

THE STRUGGLE FOR SAME-SEX MARRIAGE

Norval D. Glenn

The heated debates about same-sex marriage are focused largely on the probable social effects of same-sex marriage, civil unions, and similar legal recognitions of homosexual pairings. My concern here is with a related but distinctly different topic, namely, what will be (and already have been) the social consequences of the political struggle for same-sex marriage. The ultimate effects depend in large measure on the outcome of the struggle, of course, but they also depend on such properties of the battle as its duration and the specific forms it takes. There may be unintended casualties and/or benefits, and some participants in the struggle admit to goals other than attainment or prevention of same-sex marriage. Together, these possible consequences are what I call side effects. I lack certain knowledge about what these generally undiscussed and unrecognized possible effects may be, but I fear they are largely negative. More optimistically, I think they may be largely avoidable.

The main stated concern of opponents to same-sex marriage and other legal recognitions of same-sex pairings is likely harm to the institution of marriage. Although it may be possible to open marriage to same-sex couples without harming the institution, there are clear dangers to marriage in the political and ideological conflict about same-sex marriage. These lie in a blurring of the distinction between high and low commitment relationships, in a blurring of the distinction between marriage as an institution and mere “close relationships,” and in a politically motivated denial of the value of fathers for the socialization, development, and well being of children. It also seems likely that the debate about same-sex relationships will lead to a re-evaluation of some aspects of the privileging of marriage over other care-giving relationships—a development that, while arguably overdue, poses risks for marriage.

Considerable blurring of the distinction between high and low commitment relationships has already occurred in the United States, and it has occurred to a greater extent in several other countries. In the U. S., a good many private companies and municipalities have given insurance and similar benefits to the “domestic part-

ners” of their employees. These benefits were in response to the fact that they are often extended to partners as well as to partners. There have apparently been no apparent support for the benefits inclusion of heterosexual support for the benefits on the grounds of the reasons, an effect has been to extend served for married per to marry and assume. Whereas traditionally

both rights and responsibilities, which have been metrically linked, heterosexual domestic partnerships give rights and perquisites without attendant responsibilities. For instance, they often provide or partially pay for medical insurance for partners even though the employees have no legal obligation to pay the partners’ medical bills. The same is true of homosexual domestic partnerships although gay and lesbian couples who would marry if they could—and thus take on the risks, financial and otherwise, that marriage entails—can hardly be blamed for taking advantage of a one-sided arrangement. However, domestic partnerships allow many homosexual couples who are not highly committed to one another, and who would not take on the responsibilities and risks of marriage if they could, to gain benefits previously reserved for married couples. The destructive consequences for marriage, and for society as a whole, seem rather obvious, though they have rarely been discussed.

Consider that the family codes in all 50 states impose on spouses some kind of obligation to provide financial support to one another, often including specific obligations to support a spouse who cannot support himself or herself. These obligations are somewhat less binding in the present era of unilateral no-fault divorce than they once were, but there are still strong social pressures against abandoning a sick or disabled spouse. Although not usually codified in family law, there are also strong social obligations to provide physical care to spouses

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Considerable blurring of the distinction between high and low commitment relationships has already occurred in the United States, and it has occurred to a greater extent in several other countries. In the U. S., a good many private companies and municipalities have given insurance and similar benefits to the “domestic part-

ners” of their employees. Although inauguration of these benefits was in response to the gay rights movement, they are often extended to cohabiting heterosexual partners as well as to partners of homosexual employees. There have apparently been two major reasons for the inclusion of heterosexuals, first, to broaden the base of support for the benefits, and second, to avoid legal challenge on the grounds of sex discrimination. Whatever the reasons, an effect of the inclusion of heterosexuals has been to extend some of the rights previously reserved for married persons to those who are not willing to marry and assume the responsibilities of marriage. Whereas traditionally major social statuses have carried both rights and responsibilities, which have been inextricably linked, heterosexual domestic partnerships give rights and perquisites without attendant responsibilities. For instance, they often provide or partially pay for medical insurance for partners even though the employees have no legal obligation to pay the partners’ medical bills. The same is true of homosexual domestic partnerships although gay and lesbian couples who would marry if they could—and thus take on the risks, financial and otherwise, that marriage entails—can hardly be blamed for taking advantage of a one-sided arrangement. However, domestic partnerships allow many homosexual couples who are not highly committed to one another, and who would not take on the responsibilities and risks of marriage if they could, to gain benefits previously reserved for married couples. The destructive consequences for marriage, and for society as a whole, seem rather obvious, though they have rarely been discussed.

