one years old and women be eighteen before marrying. *Id.*

Divorce also became easy, and unilateral. In effect, this 1973 law held that the community or state no longer had significant interests in the preservation of a marriage. Fault would no longer be considered, nor would marital misconduct have any bearing on the division of property.<sup>41</sup> These two changes ripped both adultery and fidelity out of marriage's institutional construct. If both husband and wife agreed to the divorce, it would be immediately granted. If one spouse objected or if there was at least one child under age sixteen in the home, the new law fixed a mandatory reconsideration period of six months.<sup>42</sup> *Separation* no longer had legal status. Also eliminated were any legal recognition of *betrothal* and *annulment*. The measure assumed adult self-support and largely ended the concept of alimony, except in limited cases where "maintenance" payments for a set time might be required.<sup>43</sup>

## VI. THE PALME ERA

In 1972, a new Social Democratic prime minister came to power, Olof Palme. Alva Myrdal joined his cabinet as minister of disarmament and church affairs. Under her open influence, Palme addressed the women of the Party that year, declaring an end to the era of the socialist housewife. "In this [new] society," he said, "it is only natural for both parents to work. In this society it is self-evident that man and woman should take the same responsibility for the care of the home and the children . . . ." He added that "[i]n this society . . . the care of these future generations is just as naturally the responsibility of us all."<sup>44</sup>

A true revolution in family structure commenced. The Social Democratic Party abolished its Women's League, long the bastion of the housewives. New policies made employment nearly mandatory for all women in their twenties and thirties. Surviving homemakers would pay dearly through heightened marginal taxes on their husbands. Small children now moved massively into government provided daycare: 460,000 held places in 1995, compared to only 23,000 three decades earlier.<sup>45</sup>

Hirdman correctly gauges the sweep of change here, and the way in which the socialist vision of the Myrdals from the 1930s now took full form. She notes that women's work in this new Swedish order had a

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41. *Id.* at 222.

42. *Id.*

43. *See id.* at 223; Michael Bogdan & Eva Ryrstedt, *Marriage in Swedish Family Law and Swedish Conflicts of Law*, 29 *FAM. L.Q.* 675, 677 (1995).

44. Hirdman, *supra* note 25, at 6.

45. Anita Nyberg, *From Foster Mothers to Child Care Centers: A History of Working Mothers and Child Care in Sweden*, 6 *FEMINIST ECON.* 5, 16 (2000).

peculiar quality. In the fields of agriculture and forestry, the number of working women actually declined, while in private industry it grew only modestly. However, in the service sector (primarily governmental in Sweden), the number of working women rose from 268,000 in 1950 to 819,000 by 1990; in the exclusively governmental education and health care sectors, the number of working women rose nearly threefold, from 282,000 in 1950 to slightly over one million by 1990.<sup>46</sup> In a nation of only eight million people, these were large changes. In short, “family politics” had been used as a lever to achieve something “truly revolutionary”: the shriveling of private homes resting on marriage and a massive expansion of the state sector as a means of socializing remaining family functions and securing “economic democracy.”<sup>47</sup> Pointing specifically to the experience of Alva Myrdal, Hirdman adds triumphantly:

New ideas of gender replaced old-fashioned ideas about the couple. We witness [here] the birth of the androgynous individual (and I speak about the explicit ideal) and the death of the provider and his housewife. We thus witness old ideas popping up, ideas that had been buried for decades—but ideas that very quickly found their advocates and became developed: people, men and women, eager to speak the new tongue of gender.<sup>48</sup>

## VII. THE 1987 LAWS

Sweden’s Parliament largely codified this social revolution in two 1987 laws. Focused on property and inheritance questions, the new Marriage Code further weakened the concept of marriage as an economic partnership. On the one hand, and despite pressure for a more individualistic formulation, the new law retained the concept of “deferred community property” found in the original 1920 Family Code.<sup>49</sup> In principle, a spouse remained entitled to a half share in marital property at the time of divorce or death. The Courts gained more power to set aside prenuptial contracts establishing separate property.<sup>50</sup> And surviving spouses won greater control over marital property relative to children and other heirs, representing the “amputation of the blood line” in Sweden, another deliberate severing of children’s economic bonds to their parents.<sup>51</sup>

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46. Hirdman, *supra* note 25, at 10.

