

With precision and passion, David Blankenhorn offers a bold new argument in the debate over same-sex marriage: that it would essentially deny *all* children, not just the children of same-sex couples, their birthright to their own mother and father. If we change marriage, we change parenthood—for *all* families. Altering marriage to accommodate same-sex couples would mean weakening in culture and eliminating in law the idea that children need both their mother and their father.

The Future of Marriage analyzes recent survey data from 35 countries, offering the first scientific evidence that support for marriage is weakest in those nations where support for gay marriage is strongest. Blankenhorn explains how same-sex marriage would transform our most pro-child social institution into a purely private relationship (“an expression of love”) between adults, defined by each couple as they wish. Changing marriage laws to include same-sex couples, he argues, would require us to “deinstitutionalize” marriage, “amputating from the institution one after another of its core ideas, until the institution itself is like a room with all the furniture removed and everything stripped from the walls.”

For Blankenhorn, the main question concerning the future of marriage in the United States is not whether we will adopt gay marriage. The main question is whether the social institution of marriage will become stronger or weaker. If we wish to strengthen marriage on behalf of children, there is no shortage of ideas for doing so. What matters is whether we as a society regard this as a worthy and urgent goal.



David Blankenhorn is founder and president of the Institute for American Values, a nonpartisan organization devoted to strengthening families and civil society. The *New York Times* has described him as a “consensus builder for a moral base in society,” and the *Idaho Statesman* called his 1995 book, *Fatherless America*, “the bible of the fatherhood movement.”

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The Future of Marriage

Blankenhorn



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with a Preface by
Jonathan Rauch

David Blankenhorn
author of *Fatherless America*

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suspicions. In the vexed, polarized context of the gay-marriage debate, there can be no higher compliment than to say that Blankenhorn has succeeded in writing a book about *marriage*.

Most of the preface you have just read first appeared as a review in the journal *Democracy*. That Blankenhorn would turn over the introduction of his book to one of his critics says a lot about the kind of conscientiousness you will find here.

Jonathan Rauch
January, 2009

Introduction

✱ IN THE SUMMER OF 2003, I had lunch with Evan Wolfson, the executive director of Freedom to Marry, a group advocating equal marriage rights for same-sex couples. He wanted me to speak out publicly in favor of expanding marriage to include gay and lesbian couples. I hemmed, hawed, and equivocated. He had anger and urgency. I had anguish and doubts.

Some of our discussion concerned moral values. With passion, Evan spoke about equal human dignity. With passion, I told him that every child deserves a mother and a father.

He also offered me hardheaded political analysis. Sooner or later, the movement for same-sex marriage is going to win, he said. People like me—people who for years have been writing and speaking about the importance of marriage—have a choice: We can influence the course of events by getting in front of the issue and welcoming same-sex couples to the institution of marriage. Or, through our silence and equivocation, we can guarantee our irrelevance while also being viewed publicly as providing, at least indirectly, aid and comfort to some very bigoted people.

This book stems in part from that conversation. For starters, I didn't like the fact that in talking to Evan I was troubled and a bit defensive, unsure of what I finally believed. Had I really thought the issue through? Maybe I hadn't. Maybe I should.

Second, while no one knows the future, and while no one should trim one's conscience to fit current odds, I also believe that Evan's political analysis of the same-sex marriage issue is probably accurate. The change may well happen. And if it does, the people who opposed it will likely be viewed essentially as bigots. That second likelihood stings me personally in ways that Evan could not know. I was born

in 1955 in Jackson, Mississippi. The civil rights movement of the 1960s was the morally paradigmatic experience of my life. One result is that I am a lifelong Democrat. Although my work on family issues sometimes prompts those who disagree with me to call me a conservative, I have always thought of myself essentially as a liberal. The last thing I want—the last thing my guilty-southern-white-boy self-understanding could take—is to be viewed as a bigot.

Third, as a moral matter, Evan is surely right to insist upon the equal dignity of all persons. This still-revolutionary principle—“all men [persons] are created equal”—deeply informs the American experience and character and is increasingly viewed globally as the essential universal moral law. On the issue of same-sex marriage, is this profound principle of equal dignity the heart of the matter? After all, part of the reason why the principle is so revolutionary is that it can grow and deepen over time. Groups that had long been considered effectively outside of its moral reach—African Americans, women, people of certain colors or languages or religions—can over time, and often as a result of great struggle, enter into its protective sphere. I believe that today the principle of equal human dignity must apply to gay and lesbian persons. In that sense, insofar as we are a nation founded on this principle, we would be *more* American on the day we permitted same-sex marriage than we were the day before.

This argument is a powerful and challenging one. It demands our intellectual and moral attention.

In talking to Evan, I also realized that we disagreed fundamentally on the matter of children. Other than telling me that he thought children were “adaptable,” he seemed hardly interested in the issue, as if he had never really thought about it. For example, when I told him that marriage as an institution is centrally concerned with procreation in all human societies, he rejected the idea out of hand, proposing instead that marriage as a natural human institution is largely about private property. In this book, I try to show in some detail that he and others are wrong on this point. I mention it now only to show that for Evan, insofar as I understand his argument, marriage is fundamentally about the rights of adults.

For me, marriage is fundamentally about the needs of children. And in thinking and writing about it for nearly two decades, I have

come to believe one thing with more certainty than anything else: What children need most are mothers and fathers. Not caregivers. Not parent-like adults. Not even “parents.” What a child wants and needs more than anything else are the mother and the father who together made the child, who love the child, and who love each other. As G. K. Chesterton once said in a similar context, “That I know is a good thing. . . . If other things are against it, other things must go down.”¹

In recent decades, of course, the marital conduct of heterosexuals in the United States has done much to erode both the ideal and the reality of the mother-father childrearing union. Many advocates of same-sex marriage are only too happy to highlight this fact, and in one respect their point is a fair one. Why draw the line at same-sex marriage when we as a society seem to be unwilling to draw the line anywhere else? At the same time, for anyone who wishes the institution well, the concern remains. Redefining marriage to include gay and lesbian couples would eliminate entirely in law, and weaken still further in culture, the basic idea of a mother and a father for every child. Once this proposed reform became law, even to say the words out loud in public—“Every child needs a father and a mother”—would probably be viewed as explicitly divisive and discriminatory, possibly even as hate speech. For card-carrying child advocates and marriage nuts like me and my colleagues, this possibility is disturbing.

Many thinkers, perhaps most notably Isaiah Berlin, the great twentieth-century philosopher of liberalism, have pointed out that many important choices we face do not involve choosing between good and bad, but between good and good. It is good to deter crime by punishing criminals; it is also good to forgive. But doing more punishing means doing less forgiving, because the two goods are, to some extent, mutually exclusive.

Berlin’s concept of goods in conflict is central to my understanding of society’s need to make choices regarding the definition of marriage.² One good is the equal dignity of all persons. Another good is a mother and a father as a child’s birthright. These goods are at least partially in conflict. Resolving that conflict—making a morally responsible choice about the future of marriage that is faithful to the essential purposes of the institution while at least recognizing both of these goods—is a major aim of this book.

I also hope that this book will help us expand today's intense media and public policy focus on same-sex marriage to an equally intense focus on marriage itself. After all, the term "same-sex marriage," though I use it in deference to its popularity and as a shorthand, is in some respects misleading and even patronizing, as some of its strongest proponents have pointed out. What gay and lesbian leaders are demanding is not a special status, not marriage with an asterisk or with a qualifying adjective in front. What they demand is simply marriage. So the question of marriage itself—what it is and why it matters—is surely where this debate ultimately leads.

