

Session 1: How Legalizing Same-sex Marriage Harms the Stability and Integrity of the Basic Social Institution of Marriage

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Reaffirming the Linguistic and Cultural Heritage That Once Made “Marriage” a Vibrant Word of Substance and Hope

Those who have advocated same-sex ‘marriage’ are trying to commit the semantic crime identified by British literary scholar C.S. Lewis as “verbicide, the murder of a word.” To prevent this crime, those who care for the semantic life of the word marriage should—like detectives ferreting out the facts surrounding any other murder-- investigate the perpetrators and identify their method, motive, and opportunity.

The perpetrators obviously include homosexual couples wanting to call their relationship a marriage. Their motive is transparent: they want to lay hold on the cultural legitimacy that the word marriage confers, even if they must kill its traditional meaning to do so. They also wish to qualify for the governmental, corporate, and institutional benefits accorded to married couples. But the perpetrators also include many non-homosexuals whose motives are quite different. A sizable army of journalists, political activists, academics, and jurists are zealous accomplices in the ongoing verbicide. Some of these accomplices want to bolster their own identity as progressive champions of equal civil rights for all, even if it means dubiously equating blacks and homosexuals, women and homosexuals. Many of these accomplices support an arbitrarily lethal redefinition of marriage because such a redefinition sharply reduces the influence of religion in American social life and consequently amplifies the power of secularists like themselves. Diminishing the sway of religion in American social life then makes it easier for secularists to press forward with their plans for building utopia, a la H. G. Wells, Charlotte Perkins Gilman, Herbert Marcuse, et al.

And the method secularists are using to kill the word marriage entails the kind of vast expansion of manipulative state power that utopia-builders have always craved. Unlike the advertisers, sloganeers, and propagandists who rely on a confused public to kill a word slowly by inflicting a million petty semantic wounds, those now trying to kill marriage typically rely on a few progressive judges and not the general public. Like the Aztec masses who watched in reverent awe as their priests tore the hearts out of sacrificial victims, the American general public is expected to watch with deferential passivity as forward-thinking judges eviscerate the word marriage on their juridical altars. And though the jurists trying to kill the word marriage use a liberationist vocabulary to justify this murder, only the naïve fail to see how they are expanding the coercive power of the state. For when the state officially kills traditional definitions of marriage in this fashion, it forces tens of millions of ordinary Americans to violate their conscience and their religious convictions by compelling them to say that homosexual couples are married.

But regardless of their motives, the would-be perpetrators of this verbicide would probably not be attempting this crime had they not been given an ideal cultural and legal opportunity. Culturally weakened by the erosion of the home economy, the fading of religious influence in public life, and the toxic fallout of the Sexual Revolution, and legally weakened by no-fault divorce, the word marriage had grown semantically weak even before advocates of same-sex ‘marriage’ began trying to administer the coup de grace. Consequently, if Americans wish to save the word marriage from lexical death and society from semantic bondage to the masters of an Orwellian Newspeak, they must launch a very broad counterattack, reaffirming the linguistic and cultural heritage that once made marriage a vibrant word of substance and hope.

Peter Wood-
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Husbanding Sex: An Anthropological View Of Why Conjugal Marriage Prevails in Human Societies and Homoeroticism Doesn’t

This paper reviews the ethnographic case that sexual activity within conjugal (heterosexual) marriage is an essential condition for human thriving.

All human societies face the difficulty of turning men into husbands. Biological fatherhood is easy; and women become mothers with or without the benefits of marriage. The challenge is to create institutions that bond a man to a woman and her children long enough that the children can reach maturity, with the aid of responsible male parent. This imperative has a biological side but it is not simply biological. Our species can reproduce without marriage,

but societies in which conjugal marriage is absent or institutionally attenuated are very rare. The prevailing condition in human history in nearly all flourishing human societies has been to make conjugal marriage a central and privileged institution.

Societies, of course, almost always make some sort of accommodation for sexual activities outside of marriage. Casual liaisons between unmarried partners, heterosexual cohabitation, clandestine affairs, prostitution, and various patterns of homosexual behavior are common. But such extra-marital sexual activity is almost always treated as morally inferior and rife with negative consequences. This is primarily because sexual relations outside marriage conduce to short-term or transitory relationships that undermine the conditions that children need in order to flourish. Generally, sexual relations outside marriage undermine the process of turning men into husbands.

Male homoeroticism is only one of the forms of sexual expression that threatens marriage, but it is a form that seems particularly disruptive to the family. The ethnographic facts do not preclude creating a society that elevates homosexual relations to moral equivalency with heterosexual relations, or a society that treats marriage (in Anthony Giddens' famous phrase) as "pure relationship," rather than the governing institution of human reproduction. But anthropology offers a picture of sexuality and reproduction that casts the ultimate success of these projects into doubt.