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who need it. Thus, husbands and wives do a great deal for one another to prevent either from becoming a burden on society. Even deceased spouses usually leave property and/or pension benefits that help keep the surviving spouse from being dependent on the public coffers. In return for the obligations spouses discharge vis a vis one another, they are granted, among other things, spousal benefits from employers. Even when the cost is paid by private employers, it is ultimately borne by the public via the cost of goods and services. Thus spousal employee benefits and spousal property rights are an important part of an intricate web of costs and rewards that are expressions of the social contract. They may exist largely for the benefit of children, but they also provide for the care of adults.

Except in six states and the District of Columbia, domestic partnerships in the United States are private arrangements between employers and employees. In several other modern societies, domestic partnerships and similar arrangements are legally recognized statuses, usually open to both homosexual and heterosexual couples. However, their effects on marriage may be less than in the United States. In many of those societies, the benefits attached to employment in the United States are provided by the state and depend on neither employment nor marital status. Furthermore, in some of those countries so many other influences have tended to blur the distinction between marriage and relationships of low commitment that the effects on marriage of domestic partnerships and similar state recognized pairings may be largely superfluous.

The blurring of the distinction between marriage as an institution and mere "close relationships" is also well underway, largely for reasons unrelated to the political struggle for same-sex marriage. This change has been ratified (and according to some critics has been aided and abetted) by the emergence of the academic specialty of "close personal relationships," which includes marital relationships but gives little attention to the institutional aspects of marriage. This development in modern societies has been associated with the emergence (especially in the United States) of an extreme form of the conjugal family system, in which marriage is the central relationship in the family system, and the socially approved purposes of marriage have become personal and "hedonistic", as opposed to communalistic and for the benefit of the extended family. This development is reflected in the operational definition of marital success in terms of the happiness and satisfaction of the married persons.

The roots of this change go back for at least a couple of centuries, well before the possibility of same-sex marriage was contemplated by most observers of the

family. However, acceptance of the arguments made by some advocates of same-sex marriage would bring this trend to its logical conclusion, namely, the definition of marriage as being for the benefit of those who enter into it rather than as an institution for the benefit of society, the community, or any social entity larger than the couple. A common recent argument has been that same-sex couples should be allowed to marry in recognition of the fact that they have "loving relationships", the operational definition of loving relationships being long-term sexual relationships. Historically, however, heterosexual marriage has very rarely been considered a reward for entering into mutually gratifying relationships. Rather, it has been a condition for the social recognition of such relationships, one imposed for the purpose of regulation of sexual activity and provision for offspring that may result from it. To be sure, persons have been given esteem and social approval for entering into a socially recognized status, and these rewards have provided motivation for marrying, but the social purpose of marriage has usually not been in doubt.

Current conditions are historically unique, of course, including an unprecedented separation of sexual activity from reproduction. Sexual relations among unmarried persons are now common and are not widely or severely stigmatized. For many if not most adult members of modern societies, marriage is not a condition for the establishment of sexual relationships. Whether the lifting of the stigma once associated with nonmarital sex is good or bad is a matter of values and is the focus of much disagreement, at least in the United States. Whatever position one takes on this issue, however, it does not logically support the argument that attainment of an ongoing sexual relationship should, in itself, be the basis for social rights and privileges. Rather, the very separation of sex from reproduction that is often given as a reason for the restructuring of modern families undermines the argument that almost any ongoing consensual adult sexual relationship deserves to be socially privileged.

Another argument frequently advanced in support of same-sex marriage as well as the joint adoption of children by same-sex couples is that the gender of parents does not matter, that two parents of the same sex can, all else being equal, parent as effectively as two opposite-sex parents. "Dozens of studies of same-sex parenting" allegedly provide evidence for this conclusion.