47. *Id.* at 9.

48. *Id.* at 10.

49. Bradley, *supra* note 31, at 374, 381-82.

50. *Id.* at 382.

51. *Id.* at 384.

On the other hand, additional provisions gave spouses increased independence. One abolished the obligation each had to manage and preserve marital property.<sup>52</sup> Joint liability for debts acquired by household expenditures or children's education disappeared.<sup>53</sup> In one commentator's words, the new Code reflected "the increasing focus in the law itself on *termination* of marriage, rather than on its preservation."<sup>54</sup> The 1987 Code also ended the husband's special responsibility to support the family.<sup>55</sup>

The Parliament also approved The Joint Homes Act in 1987. This new measure governing "relationships similar to marriage" rested on "the principle of neutrality toward family form."<sup>56</sup> As legal analyst Ulla Björnberg explains:

The principle states that individuals are free to develop their personal lives at *their own will*, to *choose a living arrangement* and to determine the *ethical norms for their family life*. The role of family law is restricted to providing *solutions to practical problems* and to *formulate rules* of a kind that can be accepted by almost all individuals.<sup>57</sup>

Still, the Joint Homes Act did not quite equate *cohabitation* with *marriage*. Specifically, cohabiters did not gain the equivalence of marital property rights in inheritance or the limited right to claim "maintenance" after separation.<sup>58</sup> Rather, the rules in this measure applied only to the equal splitting of a dwelling and household goods acquired for joint use.

Still, the measure affirmed that parenthood in consensual unions would involve rights and responsibilities equal to those in marriage. Unmarried fathers must register with the state, just as married fathers.<sup>59</sup> Joint custody of children after separation would be the assumption for both cohabitating and married couples. A novel development in the 1987 measure, though, was that it applied to both unmarried heterosexual and homosexual couples.<sup>60</sup> Attracting little attention at the time, it should be noted that the latter innovation came near the end of the marital deconstruction project, not at its beginning.

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52. *Id.* at 383.

53. *Id.*

54. *Id.* (emphasis added).

55. See Nozari, *supra* note 33, at 220. See generally Ake Saldeen, *Sweden: Reforms of Marriage, Inheritance and Cohabitation Proposed*, 26 J. FAM. L. 197 (1987) (commenting on the 1987 Code prior to its final enactment).

56. Ulla Björnberg, *Cohabitation and Marriage in Sweden—Does Family Form Matter?*, 15 INT'L J.L. POL'Y & FAM. 350, 352-53 (2001).

57. *Id.* at 353 (emphasis added).

58. See *id.*

59. *Id.* at 354.

60. Bogdan & Ryrstedt, *supra* note 43, at 677.

In 1995, the Swedish Parliament expanded on this change and approved a measure granting same-sex couples the right to form a “registered partnership.”<sup>61</sup> This represented a civil contract providing rights and responsibilities nearly identical to those of conventional marriage.<sup>62</sup> The few exceptions involved adoption, joint custody, and artificial insemination.<sup>63</sup>

In 2000, the government severed its official ties to the (Lutheran) Church of Sweden. This brought a symbolic end to “Christian Sweden,” although the country had been effectively de-Christianized some decades earlier. The same year, the Swedish government extended the registered partnership option to foreign nationals residing in Sweden for at least two years. In 2003, gay and lesbian couples gained the right to adopt children. Recent Swedish Court decisions have also given legal recognition to polygamous marriages among immigrants from Muslim countries. An association of informal Swedish polygamists predicts full recognition of plural marriages and other polyamorous relations in their land by 2010.<sup>64</sup>

#### VIII. CONTEMPORARY NUMBERS

Since “registered partnerships” in Sweden were introduced in 1995, the annual number of new registered partnerships has varied between 250 and 665, with the highest figure occurring in the first year:

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61. See, e.g., Marianne DelPo Kulow, *Same Sex Marriage: A Scandinavian Perspective*, 24 *LOY. L.A. INT'L & COMP. L. REV.* 419, 438 (2002).