Allan Carlson-
The Howard
Center

Equality or Ideology?: Same-Sex Unions in Scandinavia

Opponents of same-sex marriage and civil unions commonly cite articles by Stanley Kurtz. They marshal statistics which, he argues, link the introduction of registered partnerships to the deterioration of traditional marital bonds in Scandinavia. In his new book *Gay Marriage: For Better or Worse*, William Eskridge responds with an extensive critique of Kurtz's methodology and reasoning. This paper will offer an unusual interpretation of this debate. On the one hand, it will largely agree with Eskridge that Kurtz's numbers simply do not hold up. (For example, the annual number of traditional marriages in Sweden has climbed nearly 40 percent since the inauguration of registered partnerships in 1995.) On the other hand, the paper will show how the introduction of registered partnerships in Scandinavia was part of a much broader ideological project designed to alter fundamentally, and weaken, the legal institution of marriage.

Monte
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Two Vital Social Institutions and Bad Wounds

This paper will focus on harm to the American constitutional foundation but with ample references to the Canadian constitutional tradition and the constitution of the Republic of South Africa.

The American, Canadian, and South African experience to date with legalization of genderless marriage teaches that harm to constitutional foundations comes in two forms. One form is the direct and substantive assault on one of the three social institutions (or forms of "civil society") that have served in the constitutional tradition as the preeminent buffers between the individual and Leviathan; that one of course is Locke's "conjugal society," meaning the man/woman marriage institution and the families ordered, sustained, and nurtured by it. F.C. DeCoste and Seana Sugrue have examined this assault brilliantly. A concomitant of this direct assault is the indirect but still substantive assault on another one of the three, church/religion. The Beckett Fund and Maggie Gallagher have recently done much to illuminate the likely trajectory of this indirect assault. (Private property is the third social institution preeminently protective against government intrusion and oppression.)

The other form of harm to constitutional foundations is not much discussed to date as such and is more mundane, but in its own way is just as corrosive as the first form. It is the abuse of "facts" in the constitutional adjudications leading to judicial redefinition of marriage. The courts that have mandated genderless marriage (and the dissenting judges who would do the same if they could) have built their constitutional arguments on a foundation of "facts" about the nature of marriage that are not facts but that are absolutely essential to the judicial redefinition project. This reality is seen in American, Canadian, and South African cases.

The most effective corrective of this second form of harm appears to be legislative findings of fact regarding the relevant aspects of marriage. Exactly because a national legislature has a unique fact-finding competence relative to widespread and complex social phenomenon, including the social institution of marriage, a court would be hard-pressed to ignore, dispute or otherwise evade the legislative findings of fact on marriage. Constrained by such findings, a court could hardly declare man/woman marriage unconstitutional and order it replaced by genderless marriage.

Session 2: How Legalizing Same-sex Marriage Harms Religion, Morality, and Sexual Responsibility

Roger Severino- The Becket Fund for Religious Liberty

Does Same-Sex Marriage Threaten Religious Liberty?

Because of the historically intimate relationship between religion and marriage, the Massachusetts Supreme Judicial Court decision in *Goodridge v. Dep't of Public Health* carried with it profound implications for religious liberty--implications that are only now being appreciated. Although religious institutions have substantial constitutional protections, this paper argues that the risks to religious freedom from legalized gay marriage are many and are potentially destructive.

The legal definition of marriage does not exist in isolation; changing it changes many areas of law. For example, marriage plays important roles in the law of adoption, education, employee benefits, employment discrimination, government contracts and subsidies, taxation, tort law, trusts and estates, and many others. In turn, these same legal regimes directly govern the ongoing, daily operations of religious organizations of all stripes. Because of the centrality of marriage to religious and civic life, many conflicts will inevitably arise where the legal definition of marriage differs dramatically from the religious definition*to the detriment of religious liberty.

Specifically, the advent of same-sex marriage will impinge on religious liberty by inducing and allowing government to (1) compel religious institutions to provide financial or other support for same-sex married couples, and (2) punish religious institutions for opposing same-sex marriage. As for the first point, wherever religious institutions provide special benefits to traditional married couples, state laws will likely require those institutions to extend equivalent benefits to same-sex married couples. Religious institutions that do not comply will be civilly liable. Correspondingly, as more courts elevate same-sex marriage to the status of a fundamental constitutional right, more courts will treat opposition to same-sex marriage as "discrimination," "irrational," or "motivated by animus," meriting the severest form of government disapproval. Thus, religious institutions that retain their "discriminatory" beliefs will be targeted for a wide range of legal punishments, precisely because their policies reflect those beliefs. Government will sanction uncooperative religious institutions by excluding them from an array of government benefits and government functions that they currently enjoy.

The question of marriage is one of national importance. As such, there is a strong push to harmonize the definition of this foundational civic and cultural institution across the nation, in the near-term or long-term, one arrangement or the other. That decision will have deep implications for the liberty of religious institutions that choose to reflect their deepest beliefs about marriage in their organization, in their speech, and in their deeds.

Lynn D. Wardle- Brigham Young University

The Morality of Marriage: The Devastating Effects that Legalizing Same-Sex Marriage Will Have on Sexual Morality

Marriage is the most important, foundational moral institution in society. The moral influences of marriage is so pervasive, so essential, that most of the time most members of society are as oblivious to them as they are to the air they breathe or the beating of their own hearts. Legalizing same-sex marriage will produce significant changes in the basic definition, core meaning, and essential morality of marriage and will have profound ramifications that will reverberate throughout virtually all sectors of society.