There *have* been dozens of studies of same-sex parenting, but this body of research leaves open the question about the relative efficacy of same-sex and opposite-sex parenting. The most frequent criticism made of the studies is that they all have used small convenience samples that may not be representative of all same-sex parents and their children, and that *is* an

important limitation. More important for the issue at hand, however, is that the studies have not used large and carefully matched comparison groups of parents and children in intact heterosexual families. The quite valid argument made by the researchers is that since most children living with same-sex parents have experienced a parental divorce, for the purpose of assessing the effects of living in a [almost always] lesbian household, the appropriate comparison group is other children of divorce and their parents. Although that argument is valid, the resulting research fails to cast light on the same-sex-opposite-sex parenting issue.

The research that would provide relevant evidence has not been done, and, because it would be expensive and difficult, is not likely soon to be done. It would require a large and representative sample of same-sex parents in intact relationships and children with whom both parents bonded while the children were infants. The results might be different for male and female same-sex parents, and thus a large number of parents of both genders would be required. Only this kind of research, which would include a large and representative comparison sample of heterosexual parents and their biological or adopted-in-infancy children, could come close to separating the effects of parental gender from the effects of such influences as parental divorce, a deficit of parental resources in single-parent families, and the frequent stresses and strains of step-family relationships.

The absence of this needed evidence also means of course that there is no conclusive evidence about the importance of both a father and a mother for child development and well-being. However, there are strong theoretical reasons for believing that both fathers and mothers are important, and the huge amount of evidence of relatively poor average outcomes among fatherless children makes it seem unlikely that these outcomes are solely the result of the correlates of fatherlessness and not of fatherlessness itself.

It would be unfortunate if the question about the importance of opposite-sex parents were to be closed prematurely in the absence of solid evidence. That may well happen, though, due to the political struggle for same-sex marriage. Given the widespread support for same-sex marriage among social and behavioral scientists, it is becoming politically incorrect in academic circles even to suggest that arguments being used in support of same-sex marriage might be wrong. There already seems to be some reluctance on the part of researchers and scholars to address issues concerning fatherlessness and the relative merits of same-sex and opposite-sex parenting.

The debate about same-sex marriage has raised issues concerning why married and unmarried persons

are treated differently by employers and under the law. Some of this questioning has come from conservatives as well as from unmarried adults who feel they are treated unfairly. For instance, Marvin Olasky, a Christian conservative, has asked why caring relationships between persons who have a sexual relationship should be privileged over, say, siblings who care for one another, or over a caring relationship between a son or daughter and an elderly parent. Unmarried adults who take the position that the total compensation package for married and unmarried employees should be the same have been emboldened by the same-sex marriage debate to reassert their position. As Shari Motro put it in a recent Op-Ed piece in the *New York Times*, "Advocates for gay marriage have exposed a huge blind spot: married-only benefits also discriminate against America's 86 million unmarried adults..." According to this line of reasoning, allowing homosexuals to marry would serve only a small proportion of the victims of marital advantage; thus the best way to eliminate discrimination against gays would be to abolish the privileges of marriage. As the battle for same-sex marriage continues, advocates of this view are likely to become more vocal.

For reasons I discuss above, I think the assault on spousal benefits is generally ill-advised; those who take on the risks and responsibilities of marriage serve social ends and deserve support in doing so. If the struggle for gay marriage should lead to any substantial reduction in such benefits, that would be an unfortunate side effect. On the other hand, Olasky's point that there are nonmarital care-giving relationships that deserve social support is well taken. It would be difficult to argue against privileging those relationships if that could be done without substantially reducing the social rewards of marriage. Furthermore, critics of marital privilege are correct in pointing out that pre-nuptial agreements now allow some married persons to avoid some of the major risks and responsibilities that marriage normally entails. Indeed, pre-nuptial agreements have contributed to the blurring of the distinction between high and low commitment relationships and are themselves a threat to the institution of marriage—perhaps as much so as domestic partnerships. However, this threat calls for restrictions on pre-nuptial agreements, or the withholding of spousal benefits from couples with such agreements, rather than a general reduction in spousal benefits.