62. Kees Waaldijk, *Others May Follow: The Introduction of Marriage, Quasi-Marriage, and Semi-Marriage for Same-Sex Couples in European Countries*, 38 *NEW ENG. L. REV.* 569, 586 (2004).

63. Eugenia Caracciolo di Torella & Emily Reid, *The Changing Shape of the “European Family” and Fundamental Rights*, 27 *EUR. L. REV.* 80, 81 (2002).

64. STANISLAW KRÓLEWIEC & KARL-GÖRAN BOTTWYK, *POLYGAMY IN SCANDINAVIA* (2000), <http://web.archive.org/web/20050215055552/www.nccp.org/fecpp/sweden.html>.

Year	New Registered Partnerships	Dissolved Partnerships	New Marriages	Divorces
1995	665	0	33,642	22,528
1996	319	0	33,784	21,377
1997	262	0	32,313	21,009
1998	250	6	31,598	20,761
1999	287	80	35,628	21,000
2000	357	101	39,895	21,502
2001	381	105	35,778	21,022
2002	422	92	38,012	21,322
2003	497	113	39,041	21,130
2004	567	115	43,088	20,106
2005	593	134	44,381	20,000

As of 2005, a total of 3700 Swedish men and women lived together as registered partners. Early in this period, the number of conventional marriages in Sweden was falling toward a low of 31,600 in 1998. However, that number soon began to climb again, reaching 44,381 in 2005, forty percent above the low point.

Adoption by same-sex couples has also turned out to be, at least in practice, mostly a non-issue. While made legal in February 2003, no such adoptions occurred that year, and only a handful have occurred since. Part of the reason is that domestic adoption in Sweden is comparatively uncommon. In addition, few source countries engaging in international adoptions will allow the process for same-sex couples. Moreover, the contemporary Swedish welfare state delivers generous benefits to all children, regardless of their formal legal status relative to adults. Just as a flexible cohabitation by adults has become the social norm, so has the flexible “cohabitation” of an adult and a child not biologically related.<sup>65</sup>

These numbers do qualify claims that the recognition of same-sex partnerships has damaged marriage in Sweden. The dismantling of the institution had already largely occurred. As early as 1938, the public linkage of marriage to procreation and sexuality was formally severed.<sup>66</sup> Tax reform in 1971 ended recognition of the economic unity of the married couple.<sup>67</sup> Reform of marriage law in 1973 eliminated the contractual nature of marriage; easy entry and unilateral exit became the new guides.<sup>68</sup> Subsequent reforms in 1987 and 1995 removed most

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65. Kalina Tallberg-Lindhahl, Memorandum prepared by The Research Service of Sweden's Parliament, *Homosexuella Adoptivföräldrar* (2006) (on file with author).

66. See *supra* text accompanying note 18.

67. See *supra* text accompanying notes 34-37.

68. See *supra* text accompanying notes 38-43.



remaining distinctions between marriage and other forms of intimate friendship. The “thing” that is now called marriage legally carries little more than a symbolic label.

As this paper has argued, such a result was the intentional product of successful ideological action. As launched by the Myrdals seventy-five years ago, the strategy was to achieve a socialist society through the revolutionary transformation of private life, rather than through the hitherto conventional socialist method of state ownership of the means of production. Marriage and private life would be deconstructed, to be replaced by the universal dependency of all adults and children on the central state. Women, men, and children alike would be separated from each other and from their homes for the better part of the day. The tasks of the housewife (child care, basic health care, early education, food preparation, elder care, cleaning) and of the breadwinner (economic support for a woman and her children) would be socialized, with the same women now paid to perform their traditional tasks as state specialists, using industrial techniques. Same-sex partnerships and adoption were, in some respects, afterthoughts to this much larger social reconstruction project.