The morality of marriage is perhaps most directly and recognizably apparent as it relates to setting and maintaining standards of sexual morality. The sexual dimension of the morality of marriage will be explored. Redefining marriage to include gay and lesbian couples will have a profound impact upon sexual morality in society. Sexual standards will change as homosexual relations will be instantly normalized and equated with marital relations. Conservative supporters of same-sex marriage argue that legalization of same-sex marriage will positively influence the life-styles of gays and lesbians as the morality of marriage rubs off on and "tames" the behaviors of same-sex couples. Of course, the "rubbing off" and effects will run both ways. Legalizing same-sex marriage will have a great transformative effect on the moral meaning and influences of marriage. The moral qualities and characteristics of homosexual relations and lifestyles will become part of and substantially alter the morality of marriage. In terms of "unsafe" sexual practices, infidelity, promiscuity, teen sexuality, sexual exploitation of minors and of other vulnerable populations, and human indignity resulting from demeaning

sexual demands, the legalization of same-sex marriage (or marriage-equivalent unions) will have very harmful effect upon the morality of marriage, upon many individuals, and upon society.

The broader moral influence of marriage will be considered as well. Marriage establishes the moral core of the family and the moral baseline and standards for society in a myriad of ways. Those moral influences of marriage will be considered. The legal status of marriage is a major influence in the laws (over 1000 federal laws, and hundreds of state and local laws in every state). Legalizing same-sex marriage will instantly transform the meaning of marriage, spouse, husband, wife, parent, child and by that redefinition will profoundly influence the meaning of family, inheritance, intimacy, relations, public behavior, privacy, disclosures, security, accommodation, filings, custody, guardianship, visitation, reasonable conduct, medical treatment, public education, school curriculum, civil rights, preferences, privileges, rights, duties, etc. Wherever the institution of marriage has been radically altered and same-sex relations approved (as in Russia following the Bolshevik Revolution of 1917), or marriage “captured” by political movements, families (especially children) and society in general have experienced traumatic upheaval and great suffering.

Ed Gantt-
Brigham
Young
University

Both Biological Arguments and Social Constructionists' Explanations Fail to Incorporate Moral Agency

Much theorizing in the behavioral sciences about the nature and origins of human social and sexual relationships reflects an evolutionary perspective that proposes to explain human relationships in terms of underlying biochemical activity and genetic tendencies or predispositions. Recently, however, many social constructionist thinkers have offered an alternative perspective to such a view, in which human social life and sexual relationships are seen to be the byproducts of the various and particular social, political, and cultural forces that shape and give form to human relations. This paper will show that despite the seemingly antithetical ontological claims of these two schools of thought, they both nonetheless endorse a reductive and necessary determinism that ultimately destroys the possibility of understanding the inherently social and moral nature of human relationships, in particular marital or family relationships. It will further be argued that the only way to preserve the inherently social and moral nature of marriage in our psychological accounts of marriage will be to make a viable case for the fundamentality of moral agency in human relationships.

Charles Reid-
University of
St. Thomas

Sexual Virtue, Sexual Vice, and the Requirements of the Good Society: Lessons from Ancient Rome

There is a basic theme in three sets of sources - the writings of the ancient, pre-Christian Romans; the Christian middle ages; and early American theological and legal materials. These sources illuminate the common expectation of the West - at least for the last two millennia - that great public harm is attached to "private" sexual license.

Session 3: How Legalizing Same-sex Marriage Harms the Social Interests in Protecting Sexual Morality and the Channeling of Safe Sexual Relations

Robert
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High Stakes Inquiry: The Unresolved Argument about the Nature, Purpose, and Meaning of Human Sexuality

At the heart of the debate over the legal status of same-sex unions lies an extended, unresolved argument about the nature, purpose, and meaning of human sexuality. On one side of the argument are the many advocates for the gay, lesbian, bisexual, transgendered, and transsexual (GLBTT) community. They argue that that laws and social structures that reflect and preserve the traditional understandings of marriage, family, sex, gender, and sexuality are, at best, “irrational”, and, at worst, evidence of “anti-homosexual hostility.” On the other side of the argument are a wide variety of individuals, interest groups, churches, and religious organizations that seek to preserve and defend not only the traditional definition of marriage, but also the traditional distinction between a person’s sexual preference and participation in extramarital sexual activity.

The paper begins with an examination of the writings of key “Queer Theorists” – the “leading edge” thinkers of the GLBTT (gay, lesbian, bisexual, transgendered, and transsexual) community, and contrasts their views with those of “traditional” Christians and Jews. It then explores the ways in which these diametrically opposed views are competing for legitimacy in the public square through offensive and defensive litigation and legislation.