It is important to consider the issue of "freedom to marry," meaning access to the institution, since it dominates the current marriage debate. But focusing too narrowly on it is harmfully incomplete, even arbitrary. Freedom to marry . . . in order to do what? What exactly *is* this institution to which some of our fellow citizens are so keen to gain access? Why do we have it in the first place? Where did it come from? How is it changing? What do we want its future to be? Why, even as so many of us fail at it and sometimes even mock it, do we still seem to feel so strongly about it?

To me, these are the essential questions. Without confronting them, we can never resolve or even seriously discuss "same-sex marriage." But irrespective of the eventual legal status of same-sex couples, for anyone who cares about the well-being of children and the vitality of our society, these questions about marriage are the fundamental domestic issues facing the United States today.

Marriage is the first and most important of society's institutions. The emergence of marriage as a way of living is arguably the decisive turning point in our history as a species. The institutionalization of marriage likely occurred simultaneously with and helped to advance our transition from prehistory to history—from the original primate condition, or what political philosophers call the "state of nature," to civilization. For this reason, the seventeenth-century English political philosopher John Locke, whose writings deeply influenced the men and women who founded the United States, properly calls marriage the "first Society."³

Let us step back a moment and try to look with fresh eyes. Imagine that you are an anthropologist from Mars, sent to Earth.

Your mission is to report back on these creatures called humans. What do they look like? What do they do? How do they organize themselves? How are they currently faring?

If you've been trained, as anthropology field researchers typically are, to begin at the beginning—to start with the most fundamental issues—you will report a cluster of related facts: Humans are social; they live in groups. They strongly seek to reproduce themselves. They are sexually embodied. They carry out sexual (not asexual) reproduction. And they have devised an institution to bridge the sexual divide, facilitate group living, and carry out reproduction. All human societies have this institution. They call it "marriage."

Let's zoom in closer. You are in North America, in a place called the United States, looking for more detail. In part, marriage there looks like marriage everywhere else. But this society also has its own particular marriage culture and traditions, which change over time. How is the institution faring here?

The evidence is mixed, but the overall answer is "not well." Interestingly, in many respects the society as a whole appears to be doing swimmingly at the moment. But not so for marriage—especially when analyzed as a social institution rather than merely a bunch of private relationships, and especially when assessed from the perspective of the offspring.

Marriage is society's most pro-child institution. Yet in the United States, more than one of every three children born today is born to a never-married mother.⁴ About 40 percent of all first-time births are to unmarried mothers.⁵ The United States probably has the highest divorce rate in the world.⁶ More than 40 percent of all first marriages here are likely to end in divorce.⁷ The divorce rates for second and third marriages are higher than for first marriages.⁸ More than half of all U.S. children will spend at least a significant part of their childhood living apart from their father.⁹

In a famous speech at Howard University in 1965, President Lyndon Johnson called for a "War on Poverty." While the underlying sources of poverty in the United States are multiple and overlapping, the president said, "perhaps the most important" is "the breakdown of the Negro family structure."¹⁰ Today, the breakdown of *white* family structure—the disintegration of marriage among

whites—almost exactly matches the level of marriage breakdown among African Americans in 1965, a level that was viewed at the time by the federal government as a national emergency and the main reason for a significant antipoverty mobilization!

Was President Johnson right to link marriage trends to poverty trends and to trends in overall child well-being? Yes, *definitively*, we now know. And therein hangs a scholarly and political tale of some consequence.

In the 1970s and well into the 1980s, most U.S. family scholars insisted that child well-being is *not* substantially or causally related to marriage and family structure. A few dissidents argued that it is. The disagreements were intense and passionately felt—quite a few of the participants used sharp elbows as well as data and sweet reason. The stakes seemed high. The Institute for American Values, the think tank that I founded with some colleagues in 1988 and currently direct, was created primarily as a place for scholarly dissidents on this issue to meet and collaborate.

Today, scholarly opinion has shifted dramatically. One of the main intellectual struggles of the past generation is now largely over, because one side has won. As new research findings poured in, especially during the late 1980s and the 1990s, and as the weight of evidence became increasingly obvious to most people, yesterday's fighting words gradually became the new scholarly conventional wisdom: *Marriage matters*. It significantly influences individual and societal well-being. Most importantly, the health of our children is strongly linked to the health of marriage.

Some scholars, especially those who dislike marriage, lament this change of view. Many of them cut their academic teeth by accusing others of being nostalgic for the 1950s, but today they themselves are more than a little nostalgic for the 1970s. They have become the new dissidents. But almost no one denies that the shift in scholarly opinion has occurred or that it has important consequences for policy and for the larger public debate.

In the mid to late 1990s, what many of us call a "marriage movement" emerged in the United States. Today that movement is led by a growing and promiscuously diverse group of educators, counselors, service providers, public officials, researchers, community organizers, religious and civic leaders, and others. It cuts across

political, racial, gender, and class lines. The movement's core goal, as articulated by more than a hundred of its leaders in a joint statement in 2000 and reaffirmed in 2004, is "to turn the tide on marriage and reduce divorce and unwed child bearing, so that each year more children will grow up protected by their own two happily married parents, and so that each year more adults' marriage dreams will come true."¹¹

For three decades, marriage advocates have been grumbling that everything is getting worse. We need to break this habit. Some things have stopped getting worse; a few are getting better. For the first time in decades, there is some mildly encouraging demographic news. Divorce rates are declining modestly.¹² Rates of unwed child-bearing, after increasing sharply year after year for decades, leveled off considerably from about 1995 to 2003, although a troubling rise was reported for 2004.¹³ Teen pregnancy rates have declined dramatically.¹⁴ Rates of reported marital happiness, after declining steadily from the early 1970s through the early 1990s, have stabilized and may be rising.¹⁵ By far the gladdest tidings is that from 1995 to 2000, the proportion of African American children living in married-couple homes rose by about 4 percent.¹⁶ Among all U.S. children, the proportion living in married-couple homes has apparently stabilized and may have increased slightly in the late 1990s.¹⁷ For the time being, at least, we may have the wind at our backs.

"On the heels of a fatherhood movement," wrote Alex Kotlowitz in late 2002 in the *New York Times*, more and more young couples in inner cities "are considering marriage."¹⁸ Kotlowitz's *Frontline* documentary on PBS television, "Let's Get Married," focused on the "burgeoning marriage movement." As Kotlowitz reported, "Now, everyone from the government to intellectuals are pushing marriage."

There is a "growing consensus," wrote the syndicated columnist Jane Eisner in early 2003, that "the central question of American life" now is: "How do we strengthen marriage as the primary social institution to rear children?" Reflecting on the year 2002, she wrote:

Liberals, in particular, heard the wake-up call this year. No longer confined to the outer reaches of the Religious Right, the "marriage movement" is moving center stage, as those on the political left are belatedly adding their voices to this necessary debate.¹⁹

We in the United States are currently in the midst of what might be called a marriage moment—a time of unusual, perhaps unprecedented, national preoccupation with the status and future of marriage. One reason for this is the growing public and scholarly concern over the weakness of the institution, and particularly the effects of this weakness on the well-being of children. This concern is broadly based and has been building steadily for at least a decade. A second reason, closely connected to the first, is the emergence of the marriage movement. A third reason, currently dominant, is the controversy over same-sex marriage, which erupted in full force in the United States in mid 2003, making the marriage debate much hotter and more political. A major task of the marriage movement today is to understand and deal with this new challenge.