In January 2005, the current Social Democratic government in Sweden appointed a sole Commissioner, Hans Regner, to study and make recommendations on extending “marriage” to same-sex couples. He works with two “reference groups,” one composed of religious leaders and the other of parliamentarians. The Commissioner will also consider whether legal marriage should be made a strictly civil matter, or continue to embrace religious ceremonies. His report is due by March 30, 2007.<sup>69</sup> A coalition opposed to these changes, *Bevara Äktenskapet* (“Defend Marriage”), has formed, backed by an array of religious and civic leaders, among them author Jan Myrdal, the controversial son of Alva and Gunnar.<sup>70</sup>

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69. Justitiedepartementet, *Äktenskaps—och Partnerskapsutredningen* (2005:03).

70. See *Bevara Äktenskapet*, <http://www.bevaraaktenskapet.se/sida.asp?p=959086034> (last visited Apr. 23, 2007).

## IX. CONCLUSION

Was the introduction of registered partnerships in Sweden in 1995 merely a neutral event? The answer really depends on how one understands, or defines, marriage. If marriage is simply a label about intimate relationships, without meaningful historical roots, holding no intrinsic nature, and endlessly variable as an expression of a current culture, then registered partnerships have been—and same-sex marriage would be—just another innovation accommodating new adult desires and realities.

However, if marriage has an intrinsic structure rooted in nature;<sup>71</sup> if marriage is more than a sexual relationship between two people, one also involving rings of obligation toward children (potential and actual), extended family, neighborhood, community, and nation; if marriage exists “only when the economic and the sexual are united into one relationship . . . “;<sup>72</sup> if marriage has always had a close (if never quite perfect) bond with procreation and the perpetuation of the human species; and if marriage has a necessary role to play as a guarantor of liberty, as “the only . . . institution that is at once necessary and voluntary,” as “the only check on the state that is bound to renew itself as eternally as the state, and more naturally than the state,”<sup>73</sup> then the answer changes.<sup>74</sup>

In this view, marriage and family law exists to encourage, sustain, and protect this unique institution. Marriage is for the propagation of children and for their conservation through nurture, education, and protection. These tasks, in turn, renew extended families, communities, and nations. Autonomous homes so formed also serve as a bulwark of liberty, a natural rival to the growth of the state. As with the elimination of “fault” from divorce proceedings or like the deliberate dismantling of economic bonds between husband and wife, the introduction of registered partnerships or same-sex marriage further confuses and diminishes a vital human institution.

The real debate is over the nature of marriage, and of society. The first model noted above emphasizes variability and change. The second model sees marriage as an institution, universal in its basics. For consistent ideological reasons, Sweden’s socialists openly embraced the first model, because conventional marriage stood in the way of their

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71. See C. Owen Lovejoy, *The Origin of Man*, 211 *SCIENCE* 341, 348 (1981).

72. GEORGE PETER MURDOCK, *SOCIAL STRUCTURE* 1-8 (1949).

73. G. K. CHESTERTON, *The Superstition of Divorce*, in *THE COLLECTED WORKS OF G.K. CHESTERTON* IV 227, 256 (1987).

74. See generally ALLAN CARLSON, *CONJUGAL AMERICA* 5-78 (2007).

collectivist ambitions. Marriage embodied a rival set of loyalties that prevented emergence of the desired androgynous individual dependent on the central state and forestalled the socialization of private life.

Until recently, American debate over the meaning of marriage has been much more muddled than the one in Sweden. One positive result of the current U.S. controversy over same-sex marriage has been to clear the air, to reveal the real issues involved, and to clarify the predictable consequences of decisions soon to be made.