The stakes in this debate could not be higher. Queer Theorists argue that traditional social norms governing the proper expression and purposes of human sexuality are “hetero-centric,” and that they violate the Religion Clause of the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. This is so, in their view, because “tradition” defines concepts like “sex”, “gender”, “sexuality,” and “family” in a manner that “privileges” the Judeo-Christian preference for monogamous, heterosexual relationships and “subordinates” all others, particularly those of the GLBTT community. Their goal is to replace the “heteronormativity” of current law with one that rejects the “widespread sense of sexual proscription that emanates from many organized religions and, even more broadly, the prudish mythology that surrounds them.”

The Judeo-Christian tradition, by contrast, draws on Scripture (revealed Truth), a long history of scriptural interpretation (tradition), and its understanding of human nature to make two points central to the marriage debate.

1. The equality of all persons “rests essentially on their dignity as persons and the rights that flow from it.”

2. All extra-marital sexual activity is forbidden.

The religious liberty controversies emerging from the same-sex marriage will ask courts to resolve what is, in essence, a difference of “religious” opinion concerning the legitimacy (“fairness”) of the Judeo-Christian (or “heterocentric”) position and its consistency with positions taken to date by the courts concerning state interests in regulating adult sexual behavior.

Richard N. Williams-Brigham Young University

Same-Sex Marriage and the Question of Harm: Getting Clear about Meaning, Morality, and Making a Difference

The question as to whether legalizing same-sex marriage will do harm to traditional marriage, to the family, to persons, or to our culture at large is, in its essential form and purpose, analogous to the question of whether there are detrimental effects on children from being reared by homosexual parents. A decade ago, I reviewed the literature on the latter topic. The conceptual and methodological flaws in the literature on this topic, and the problematic conclusions drawn from it seem to be repeated in the current debate about potential harm that might come from legalizing same-sex marriage. In the analysis of potential effects on children, a lack of empirical findings was fallaciously taken as evidence for a conclusion that there no harm. A similar line of reasoning seems to be taking shape in the debate about same-sex marriage. This paper will briefly address the similarity.

The paper will also argue that the issues at the core of the debate about same-sex marriage are necessarily moral issues. It will argue that all issues worth disagreeing about are inherently moral issues and must be dealt with at that level. For a culture to be a culture at all, it must engage in this type of fundamentally moral discourse. In arguing that the debate over same-sex marriage may be being carried out at too superficial a level, the paper will deal with the issue in terms of a) the contention that all relationships are or should be a matter of individual choice, and thus are all on the same ground, b) whether human sexuality is or should be separable from human reproductive processes, c) whether sexual orientation can be understood as biological fact, d) the implications of legitimating same-sex marriage for the essential meaning of marriage and family, and e) the meaning of human sexuality.

If the question of potential harm is not pursued at the level of fundamental ontology, and in light of a clear explication of assumptions and implications, then we have not done justice to the question. Decisions about potential harm must be dealt with only after achieving clarity on the question of human ontology; and they must be dealt with on the level of meaning and morality which is the ground out of which emerges our culture and our understanding of ourselves.

Session 4: How Legalizing Same-sex Marriage Harms the Social Interests in Promoting Responsible Procreation and Accountability

Scott FitzGibbon-Boston College

Procreative Responsibility and the Recognition of Marriage

Part One: the Nature of Procreative Responsibility

- I. The Nature and Good of Procreation.
- II. The Nature of Justice.
- III. Justice between Procreator and Procreated.
- IV. Justice Between Procreators.

Part Two: the Procreatively Just Affiliation

- I. The Metaphor of the House; the First Three Requirements of Justice in Procreative Affiliations.
- II. The Metaphor of the Sculptors: Three Further Requirements of Justice in Procreative Affiliations.
- III. Beyond the Metaphors: Reproductive Eros as the Great Problematic of Procreative Justice and its Implications for a Seventh Requirement of Procreative Justice.
- IV. Implications for Same-Sex Associations.

John Diggs,
M.D.

The Harm of Broken Levees: Drowning in Counterfeit Public Health and Education

"Don't tear down a wall until you know why it was put up." ~ African Proverb

The promotion of sexual congress only between married adults creates barriers which contain the integrity of civilized society. When these barriers are broken, chaos and violence inevitably follow.

Marriage is a levee that safely contains the activity and fruit of sex. While many things have damaged this wall, homosexuality sweeps away the foundations that sustain protections of women, children, men, and the integrity of science and public health. Left in its wake is avoidable pain, suffering, disease, and destruction. We drown not because we don't know how to swim but because we are awash in toxic substances no longer restrained by the levee.

The specific consequences of even considering the concept of homosexual "marriage" will be discussed.

Session 5: How Legalizing Same-sex Marriage Harms the Social Interest in Fostering Optimal Childrearing

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University of
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Conjugal Marriage Fosters Healthy Human and Societal Development

Conjugal marriage benefits individuals, particularly children and by extension, society. Men and women who marry benefit financially, emotionally, physically and socially from this unique institution. Dual-gender parenting is protective for children: all variables considered, this one family structure offers the best outcomes for children.

Differences emerge when comparisons are made between same-sex and opposite-sex couples. Same-sex relationships are less permanent and less monogamous. Homosexual practices place its participants at risk for mental illness and physical disease.