Marriage enthusiasts like me tend to be anguished over this controversy. We fret: How long must the tail wag the dog? Will the entire marriage debate for the foreseeable future be subsumed under the question of how we feel about homosexuality? What about the encouraging trends of the past decade? Will they be threatened or even undone by a fundamental redefinition of marriage? Is all the hope and work that so many have invested in the project of strengthening marriage—I suppose one is now obligated to specify *heterosexual* marriage—going to be overwhelmed and even negated by the current controversy?

More positively, is there a way for the marriage movement to sue for peace and tone down this culture war? Search for a compromise on the grounds that we all have to find a way to live together? Perhaps even, as Evan Wolfson suggested, try to get in front of the issue rather than trail behind it, breathing dust?

If our national debate on same-sex marriage is finally to be redemptive rather than divisive, it needs to meet two tests. First, it must not only accept but also deepen and advance the principle that all persons are equal in rights and dignity. Second, it must also help us rediscover and renew marriage as the main protector of our children and our primary social institution. My central aim in this book is to confront the issue of same-sex marriage by confronting the issue of marriage itself. I hope that doing so will give aid to the marriage movement, potentially the most important domestic initiative of our time.

An Overview

*"What's your proposition?" I says. "Let's have a proposition."
—John le Carré, The Incongruous Spy²⁰*

The first five chapters of this book focus on one question: *What is marriage?* For most people active in today's marriage debate, the answer requires only a few words. Marriage, they say, is a commitment between two people. It is an intimate, caring relationship. It is an expression of love. Any questions before we move on?

But these answers are wildly inadequate. And the issue of definition is anything but an academic quibble; the real-world stakes are quite high. The puerile formulations that currently dominate our debate tend to prevent us—often, I sense, they are *designed* to prevent us—from seriously examining the meaning and possibility of same-sex marriage. More generally, I am convinced that such treacherously greeting-card definitions of marriage, avoiding any hint of its institutional weight and public authority, have become a barrier to understanding what marriage in our society actually is.

The chapters aiming at a definition of marriage do not pretend to be a comprehensive history of marriage. As an institution, marriage has been around for at least five thousand years and exists in all or nearly all known human societies. That extraordinarily thick history could hardly fit into one book. Faced with a topic of such dimensions, most scholars choose to examine marriage in one society or a related cluster of societies, and to concentrate on a specific period of time. These studies are invaluable, yet they also tend toward near-sightedness. In particular, such carefully targeted monographs can usually tell us little or nothing about marriage as a cross-cultural human institution.

Another possible approach is to attempt a grand synthesis—a sky-level overview of the entire world history of the institution, from the earliest hunter-gatherers to contemporary Indonesian marriage to the "marriage gap" in the 2004 U.S. presidential election. The historian Stephanie Coontz makes precisely this attempt in her recent book, *Marriage, a History*.²¹ In my view, books of this type usually suffer from serious shortcomings. Even the best of them—such as George Elliot Howard's three-volume *A History of*

Matrimonial Institutions (1904), Willystine Goodsell's *A History of the Family As a Social and Educational Institution* (1915), and Edward Westermarck's deservedly famous three-volume *History of Human Marriage* (1922)—necessarily leave out a great deal of material while skimming too quickly over too much.²² Coontz's *Marriage, a History*, though more current, is a clear example of glossing marriage's history in a way that is superficial and unsatisfying.²³

So this book is not a history of marriage, but it does aim to capture the essence of marriage as a human institution. What is it? When and how did it emerge? What are its basic purposes? Why do all societies have it? What are its primary institutional features? What are its core public meanings?

To answer these questions, I use an approach that blends history with anthropology, combining a few case studies with systematic cross-cultural analysis. It details a few episodes and turning points in the story of marriage—the biological and evolutionary roots of this way of living; the earliest historical record of marriage as a social institution; and marriage's role in a matrilineal society with much sexual freedom and unusually egalitarian gender roles. At the same time, it draws conclusions about marriage as a universal or nearly universal human institution.

The final three chapters ask, *What is marriage's future?* A major theme in these chapters is today's controversy over same-sex marriage. How should we understand it? What are the goods at stake on both sides of the issue? How would adopting gay marriage be likely to affect the future of marriage? But these chapters are not finally about gay marriage or about public policy affecting same-sex couples. Rather, they examine the new demand for equal marriage rights for same-sex couples in order to reach conclusions about what marriage's future should and can be. Here I repeatedly employ two rather awkward terms: *deinstitutionalization* and *reinstitutionalization*. I could not think of adequate substitutes, and to me these ideas are extremely important. In fact, I believe that nearly everything about the future of marriage hinges on them.

1

What Is Marriage?

✱ MARRIAGE IS A UNIVERSAL institution, present in all known human societies. But there is no single, universally accepted *definition* of marriage—partly because the institution is constantly evolving, and partly because many of its features vary across groups and cultures.

Many attempts to define marriage over the centuries have been intellectually serious; some have been less so. Many have aimed at comprehensiveness. Some have been ennobling; others have been more pedestrian. But in the long sweep of this history, and amidst all this variability, of this we may be fairly certain: For sheer cultural illiteracy and intellectual vacuity, nothing can top the debate over the meaning of marriage taking place in the United States of America in the early years of the twenty-first century.

"Marriage is, more than anything else, the expression of love," writes Gregg Easterbrook of the *New Republic*.¹ For David Brooks, a *New York Times* columnist, marriage is a "sacred bond" in which two people "make an exclusive commitment to one another."² For Richard Cohen, a *Washington Post* columnist, the "last, best" meaning of marriage is "love and commitment."³ Barbara Risman, a sociology professor who writes frequently about families, says approvingly: "Now marriage is seen by most people as love, intimacy, happiness."⁴

The scholar and journalist E. J. Graff has written a book entitled *What Is Marriage For?* Her answer is that marriage is "a commitment to live up to the rigorous demands of love, to care for each

other as best you humanly can."⁵ Andrew Sullivan, a prominent advocate of same-sex marriage, writes that "the essence of a good marriage is not breeding or even the romantic love that can blind us while it overwhelms us," but instead "a unique and profound friendship."⁶

In a court brief, thirty U.S. professors of history and family law explain to the judges that "the history of marriage" is "a history of change." Fine, but what is the thing that is changing? The scholars say that marriages, in essence, are "committed, interdependent partnerships between consenting adults." Marriage is therefore the state's "formal mechanism for recognizing adult partnerships."⁷

Nathaniel Frank, who teaches history at New School University in New York, writes: "The main reason marriage is considered good for society is that committed relationships help settle individuals into stable homes and families." Marriage fosters these committed relationships through "collective rules" that "strengthen obligations."⁸ For the editors of the *Economist*, "the real nature of marriage" is a commitment "between two people to take on special obligations to one another."⁹

Writing in the *Olympian*, the journalist Dawn Barron defines marriage as "a personal journey" and "a commitment of two consenting adults who choose to live their lives connected."¹⁰ Writing in the *Cincinnati Enquirer*, the teacher and guest editorialist Rich Schmaltz announces, "Marriage is cohabitation." Anything else? No, not really. Beyond living together, he tells us, referring to himself and his wife, "We define our relationship."¹¹ In the *Philadelphia Inquirer*, the syndicated columnist Crispin Sartwell puts it this way:

Marriage is sometimes referred to as an "institution," but that's an odd application of the term. The Department of Defense is an institution. The University of California is an institution. A marriage is a private arrangement between parties committed to love.¹²

Let's call in the lawyers. In 2002, after more than a decade of deliberation, the prestigious American Law Institute published a report calling for major changes in U.S. family law, including eliminating many of the legal distinctions between married and

unmarried couples. For these family law professionals, marriage can hardly be defined at all. They see marriage as radically subjective and almost infinitely malleable—really nothing more than a collection of discrete relationships and private accommodations. At one point in the report we learn that marriage should be understood as "an emotional enterprise, filled with high returns and high risks." Beyond this, it turns out that each marriage is unique: "Different couples arrive at different accommodations in their relationships, and some depart from social conventions. Intimate relationships often involve complex emotional bargains that make no sense to third parties with different needs and perceptions."¹³ All we can say for sure, it appears, is that marriage is an emotional enterprise.

In 2003, the Supreme Judicial Court of Massachusetts issued a ruling effectively requiring the state legislature to take steps to redefine marriage to include same-sex couples. The essence of marriage, the court said, is "the exclusive commitment of two individuals to each other." The purposes of this commitment are "love," "mutual support," and a way of living that brings "stability to our society." The justices also wrote that "marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family."¹⁴

In 2004, a superior court judge in the state of Washington ruled that same-sex couples can marry under Washington State law. In his ruling, Judge William L. Downing offered this definition: "To 'marry' means to join together in a close and permanent way." Rephrased a bit, marriage is "a close personal commitment" that "is intended to be permanent." Judge Downing added that such close, intended-to-be-permanent commitments are "spiritually significant."¹⁵

In 2005, a judge on the Supreme Court of the State of New York ruled that a New York State law effectively limiting marriage to male-female couples was unconstitutional. In her ruling, Justice Doris Ling-Cohan defined marriage as "the utmost expression of a couple's commitment and love," and as "a unique expression of a private bond and profound love between a couple." It is "highly personal" and "the most intimate of relationships." People who marry "publicly commit to a lifetime partnership with the person

of their choosing." In addition, marriage is a basic right; it "provides an extensive legal structure" of practical benefits and protections; and it is constantly evolving.¹⁶

Canadian lawyers are also busy redefining marriage—as something that can't really be defined. In 2001, the Law Commission of Canada published an influential report entitled *Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships*. Their central recommendation, as the report's title suggests, was that Canadian law should end (or move "beyond") its focus on the *form* of interpersonal relationships and instead focus on the "substance." For the commission, an example of wrongly dwelling on *form* is when the law asks: Is this couple married? Another example is when the law inquires: Does this couple consist of a man and a woman living together in a sexual relationship? (That's what the commission means by "conjugal.") By contrast, *substance* questions are when the law asks: Do these individuals care for and support one another? Have they voluntarily chosen to enter into a close personal relationship?

You get the idea. If the Law Commission of Canada has its way, marriage is basically out, and legal close relationships are in. But along the way, the commission does take the time to define marriage. On the one hand, it is a "form" that the law needs to get "beyond"; but it also is "a means of facilitating in an orderly fashion the voluntary assumption of mutual rights and obligations by adults committed to each other's well-being." As for government's legitimate interest in this facilitation of interpersonal commitment, the report says: "The state's objectives underlying contemporary regulation of marriage relate essentially to the facilitation of private ordering: providing an orderly framework in which people can express their commitment to each other, receive public recognition and support, and voluntarily assume a range of legal rights and obligations."¹⁷ In short, marriage is merely the public recognition of private ordering in which people express commitment to one another.

These definitions are typical of the current debate. They are also radically insubstantial. Some of the words are sweet enough and true enough, but one searches in vain for any recognition of the fact that marriage might be something more than a private close relationship between two people.

I am not an unusually gregarious person, but I have "expressed love" to quite a few people in my life. I have a number of profound friendships and some intense personal commitments, all of which seem to me to be emotional enterprises. I am involved in a number of mutually supportive relationships, many of which, I am sure, enhance social stability. But none of this information tells you to whom I am married or why.

Consider the same matter from a societal perspective. Why does society care about marriage at all? Why do we bother with marriage laws? Is it because society feels obliged to structure and guide lasting friendships and emotional enterprises? Is there a compelling state interest in regulating expressions of love? Of course not. In such formulations, we end up playing a version of the children's game "Where's Waldo?" We are trying on every page to find Waldo, but he is nearly impossible to locate in all the clutter and seemingly intentional confusion.

Mae West once reportedly deadpanned that "marriage is a great institution ... but I'm not ready for an institution." Neither are these fluttery definitions. Yet defining marriage as essentially a private emotional relationship obscures a large piece of reality. Notwithstanding Crispin Sartwell's opinion and Mae West's personal choices, and notwithstanding the American Law Institute's ludicrous assertions, marriage is in fact what sociologists call a social institution—a socially structured way of living, intended largely to meet social needs. Childrearing is probably the single most important social need that marriage is designed to meet, but there are numerous others as well. We do not build social institutions around purely private emotional connections that no third party can understand. If marriage does not have a valid, comprehensible public dimension, then marriage for all intents and purposes does not exist.

Next, consider the fact that these highly abstract definitions, in what would appear to be a sudden attack of Victorian prudery, all conspicuously fail to utter the secret word. That secret word is "sex." Having sex. Being sexually jealous and sexually exclusive. Sweaty, needy, flesh-and-blood, behind-closed-doors sex. Marriage is about many things, but until about five minutes ago, among certain let's-don't-say-it commentators, hardly anyone in the world

ever pretended that marriage is not fundamentally about socially approved sexual intercourse. Which is why, in law and cultures everywhere, to consummate a marriage is to have sexual intercourse; and why refusing to consummate a marriage with sexual intercourse is almost universally viewed as a negation of the marriage and therefore as grounds for divorce; and why everyone knows that the term "marriage bed" means the place where the spouses have sex.

After all, what one assumption does everyone make about married couples? That they are involved in an emotional enterprise? Of course not. *It's that the spouses are having sex with one another!* Yet today in the United States, as we debate the future of the most important sexual institution ever devised by our species, we seem quite determined to define it in strictly asexual terms. It's like defining General Motors without mentioning cars.

There is another word almost entirely missing from the currently prevailing definitions of marriage. It's a word closely related to matters of sexual embodiment and sexual intercourse. That word is "children"—or what Andrew Sullivan calls "breeding." Children rarely make an appearance in the thin descriptions of marriage as a personal commitment or an expression of love. Mostly, they are not seen and not heard.

In fact, the Supreme Judicial Court of Massachusetts in its 2002 opinion explicitly considers and then rejects as "inappropriate" the view that marriage is centrally concerned with bearing and raising children. The justices point out that people applying for marriage licenses in Massachusetts do not have to prove that they are fertile and intend to have children. Moreover, "the Commonwealth affirmatively facilitates bringing children into a family regardless of whether the intended parent is married or unmarried, whether the child is adopted or born into a family, whether assisted technology was used to conceive the child, and whether the parent or her partner is heterosexual, homosexual, or bisexual."¹⁸ The justices make their case with admirable clarity. Marriage and procreation are hereby defined as separate and unconnected. Adult emotional ties are over here where it says "marriage." Children are over there.