Given all of the possible detrimental side effects of the conflict about same-sex marriage, a reasonable position for the defenders of marriage might seem to be that the sooner same-sex marriage is instituted and the conflict is ended, the better. A good many centrists and some conservatives have taken that position. They advocate a quick legitimating of same-sex marriage along

with elimination of domestic partnerships and other halfway measures to recognize same-sex relationships. These persons want to open the door to what they assume is a small percentage of homosexuals willing to take on the risks and responsibilities of marriage and to deny social recognition and special rights and privileges to couples, homosexual or heterosexual, with mere “enduring sexual relationships.”

The reasoning behind this position might seem unassailable, except for one thing: a quick legitimating of same-sex marriage is not going to happen. The redefinition of marriage as including both heterosexual and homosexual pairings is too radical, flying in the face of thousands of years of tradition, and religious and moral objections to same-sex marriage are too widespread, at least in the United States, for this resolution of the political struggle to be possible. The conflict will not soon end, whatever the ultimate outcome may be. Minimizing negative side effects must be by controlling the nature of the struggle, not by quickly ending it.

In warfare between nations, there is a long tradition of the combatants agreeing to certain rules of engagement in order to avoid unnecessary “collateral damage,” such as civilian casualties. Perhaps it is not unrealistic to hope that the participants in the same-sex marriage “war” can be persuaded to wage their battles in such a way as to avoid unnecessary collateral damage to the institution of marriage. Although some advocates of same-sex marriage may wish to weaken marriage by stripping it of its institutional trappings, many want to keep the institution strong and robust, and virtually all opponents of same-sex marriage see themselves as defenders of marriage. Those on each side of the debate who value marriage as an institution could and should take certain steps to help protect marriage. I turn first to what the advocates should do.

The position that any couple in a “loving relationship” deserves the rights, protections, and privileges of marriage should be abandoned, not only because its acceptance would harm marriage but because in the long run it is unlikely to be useful to same-sex marriage advocates. Acceptance of this position is indeed stepping out on the “slippery slope” discussed by such opponents of same-sex marriage as William Bennett. Use of the loving-relationship argument makes same-sex marriage advocates seem more radical than they need to be to make their case.

Those advocates should also make clear that they are willing to dismantle all existing domestic partnership arrangements in exchange for the right of homosexuals to marry or enter civil unions, even though in this exchange the aggregate-level gain in benefits to same-sex couples might be rather small.

The most important step that same-sex marriage advocates could take to avoid harm to marriage would probably be to stop claiming that fathers are not important for the development and welfare of children. Although this claim has some political utility to same-sex marriage advocates, it is not essential to their case. Legitimizing of same-sex marriage would have a small effect, at most, on the percentage of fatherless children, and there is no precedent for prohibiting a family arrangement because it creates less than ideal conditions for children. Having two parents of the same gender may not be ideal for children, but it should be better than having only one parent, and children with only one parent are much more numerous than children with same-sex parents are ever likely to be. Most children living with same-sex parents are in step-family situations, and there is no evidence that homosexual step-families are worse for children than heterosexual step-families, which are known to be generally less than ideal and are much more numerous than homosexual step-families. The bottom line is that same-sex marriage advocates gain little from the fathers-are-not-important argument but risk harming marriage, and children, by making it.

In view of the fact that the overriding concern of most opponents of same-sex marriage seems to be the “defense of marriage,” it might seem unnecessary to give advice to those persons about how to avoid harm to marriage. However, the view of some opponents that “all is lost” if same-sex marriage is adopted might be harmful to marriage in the long run. If the only thing that matters is preventing same-sex marriage, then little or no attention will be given to minimizing harm to marriage in case same-sex marriage comes about. Universal adoption of same-sex marriage in the United States is not inevitable, but it is likely, given the trends in other modern societies and the fact that young Americans are more receptive to same-sex marriage than older ones. Even the most adamant opponents of legal recognition of homosexual pairings should consider “what if.” If same-sex marriage does come about, what is the best way for the change to happen? How can the institutional aspects of marriage be preserved as the redefinition of marriage occurs? These and similar questions should be entertained by persons who oppose same-sex marriage, say for religious reasons, even as they stiffen their opposition.

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