Emerging research suggests potential risks for children raised by lesbian parents including gender non-conformity. How healthy is the rejection of gender roles?

The social science research supports the notion that gender matters, that family structure matters and that conjugal marriage fosters healthy human and societal development.

Dr. Brenda
Destro-
Association of
Adoption
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Adoption – The Best Interests of the Child

Adoption is a way to create a new and permanent family for a child who needs one. It is a legal and moral process in which all parental rights and responsibilities are transferred to an individual or couple who has agreed to assume them. Adoption is permanent and grants a child full membership into the new family as if he were born into it. In order for those rights to be allowed to transfer, the rights of the biological parent(s), need to be terminated, either voluntarily or involuntarily, and the adoptive parents to whom the rights will transfer must be qualified to adopt.

Adoption is about children that need parents, not parents that need children. The duty of adoption professionals, including judges, lawyers, social workers, and medical staff, is to serve the "best interests of the child" in the adoption process. Yet, the duty to serve and protect the child is now taking a backseat to the demands and "rights" of the adults involved. Birthmothers and adoptees want the right to search confidential records, adoptive parents want the right to waive waiting periods, birthparents want the right to pick the adoptive family, and homosexual couples want the right to be equal to heterosexual, married couples in the adoption process.

These demands for "rights" are challenging important practices and dismantling vital protections in the adoption process that have left children at risk. Confidentiality, waiting periods, privacy, and ethical best practices are ignored without regard to the consequences. And there are consequences. Courts are tearing children from adoptive homes and giving them

back to their biological families based on procedural errors. Birthmothers are harassing adoptive families for more involvement or more money. Some adoptive families deceive birth mothers, just to get a baby. And now, children are being placed with singles and homosexual couples with little regard to the outcomes.

Key to the success of any adoption plan is meeting a universally accepted standard called, "the best interests of the child". It requires that adoption professionals move to find a safe, loving, and permanent home for a child as the central and most important characteristic of the adoption plan. The child, as the most vulnerable and needy person in the adoption process, must be protected. When adults in the adoption process push their demands and rights at the expense of good practice, the child will not be protected. Adoption will no longer be a sanctuary for a vulnerable child, but rather political theater for those who wish to push their interest ahead of the needs of the children at risk.

Louis
DeSerres-
Preserve
Marriage

Same-sex marriage: What About the Human Rights of Children?

- In various countries, same-sex marriage has been advocated by adults as an adult-only right based on constitutional equality arguments.
- Children are the fruits of marriage. They are citizens and are as eligible to human rights protection as adults, probably even more so.
- Children's best interests have traditionally been protected in the sphere of family law.
- Constitutional guarantees have not always provided children with appropriate protection.
- Children born from same-sex parents are denied their equality rights.
- In particular, if one child has a mother and a father, a second child has two mothers and no father, and a third child two fathers and no mother, are these children really equal?
- In these cases, the harm is multi-faceted, fundamental, permanent and there is no remedy.
- The harm to children is not limited to children created within marriage or marriage-like same-sex relationships.
- By allowing, even mandating, that same-sex marriage-like relationships be treated equally with heterosexual marriage relationships, the rights of all children are at best weakened and at worst denied.
- In judicially and/or legislatively allowing same-sex couples to form families, the State in various countries has been negligent in its duty to protect the human rights of children.
- In the case of children created within same-sex family units, the state has the authority and the tools to prevent much of this harm through its ability to legislatively define marriage, regulate adoption and through its regulatory powers over the medical profession.
- Examples from Canada, the U.K., the U.S. and France will be cited.

Session 6: How Legalizing Same-sex Marriage Harms the Social Interest in Protecting Adults, Especially Wives & Mothers, and Husbands & Fathers, Who Care and Provide for Family Members

David
Dollahite &
Jason S.
Carroll-
Brigham
Young
University

How Changing the Definition of Marriage Harms Generative Fathering

Same-sex marriage is one of the most contentious, complex, and important issues of our time. It is a religious, personal, relational, and familial issue-not merely a legal, cultural, or political issue. I neither fear nor hate homosexual persons. I know and care for people who are attracted to members of the same sex, I bear no ill will toward them, and I hope for their health and well-being. I do believe it is the interest of all people and societies that the institution of marriage continues to be limited only to a relationship between a man and a woman. In this paper I discuss some of the ways that redefining the institution of marriage to include same-sex couples could harm men-unmarried men and married men; fathers, sons, and brothers; straight men and gay men; younger men and older men. I include discussion of religious, moral, legal, and relational issues. I discuss evidence from social science research, history, tradition, and experience.

Violence Against Self and Others: the Harm of Same-sex Marriage

It is not surprising that this strange disease of the spirit—the self's loss of the self—should have its counterpart in an anguish of the body. One of the commonplaces of modern experience is dissatisfaction with the body—not as one has allowed it to become, but as it naturally is. --Wendell Berry, *The Body and the Earth*

One species of self-dissatisfaction is that of alienation from one's own body, and the gender roles that accompany that biological sex. One theory of intimate partner violence claims that domestic violence is an outgrowth of the patriarchal oppression of women, masculinity gone awry. Some studies suggest, however, that rates of violence in same-sex relationships are as high as, if not higher than, rates among heterosexual couples. Why such rates should exist among couples which have ostensibly rejected gender roles remains unexplained, except as a vestige of "internalized homophobia."