Yet this way of understanding marriage presents a formidable intellectual problem. For many centuries and across human

cultures, virtually all scholars, jurists, and other commentators on marriage have emphasized that marriage as a human institution is deeply connected to bearing and raising children. Surveying the cross-cultural evidence, the anthropologist Helen Fisher sums it up simply: "People wed primarily to reproduce."¹⁹

Bertrand Russell was no friend of conventional sexual morality. But he recognized clearly enough that "it is through children alone that sexual relations become of importance to society, and worthy to be taken cognizance of by a legal institution." Thus: "The main purpose of marriage is to replenish the human population of the globe."²⁰

Fisher is right. Russell was right. Without children, marriage as institution makes little sense.

After all, why did we humans invent marriage in the first place? Why do we keep it around? Here is a proposition that cannot be empirically proven, but that is almost certainly true. If human beings did not reproduce sexually and did not start out in life as helpless infants—if, for example, new humans arrived on earth fully grown, brought to society by storks—our species would never have developed an institution called marriage. We would be doing many interesting things, but getting married would not be among them. Accordingly, to insist that we erase children from our formal understanding of marriage comes very close to insisting that marriage itself makes no formal sense.

Notice also the circularity of this argument. What purports to be a definition—marriage is not connected to children—is in fact a redefinition that ends up negating the very thing being defined. Before our very eyes, the task of understanding marriage becomes a going-out-of-business sale.

In fact, the justices in Massachusetts, with seeming equanimity, contemplate precisely this prospect: The concept of "marriage"—"civil unions" or other similar terms, the justices make clear, simply won't do—is so important that denying it to same-sex couples means that they are "excluded from the full range of human experience." But why is this particular concept so important? On this point, the justices are stunningly inarticulate. Marriage, they tell us, is two people making a commitment to one another. We get sugary pieties—marriage "fulfills yearnings for security, safe haven,

and connection"—that have almost no concrete meaning.²¹ Then we are informed bluntly that marriage is essentially unconnected to having sex or to bearing and raising children.

Where does this logic lead us? In a 2004 follow-up opinion on the same set of issues, the justices in a curious aside opine that one "rational and permissible" strategy of achieving equality under the law in Massachusetts might be for the legislature to "jettison the term 'marriage' altogether."²² Let's sum up their argument: Marriage is a vitally important word. The word has no meaning that anyone can pin down. One possible answer is to jettison the word altogether.

Why such intellectual anemia over this word? Part of the reason is the intensity of the debate over same-sex marriage. Proponents of equal marriage rights for gays and lesbians seldom focus centrally or specifically on sex, childrearing, or other aspects of marriage suggestive of a multipurpose social institution. Even as they seek access for same-sex couples to whatever remains of marriage's larger communal meanings, these advocates typically insist that we define marriage itself basically as an intimate personal commitment and a private close relationship. But the same-sex marriage debate is not the only reason for our intellectual muddle, or even the main reason.

A much more important cause is the way that heterosexuals have treated heterosexual marriage in recent decades. Leave aside for now the explosive increases in divorce, unwed childbearing, and children growing up in one-parent homes. Leave aside as well the sustained intellectual assault on marriage from those who view it as a failed and even dangerous institution. (My colleagues and I have spent years pursuing those topics in some detail.) Instead, consider the underlying change in how many Americans—straight as well as gay, ordinary citizens as well as opinion leaders, people who dislike marriage as well as many who like it quite a bit—have come to regard the very meaning of marriage.

One view is that the vow is prior to the couple. The vow—the way of living together as wife and husband, the institution—exists on its own, exerting authority that is independent of the couple. In a sense, the vow helps to create the couple. On their wedding day, couples become accountable to an ideal of marriage that is outside of them and bigger than they are.

A newer view is that the couple is prior to the vow. The way of living, the institution, is less an external reality, like the weather, than a subjective projection that derives its meaning almost entirely from the particular couple. Instead of the vow creating the couple, the couple creates the vow—which is literally the case in many, probably most, weddings today, where couples compose their own, individualized vows. (My wife and I did this when we married in 1986; most couples we know did.) As a result, each marriage can be viewed as unique, like a painting or a snowflake.

These two views reflect strikingly divergent conceptions of marriage. One view seeks to make the couple fit marriage. The other seeks to make marriage fit the couple. In one view, society presents a socially composed norm to the couple. In the other, the couple presents a privately composed norm to society. In the former view, marriage defines me. In the latter view, I define marriage.

The most important trend affecting marriage in America—far more consequential in the long run than arguing about same-sex marriage, or even expanding our definition to include it—is the belief that marriage is exclusively a private relationship, created by and for the couple, essentially unconnected to larger social needs and public meanings. This view has deep roots in our society and has been growing for decades, propagated overwhelmingly by heterosexuals, focusing on heterosexual marriage.

For example, in the early 1960s a majority of Americans believed that spouses in a troubled marriage should stay together for the sake of the children. Today the great majority of Americans believe the opposite.²³ What has changed is not our love for our children, but our underlying conception of what marriage is.²⁴ The growing belief is that marriage is less about the vow and society than about the private needs and feelings of the spouses. To the degree that this belief informs the debate on same-sex marriage, we should understand it not as a novel idea, specifically connected to homosexuality, but instead as one manifestation of a broader conception of marriage in our society.

Accordingly, the great challenge of our time lies neither in defending nor in thwarting same-sex marriage. The challenge is to renew marriage as a powerful way of living that calls forth and reflects the best in us, that successfully meets important social needs,

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and that is worthy of strong social support. If we could move toward this goal by embracing same-sex marriage, I would gladly embrace it. If adopting same-sex marriage was likely to be part of a larger societal shift leading to better marriages, less divorce, and less unwed childbearing—or, more modestly, if it seemed likely that adopting same-sex marriage would not significantly *undermine* efforts to renew our wider marriage culture—I am confident that most marriage advocates would favor its adoption. I know that I would. But if adopting same-sex marriage is likely to impede that larger goal, I will be against it.

Those who disagree with me can charge that I am proposing a moral metric in which, regardless of the ultimate policy decision on same-sex marriage, the rights of gays and lesbians take second place to the needs of an existing social institution. The charge would be accurate. But for me the same moral metric applies to other marriage issues that have nothing to do with homosexuality. For example, I have testified before state legislatures in favor of reforms in marriage law—such as longer waiting periods, mandatory counseling, and in some cases a requirement to show fault—that would place restrictions on “no fault” divorce, or what amounts to the unilateral right to divorce. In short, I favor limiting certain adult freedoms in the name of child well-being and the health of marriage as an institution.

In the case of same-sex marriage, one priority is the particular rights and needs of same-sex couples—the right to equal respect, the right to form loving, stable partnerships and families, and the need for greater social acceptance. Another priority is the collective rights and needs of children—the right to know and be loved by a mother and a father, and the need for as many children as possible to grow up under a strong shelter of marriage, our society’s most pro-child institution. To the degree that these two priorities can be in harmony, or at least exist together in peace, I want to embrace them both. To the degree that I must choose, with some anguish I will choose children’s collective rights and needs—I will choose marriage as a public good—over the rights and needs of gay and lesbian adults and those same-sex couples who are raising children.