I will explore some alternative explanations for the violence and high-risk behaviors of same-sex couples. The propensity for violence in same-sex couples may have something to do with dissatisfaction with self, and an unwillingness to enter into the pattern of husband-wife marriage for a purpose greater than the self. Rejecting patterns of living which have allowed women and men to grow into an adulthood of service within the family, and which have served families well, albeit imperfectly, for centuries, may be sufficient cause for feelings of alienation and depression resulting in violence.

Legalizing same-sex marriage does violence to the concept of self, as well as to the institution of marriage. Granting marriage rights to same-sex couples can never satisfy the human longing for acceptance as long as the individual remains unreconciled to his or her own sex, and gender.

How Have Women and Children Fared Since the Sexual Revolution, the Decline of Marriage and the Rise of Homosexual Acceptance?: A Statistical Analysis

Introduction: Implicitly answering the questions set out for the Panel, this colloquium will trace historical facts over the past forty years and document statistically how a decline in both social and legal respect for marriage has not resulted in any betterments for women, but has resulted in opposite and harmful negative effects on women and children.

1. Women:

- i) No pay equity – women still make only 76% of what men make
- ii) No greater economic security – women still comprise majority of citizens under poverty line, impoverished single parents and impoverished seniors
- iii) Rise in cohabitation has brought negative effect upon women of increased domestic violence
- iv) No greater custody assurances – primary caretaker standard based on gender equality; no tender years presumption; men and third parties prevail in a high percentage of cases; the best case scenario has been joint custody with a great decline of sole custody determinations

2. Children:

- i) When sexual freedom takes priority over motherhood, the obvious potential results are neglect, abandonment, abuse
- ii) Rise in domestic violence upon children
- iii) Rise in child on child violence and violence among children generally
- iv) Record numbers of illegitimacy and children in poverty
- v) Record numbers of single parent families

3. Women and Children in Marriage – statistical comparison

- i) Economic facts
- ii) Employment facts
- iii) Social and mental health facts
- iv) Lowest poverty rates
- v) Lowest violence indicia
- vi) Greatest future productivity of children

Conclusion: Factual evidence brings clarity to the benefits of marriage to women and children.

Dr. Lili and
Chris
Anderson

Our paper will review research indicating concrete ways in which children benefit from rearing by mothers and fathers in ways that are specific to the gender differences between heterosexual parents. Further, while data is, at best, very limited, there is some reason to suppose that lesbian couples are more likely to adopt or choose to parent than male homosexual couples. Therefore, we will look closely at research that shows outcomes of biological father absence on sons and daughters and the repercussions of these outcomes for societal well-being.

We will argue that same-sex marriage, as a legal and social institution, decreases the likelihood that children will be conceived in a home with a committed father, by reducing or eliminating certain important selection effects concerning who becomes a parent and with what kind of partner. Thus, protecting heterosexual marriage as the exclusive marriage bond acknowledged and protected by law and society protects children and, ultimately, protects society from dealing with the consequences of greater numbers of less stable, more problematic replacement citizens.

Session 7: How Legalizing Same-sex Marriage May Harm the Social Interests in Preserving the Constitutional Foundation and Social Order

Seana
Sugrue-
Ave Maria
University

The Erosion of Marriage: A Pyrrhic Victory?

The institution of marriage is being eroded by societal acceptance of antinomian hedonism. Whereas marriage, as a normative institution, has traditionally been defined by a matrix of sexual norms that channel human sexuality into the union of man and woman who, if they reproduce, are responsible for the rearing of their children, antinomian hedonism promotes desire and self gratification, limited only by the need for consent.

The institution which has been primarily responsible for the erosion of marriage has been the state, which through law, has refused to enforce traditional sexual norms, and has granted legitimacy to antinomian hedonism. This process began in earnest during the sexual revolution of the 1960's and 70's, and continues to the present day.

The erosion of the institution of marriage should be expected to affect other institutions, given the reality of institutional interdependence, as well as the children who have traditionally been socialized within the institution of marriage. In the case of children, the prevalence of antinomian hedonism should be expected to correspond with their sexualization, the loss of a sense of their intrinsic value, and the erosion of conscience and responsibility. The erosion of marriage should also be expected to erode other institutions of civil society, including religion and the market, given that these institutions are dependent upon the existence of social capital generated by the institution of marriage. Finally, the erosion of marriage should be expected to weaken the long-term sustainability of the republican governance, as the civil institutions of society upon which the republican state is dependent are undermined.

Matthew
Holland-
Brigham
Young
University

Democracy with an Expiration Date: Legalizing Same-sex Marriage Rejects the Founders' Ethical Imperative of Perpetuating Freedom

Permeating key documents of the American Founding are statements indicating the Founder's determination to secure liberty for their generation and all succeeding generations. Put another way, the Founders saw themselves operating under an inherent ethical demand to establish freedom and perpetuate it. This reveals a concept of freedom considerably different from that found in most contemporary ethics and political theory. Such a contrast helps highlight how legalizing same sex marriage strikes at the heart of the most fundamental ethical and ontological assumptions upon which America's constitutional democracy rests. The danger this betokens is not limited to America alone as such ethical and ontological assumptions are critical to any culture that would both enjoy and perpetuate the free life as a common way to live.

Marianne
Jennings-
Arizona State
University

Unintended Consequences: The Flaws in "It Doesn't Affect Anyone But Us" Argument in Favor of Legalizing Same-Sex Marriage

This paper examines the often-advanced argument that there is no impact beyond couples when same-sex marriage is sanctioned, that the legalization of same-sex marriage is a benign act. This emotional reaction, often clothed in the sanctity of accusations of bigotry, cuts short what should be a thorough and in-depth public policy discussion. There are three components of unintended consequences: (1) historical results when public policies affect

family structure; (2) conflicts of law that will result between same-sex marriage legalization and constitutional provisions including full faith and credit and freedom of religion; and (3) impacts on societal behaviors without the presence of the exclusive sanction of procreation capability as the province of marriage.

1. A brief look at public policy history on decisions related to the family demonstrates that the unanticipated and unintended consequences of such decisions often require generations following their reversal for correction of societal harm. The Johnson Administration's goal of "The Great Society," one intended to provide support for those families that were fatherless, was grounded in the same notions of fairness, equality, and compassion. The impact of the resulting welfare system was the destruction of the family unit with a rise in births to single parents and a continuing cycle of welfare dependence. The result of the government-subsidized housing erected as one means of support for these fragmented families was the creation of an atmosphere in which undisciplined youth had free reign. Crime rates eventually forced government policy to abandon project homes in favor of "mainstreaming" so as to preserve community safety and values. Shifts in public policy that affect family structure have, historically, proved ineffectual, indeed, damaging.
2. If same-sex marriage legalization is relegated to the state level, one consequence is the application of the full faith and credit clause to such unions in order to allow same-sex couples mobility without loss of rights. However, honoring that constitutional provision requires states in which same-sex marriages are not legalized to honor their existence. State rights, traditionally exclusive in matters of marriage, are thus usurped. Further, recent referenda on same-sex marriages indicate a clear public statement against their legalization. Constitutional conflicts would be exacerbated if legalization were undertaken at the federal level. The recent Massachusetts decision that required adoption agencies to place children with same-sex couples forced the Catholic Church to withdraw from its adoption work because of its inability to compromise religious beliefs. The result is a mandate from the state to sanction a union that runs contra to the organization's religious beliefs or a loss of a right other groups hold, a form of discrimination on the basis of religion. Churches are thus prohibited from participating in a service that few can dispute operates to society's benefit.
3. We have just begun to understand the impact of same-sex unions on the social fabric. Stable, parenthood-focused marriages have an impact on the social fabric and require social support to survive. Without the stability of monogamous parenthood and society's pedestal sanctioning of it for survival of the species, the activities of unstable cohabitation increase (as has been seen in Europe). The impact of that instability is examined in this component.

The sheer emotion of the debate on the legalization of same-sex marriage has precluded rational consideration of its likely and ominous, albeit unintended, consequences. Those consequences deserve both research and deliberation.

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Same-Sex marriage and Public School Curricula: Reflections on Preserving the Rights of Parents to Direct the Education of their Children

"Therefore shall a man leave his father and mother
and shall cleave to his wife, and they shall be made one flesh."

As reflected in the opening quotation from the Bible, from the earliest days of the Judaeo-Christian era, with Judaism as the first religion to impose a strict form of monogamy on its adherents, marriage has been defined as a union between one man and one woman. Moreover, even though such practices as polygamy, polyandry, and open marriage have occasionally been in vogue, until recently, there has been little serious discussion of the possibility of marriage between two members of the same sex, commonly referred to as same-sex marriage. However, spurred by social and judicial activists, talk of same-sex "marriage" has been wide-spread in recent years, especially in academic journals and the popular press.

At the outset, there are two important delimitations to this paper. First, in supporting what is now euphemistically referred to as "traditional" marriage, thereby distinguishing it from unions between members of the same sex, this paper is not intended as a personal criticism of those who support such a radical change in society. Rather, this paper is a defense of preserving marriage as it has been practiced through the ages in Western society as the basis of a civil society. As such, the paper includes a discussion of the author's serious concerns about the two-pronged approach that proponents of single-sex marriage have adopted in seeking to a radical metamorphosis of an institution that, however imperfect, has stood the test of time. In

fact, it should be troubling to all that proponents of same-sex marriage have relied almost exclusively on “the least democratic of the branches” to accomplish their goals while simultaneously demonstrating overt hostility to all things Christian. This other prong in this two-part plan of attack demonstrates instances of what may aptly be referred to as Christophobia, as advocates seek to remove references to Christianity (and its underlying values, including marriage) in the public marketplace of ideas, in their attempt to impose their world-view on society writ large. Second, the paper does not trace the legal history or development of arguments for or against same sex marriage other than it impacts on its major themes.