The central issue in the same-sex marriage debate is not homosexuality; it is marriage itself. In the next few chapters, we will seek with fresh eyes to uncover an adequate answer to what might seem to be the simplest of questions: What is marriage? First, we examine a few shards of evidence from the prehistory of our species, including some findings from brain scientists who study the biochemistry of human attachment. Next, a visit to ancient Mesopotamia and the Nile Valley, where marriage first emerged in recorded history. Then to the Trobriand Islands, where marriage today is quite unlike the pattern familiar to us. Then we can craft a working definition of marriage for our time.

Goods in Conflict

✱ THE CENTRAL ARGUMENT for gay marriage is not an argument about marriage. In the previous chapter, we saw what many leading proponents of same-sex marriage are saying about marriage itself. We saw that the people who have devoted much of their professional lives to attacking marriage as an institution almost always favor gay marriage. Indeed, the most energetic crusaders *against* marriage in its customary forms appear to be among the most energetic crusaders *for* same-sex marriage. And the arguments that for years have been deployed to attack marriage, and in particular to plead for its further deinstitutionalization, are now routinely deployed to support same-sex marriage. These facts should worry anyone concerned about child well-being and the future health of our most pro-child social institution.

At the same time, for many—I believe most—people who support same-sex marriage, the single biggest and most deeply felt reason is less about marriage itself than it is about something else. That something else is human dignity. The central argument for gay marriage is not an argument about marriage, but an argument about basic rights.

In late 2005, I participated in a public conversation with Andrew Sullivan about same-sex marriage. It was a spirited debate. I wanted to discuss marriage, and Andrew fully obliged, repeating many familiar themes: Marriage is constantly changing. Marriage is a close relationship between two people. Marriage originally was all about property. Marriage is not really about children.

Marriage historically was pretty awful. On each of these points and more, Andrew expressed himself succinctly and forcefully.

But his heart was clearly elsewhere. Near the end of the debate, I told him as much, and read to him from one of his essays, in which he speaks directly to

a young [gay] kid out there who may even be reading this now. . . . I want to let him know that he doesn't have to choose between himself and his family anymore. I want to let him know that his love has dignity, that he does indeed have a future as a full and equal part of the human race. Only marriage will do that.¹

Not too many years ago, Andrew *was* that "young kid out there," struggling to know that his love has dignity and that he is a full and equal part of the human race. *That* is the heart of the matter for Andrew—not so much a cluster of intellectual concerns about what marriage as an institution is or should be, but instead, a bone-deep, fighting-for-my-life desire to be accepted by others as a child of God who can love with dignity and who is worthy of love. *That* is his motivation, his true and deepest need. Or so I suggested at the close of our debate. When Andrew responded, his eyes were filled with tears as he stressed again the idea that "only marriage" can meet such a basic human need. We didn't agree on that point, just as we hadn't agreed on much else. To my disappointment, we seemed to spend much of the conversation talking past one another. But at least we had agreed on what, for him, was the fundamental issue.

And not just for Andrew. For many—probably most—proponents of gay marriage, the essential fact is equal human dignity. Therefore the essential demand is for justice, and the essential argument is about human and civil rights.

The Analogy

We often hear that the struggle for equal marriage rights for gays and lesbians today is morally and legally analogous to the struggle for civil rights for African Americans in the 1950s and 1960s.

More specifically, we hear that today's effort to permit same-sex couples to marry is morally and legally analogous to yesterday's effort to permit interracial couples to marry.

For example, the title of a column in the *Boston Globe* announces: "Echoes of Racism in Gay Marriage Ban."² In the *Washington Post*, the columnist Colbert I. King elaborates:

A host of state anti-miscegenation laws—strongly backed by white public sentiment—were upheld in state courts well into the 20th century. The reasoning was simple and absolute: Marriage between the races defied the natural order; intermarriage bans had legitimate historical roots and were based on a "divinely ordained" scheme. Conclusion: Government had the right to define marriage as a union of two persons of the same race.

It remained that way for generations, until 1967, when the U.S. Supreme Court, in *Loving v. Virginia*, ruled that state laws setting forth who can marry whom violate "one of the vital personal rights essential to orderly pursuit of happiness by free men"—marriage—and "the principle of equality at the heart of the Fourteenth Amendment. . . . How will future generations view our present-day fight against allowing monogamous couples with life commitments to each other to marry?"³

Gail Mathabane's column in *USA Today* declares that "Gays Face Same Battle Interracial Couples Fought." She writes, "Before the U.S. Supreme Court delivered the landmark Loving decision, interracial couples were in the same boat that same-sex couples are in today." Her conclusion: "Like interracial marriages, same-sex marriages are bound to become legal sooner or later. . . ."⁴

Here is the columnist C. W. Nevius in the *San Francisco Chronicle*:

There's no economic or public safety reason to keep two people who love each other from getting married. It just comes down to "I don't like the idea so you can't do it." Which, when you think about it, was pretty much the argument against interracial marriage.⁵

A judge on the Supreme Court of the State of New York invoked the analogy in a 2005 ruling:

Marriage is no more limited by the historical exclusion of same-sex marriage than it was limited by the exclusion of interracial marriage. . . . The challenge to laws banning whites and non-whites from marriage demonstrates that the fundamental right to marry the person of one's choice may not be denied based on longstanding and deeply held traditional beliefs about appropriate marital partner.⁶

Here is the writer Steve Swayne: "Eventually gay couples will achieve full legal equality throughout America, just as interracial couples achieved equality."⁷ Here is Kim Gandy, the president of the National Organization for Women: "In the 1960s, the civil rights movement fought for interracial couples to have marriage rights—and won. We're fighting for marriage rights again, this time for same-sex couples. We'll win this struggle too."⁸

This analogy has become a powerful shaper of our national conversation. It is repeated constantly. As far as I can tell, from the earliest proponents to the most recent, hardly *anyone* seriously proposing same-sex marriage in the United States has failed to assert, typically with great gusto, as if playing a surefire trump card, that prohibiting gay marriage is basically the same as prohibiting interracial marriage.

The analogy is moral dynamite. It forcefully links gay marriage to the African American civil rights movement—possibly the most morally compelling movement for social change of the past century in the United States. It also directly links opponents of gay marriage with a particularly despicable idea, racism, and with a particularly ugly period of our national history. All in all, this is a powerful tactic.

But the analogy is false—not simply intellectually weak, not merely confusing or misleading, but entirely and totally false. The fact that so many highly credentialed people in our society regularly shout it from the rooftops does not make it any less false. It is false at two levels. First, two men (or two women) seeking to marry one another is not remotely similar to a black person of one sex seeking to marry a white person of the other sex. At a deeper level, yesterday's proponents of anti-miscegenation laws have more in common with today's *proponents* of gay marriage than with those who oppose gay marriage.

Recall the basics. Across history and cultures, marriage is socially approved sexual intercourse between a woman and a man. Marriage is in part a private relationship, but it is also, and fundamentally, a social institution, with rules and forms that create public meaning intended to solve important problems and meet basic needs. The core problem that marriage aims to solve is sexual embodiment—the species' division into male and female—and its primary consequence, sexual reproduction. The core need that marriage aims to meet is the child's need to be emotionally, morally, practically, and legally affiliated with the woman and the man whose sexual union brought the child into the world. That is not *all* that marriage is or does, but nearly everywhere on the planet, that is *fundamentally* what marriage is and does.