In setting forth a defense of marriage as part of a panel on “Fostering Virtue, Morality, Democracy, and Religious Liberty,” this paper is divided into two major sections. The first part reviews the ways in which marriage has uniquely benefited society by helping to preserve the moral and social order through ensuring a stable environment within which children can grow, defining and promoting legitimacy (if this is not already an archaic concept), and providing a form of population control by placing limits on the ability of some to procreate without consequence. Undoubtedly, critics will allege that such concerns are specious in the face of the apparent breakdown in traditional marriage as witnessed by increased divorce rates, the popularity of shared living arrangements, and the dramatic increase in single-motherhood. However, the paper will parry these objections by pointing out that as regrettable as these developments are, they are still, by-and-large, taking place within the context of heterosexual, rather than homosexual liaisons. . . .

The second part of the paper examines ways in which the benefits that marriage offers to society can be harmed by a shift to permitting same-sex marriages in two main areas, the rights of parents to direct educational upbringing of their children and religious freedom. Initiating such a far-reaching change in the social structure as same-sex marriage may well require significant modifications in K-12 curricula that will leave children confused because they are being exposed to in classes may conflict with the values that they are being taught at home, especially at a time when they are beginning to explore their own nascent sexuality. Moreover, as evidenced by controversies over the use of such materials as Heather has Two Mommies, and judicial refusal to intervene in the face of inappropriate sexuality instruction and surveys in public schools, even when educators failed to comply with applicable laws regulating such activities, litigation has occurred over whether limits should be imposed on public school officials in their capacity to act in loco parentis. Recognizing that “the child is not the mere creature of the state,” significant conflict may emerge as parents who do not support same-sex marriage raise legitimate objections over having their children exposed to curricular materials that are not consistent with the values that are expressed in their homes. Of course, educators and critics might argue that in the state’s role as *parens patriae*, school officials have the duty to direct the curriculum, refusing to grant parents a heckler’s veto. Yet, reflected in the growth of Christian schools, which are replenishing, if not replacing, the strong, albeit diminished, presence of Roman Catholic schools in the religiously-affiliated non-public school community, and the emergence of home schooling, parents are already “talking with their feet,” placing their children in educational environments that are consonant with their beliefs. While the numbers of children in religiously affiliated non-public schools is still under fifteen percent, the statistics should give educational leaders, policy makers, and politicians pause as they consider the tension between parents and school officials with regard to matters such as programming with regard to instruction about same-sex marriage.

Another far-flung change might impact religious freedom. More specifically, insofar as marriage is a recognized religious ritual, or sacrament, in many mainstream American Christian churches, circumstances may arise in which proponents of same-sex marriages would accuse those whose Biblically-based faith, disagrees with them of religious discrimination or bigotry. If this were to transpire, it might lead to the unfortunate situation whereby judicial activists might intervene in interpreting religious doctrine.

In response to claims that these are weak arguments, the paper will cite to educational examples where controversies of this type have already been engendered, discussing whether there is room in the public marketplace of ideas in a democratic society for differing visions of what marriage is, or ought to be.

The paper rounds out with reflections of where this debate on same-sex marriage may be headed in the near future.

Marriage and the Move from the Rule of Law

Inevitably, major social policies become subject to judicial and political processes. This fact has implications not only for the underlying substantive matters on which policy is being made but may also affect the processes themselves, particularly when competing ideas evoke deeply held beliefs and strongly felt emotions. Thus it is with the definition of marriage, which has increasingly become the subject of political and legal debate. The way this debate progresses will affect marriage policy for decades to come but it may also either enhance or detract from the relevant processes and ultimately, our commitment to the rule of law that under girds them.

Examining the now-decades old struggle over the legal definition of marriage can test this proposition. I believe such an examination discloses significant reasons to be concerned with the effect the movement to redefine marriage is having on our political and legal institutions. In fact, I argue that the redefinition movement is accelerating and/or inaugurating trends that are likely to prove harmful to our form of government.

Typically (and with some reason), the discussion of the marriage debate as it relates to questions of government structure focuses on the sole issue of the relative roles of judges and legislators. Some argue that a question of such profundity as the definition of marriage should only be affected by actions by politically accountable governmental actors. Others assert that the court role should be paramount because the broad popular support for our inherited understanding of marriage blinds majorities to the injustices this definition works on those who would like their personal relationships recognized as equivalent to marriages as traditionally defined.

The potential threats posed by the redefinition movement to our governmental system go much deeper, however, than the question of who is to decide what the law will say about what marriage is. This article will discuss the implications of the redefinition effort for a number of core governmental concepts: (1) the principle that our government is one of limited jurisdiction, (2) the need for separation of powers, (3) the importance of predictability and consistency in lawmaking, and (4) the need to avoid official intolerance of citizens' benign beliefs.