Accordingly, it is *not* true that the only constant in the history of marriage is that it is always changing. It is *not* true that marriage is only incidentally connected to sex, or to children, or to bridging the male-female divide. Most of all, it is *not* true that marriage in essence is an expression of love, a private relationship of commitment between consenting adults.

Put somewhat differently, in the United States today, there are two competing and quite different conceptions of what marriage is. One view says that marriage at its core is a pro-child social institution. The other says that marriage at its core is a post-institutional private relationship. The latter view certainly has many advocates, but the former view is, well, correct. At a minimum, let's assume that it's correct for the purposes of examining the analogy.

Let's get specific. If a white person of one sex aims to marry a black person of the other sex, we have not the slightest reason to believe that marriage's fundamental forms are being weakened or violated, or that the institution's fundamental purposes are being challenged or denied. On the contrary, we have every reason to assume that such a marriage would be fully consistent with the core forms, meanings, and purposes of marriage as a human and social institution. But whenever someone seeks to *prevent* an interracial couple from marrying—say, by passing anti-miscegenation laws—that person is weakening the institution of marriage, because *promoting racism by enforcing racial separatism is not one of marriage's public purposes*. Accordingly, people who use marriage laws to promote

racism are corrupting marriage by grafting onto it a public value that is alien and even hostile to the institution's core forms, meanings, and reasons for being. They are manipulating marriage for their own purposes, turning an institution designed to bring women and men together into one that often keeps them apart.

That's why Mildred Jeter and Richard Loving, a black woman and a white man, did a good deed for the social institution of marriage when they told the sheriff who arrested them in 1958 for violating Virginia's anti-miscegenation statutes that *they were married*. And that's why Sheriff R. Garnett Brooks, and the legislators who made the law he was enforcing, and the people of Virginia who supported that law, by their actions during that time all did significant harm to marriage as a social institution. This case led to the famous *Loving v. Virginia* decision of the Supreme Court in 1967, which overturned all bans on interracial marriage in the United States.⁹

This example of twentieth-century U.S. anti-miscegenation laws is far from unique. There are many episodes in the history of marriage in which interested persons—for racial, economic, religious, or other reasons—have sought to use marriage for essentially alien objectives, or twist marriage into something other than what it fundamentally is. Often these efforts have been successful, at least for a time, but usually they do not last. To see how this phenomenon can work, let's glance again at two examples from Chapter Five.

Early Christian fathers. As we saw, some important Christian writers during the Church's patristic and early medieval periods viewed all sexual intercourse as impure and tending toward sinful. In several creative ways, these Church fathers sought to graft this view of sex onto the institution of marriage. The most astonishing result of this effort was the notion, propagated by a number of these writers, that marriage is not intrinsically connected to sexual intercourse. Another result, which first appeared in the third century, was the idea of "spiritual marriage," in which Christian clergy and ascetic men could live intimately, but without engaging in sexual intercourse, with nuns or other consecrated female virgins. A third result was decrees, including one from the Council of Elvira in the early fourth century, stating that legally married

Christian clergy must abstain from sexual intercourse with their wives.¹⁰ This novel view of the relationship of sexual intercourse to marriage, as well as the marriage rules and practices that stemmed from it, did not last.

The Nayars. Recall that marriage among the Nayars of India from at least 1400 to about 1800 was highly unusual in practice and institutionally wafer-thin. As a result, fatherhood among the Nayars, in the sense of one social father for every child, hardly existed at all. Nayar males during this period were highly specialized fighting men, far too preoccupied with war and rulership to become ordinary marrying men. Consequently, the Nayars invented a radically watered-down, structurally altered, and astonishingly flimsy version of marriage that both reflected and served these *military* goals—all of which came to an abrupt halt and quickly reverted back to normal marriage in the early nineteenth century, as the British conquest caused the disbanding of the Nayar armies.

In most respects, early Christian clerics do not have much in common with Hindu castes of Nayar warriors. But for our purposes, they are quite similar! Both groups of men were elite and highly specialized. Both were fundamentally preoccupied with callings that appeared to them to be inconsistent and even incompatible with marriage as a natural social institution. As a result, both groups sought effectively to change marriage's public meaning, by eviscerating one or more of its core purposes or by eliminating one or more of its basic forms. The Church fathers wanted to get rid of the form of sex. The Nayars abandoned not only the form of sex, but also the idea of marriage as a personal relationship and the idea of a mother and a father for every child.

Both groups reshaped marriage in order to use it for other purposes. For the Church fathers, that purpose was celibacy in the service of religious devotion. For the Nayars, the purpose was war. Both groups wanted to redefine marriage—lop off some features and restructure the rest in ways that would help them achieve extramarital social objectives—while still continuing to call it "marriage." Both of these projects succeeded for a while, then collapsed.

Does any of this sound familiar? In the same tradition, today's proponents of same-sex marriage in the United States are seeking to restructure marriage and use it for a special purpose. That

purpose is to gain social recognition of the dignity of homosexual love. Or as Andrew Sullivan puts it, the purpose is to win acceptance of gays and lesbians as full and equal members of the human race. I endorse that purpose, but I do not endorse using marriage to achieve it. There are four main reasons why.

First, using marriage to achieve that good purpose would require eradicating in law, and weakening in culture, the form of opposites (marriage as man-woman), which arguably is marriage's single most foundational form.

Second, using marriage to achieve that good purpose would also mean largely eradicating in law and public discourse the form of sex (marriage involves sexual intercourse). For as we've seen, although their reasons are different, today's civic and judicial proponents of gay marriage easily rival the most sex-averse early Christian fathers in their adamant insistence that marriage is not intrinsically connected to sexual intercourse. So two of marriage's three basic forms have already been taken down. Whether the form of two (marriage is for two people) could remain standing once the other two basic forms have been tossed aside is at best an open question—especially since many proponents of gay marriage are earnest opponents of this form as well.

Third, using marriage to achieve the good purpose of full acceptance for lesbians and gays would require publicly and legally renouncing the idea of a mother and a father for every child. Across history and cultures, as earlier chapters demonstrated, marriage's *single most fundamental idea* is that every child needs a mother and a father. Changing marriage to accommodate same-sex couples would nullify this principle in culture and in law. For me, and for many other child advocates, this issue is more crucial than any other.

Finally, and more generally, using marriage to achieve that good purpose would mean marriage's complete or nearly complete deinstitutionalization. It would be like going from room to room turning off the lights, since many of the rooms would no longer be necessary. In the end, we would be wandering around a building that has been largely abandoned. The public meaning of marriage would become much thinner and weaker. The idea of marriage as a pro-child social institution would be replaced by a

much smaller idea: marriage as another name for a private committed relationship.

We as a society can and should accept the dignity of homosexual love and the equal worth of gay and lesbian persons. But must we shrink and restructure *marriage* in these institution-maiming, child-threatening ways in order to achieve this social process? I do not suggest that the answer is easy. But to me, the answer is no.

Marriage exists for public purposes that can be specified. *Diminishing homophobia is not one of marriage's public purposes.* Marriage is institutionally alive to the fact of sexual embodiment and, flowing from it, sexual reproduction. Regarding the subjective and often complex issue of sexual orientation, marriage is institutionally deaf, blind, and dumb. It doesn't ask, tell, require, record, stipulate, accept, judge, or reject on the basis of individual sexual desire. Asking marriage to do so now—asking marriage to reconstitute itself according to the criterion of sexual orientation, and in doing so to help change public attitudes about orientation—is asking marriage to do something entirely unprecedented, and something for which the institution is radically ill equipped.

When people seek to reshape and use marriage for a bad purpose, such as fostering racism through anti-miscegenation laws, the moral judgment is easy. When a major social institution is threatened for a *good* cause, the moral judgment becomes difficult and painful, because doing more of one good thing requires doing less of another. That is our predicament today regarding same-sex marriage. There is no true analogy between yesterday's racists and today's defenders of marriage's customary forms. The only accurate analogy is between the advocates of anti-miscegenation laws and the advocates of same-sex marriage, since each group wants to recreate marriage in the name of a social goal that is fundamentally unconnected to marriage.

The Right to Marry

When Andrew Sullivan insists that "only marriage" can make it possible for a young gay man to know that "his love has dignity," he is grounding the plea for same-sex marriage in one of humanity's most

powerful ideas. That idea is that all persons possess equal dignity, and therefore that all are entitled to equal moral regard. Philosophers increasingly view this idea as the essential universal moral law—the starting point of almost all liberal moral thought and the necessary foundation of any philosophical stance consistent with basic human values.¹¹

In the modern era, the idea of equal human dignity has been expressed most concretely, and has achieved its greatest impact, through the development and practice of human rights. The most seminal human rights document in the world today, the United Nations 1948 Universal Declaration of Human Rights, begins its preamble with these properly famous words: “Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The first sentence of the Declaration’s first article reads: “All human beings are born free and equal in dignity and rights.”

This concept of human rights based on inherent human dignity is changing the world. Increasingly, talking about rights is the way that we talk about many of our most important needs and aspirations. Both in the United States and internationally, the language of rights has become a primary language for expressing our ideas of the good, especially regarding standards of justice. As the Canadian human rights scholar Michael Ignatieff puts it,

Rights are not just instruments of the law, they are expressions of our moral identity as a people. When we see justice done—for example, when an unjustly imprisoned person walks free, when a person long crushed by oppression stands up and demands her right to be heard—we feel a deep emotion rise within us. That emotion is the longing to live in a fair world. Rights may be precise, legalistic, and dry, but they are the chief means by which humans express this longing.¹²

The modern human rights revolution carries powerful implications for the institution of marriage. The most important is that marriage is a fundamental human right, stemming from the equal dignity of all persons. The Universal Declaration of Human Rights establishes this point clearly in Article 16: “Men and women of full age, without any limitation due to race, nationality or religion, have

the right to marry and to found a family.” Today, and partly as a result of the Declaration, the right to marry is recognized in most of the world, by national and transnational political and judicial authorities as well as by religious groups and other institutions of civil society, as a basic human right.¹³

Does this right to marry imply—logically and by simple justice—the right to marry a person of the same sex? For proponents of gay marriage, the answer is easy. Indeed, of *all* public arguments favoring same-sex marriage, the most frequently repeated and the most rhetorically powerful one is the argument that the right to marry, if it means anything, means the right to marry the person you choose.

To me, this argument is mistaken and begs for reflection on what “the right to marry” means. Is it something like a generic permission slip to do what you choose?

To explore this issue, there is no better place to start than the Universal Declaration of Human Rights, the foundational document of the modern human rights revolution and the primary source for human rights instruments now in effect in countries around the world. What does the Declaration tell us about the right to marry?

First, *the right to marry is a compound right.*

When the Declaration affirms that men and women “have the right to marry and to found a family,” it indicates that this is a compound right. The right to marry implies and carries with it the right to bear and raise children. The institution of marriage as understood by the Universal Declaration is intrinsically connected to parenthood and to the values, norms, and social expectations associated with bearing and raising offspring.

Today’s proponents of same-sex marriage frequently and adamantly insist that marriage is *not* intrinsically connected to bearing and raising children. The weight of evidence overwhelmingly does not support this thesis. Now we know that the Universal Declaration of Human Rights also clearly disavows it.¹⁴

Second, and more broadly, *marriage as a right is closely linked to marriage as an institution.*

Overall, the drafters of the Universal Declaration of Human Rights did a masterful job of producing an integrated, holistic

statement of human rights. As the legal scholar Mary Ann Glendon puts it, when we read it as a whole, we find that “the Declaration’s vision of liberty is inseparable from its call to social responsibility.” She states:

When read as it was meant to be, namely as a whole, it is an integrated document that rests on a concept of the dignity of the human person within the family. In substance, as well as in form, it is a declaration of interdependence—interdependence of people, nations, and rights.¹⁵

So let us examine more fully what the Declaration tells us about the right to marry and to found a family. Here is Article 16, the one concerning marriage, in its entirety:

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Here we see six important ideas. Marriage is intrinsically linked to children. Men and women have equal rights in marriage. Marriage requires the spouses’ free consent. The natural family is society’s basic group unit. The institution of the family deserves protection. And, marriage is a fundamental human right.

The key point is that each of these ideas is connected to all the others. Freedom is linked to solidarity. Marriage is linked to family. Rights imply responsibility. Institutions are not wished away; they exist, and they matter. Together, these six ideas are not perfect and do not tell us everything about marriage, but they ably suggest marriage’s fundamental shape and public purpose. Above all, the Declaration clearly does not intend for these ideas to be pulled apart and isolated from one another. It is certainly not saying, or even remotely implying, that the master idea, the one right, is that anyone has the right to marry anyone.¹⁶

Note especially the linkage in the Declaration between the right to marry and the idea that “the family is the natural and fundamental group unit of society.” When Article 16 says “natural,” it is making two interconnected claims. In one respect, “natural” refers to the dimension of the family that we today would more likely call biological. A “natural” parent, in this sense, is a biological parent. The second meaning of “natural” refers to marriage. The Declaration is suggesting that marriage is a “natural”—universal, existing everywhere—human institution. Thus the Declaration affirms that the basic social unit among humans is the biological mother married to the biological father, together raising their children. Marriage is a human right precisely, or at least primarily, because it is integral to this fundamental social unit.

In the Declaration, the right to marry is a thick idea, not a thin one. It is sociologically concrete, not abstract and free-floating. It concerns society as well as individuals, children as well as adults, responsibility as well as freedom. As a result, the right exists in a coherent institutional context—the right to the thing is bound up with the thing itself, which has public purposes that can be specified. In particular, the Declaration forthrightly refuses to sever marriage from parenthood, which is another way of saying that it refuses to sever marriage from its single most important public purpose.

In the world’s most important articulation of human rights to date, the right to marry recognizes fully, but also recognizes only, *the right to participate in the institution of marriage*. It does not recognize the right to turn marriage into another word for any private adult relationship of choice.

Rights Claims in Conflict

Let us stipulate that many people today, including many policy makers, simply do not agree with the understanding of marriage found in the Universal Declaration of Human Rights. For the future, they want something quite different. They want society to adopt a much more flexible definition of the right to marry and to found a family. What exactly would this new, streamlined definition say?

For many people, the right to marry at its core should simply mean *the right to marry the person you choose*. As long as the person is an adult, consents to the marriage, and is not a biological sibling or parent, you have the legal right to marry that person.

In addition, any revised formulation of the right to marry must have something to do with parenthood, or what the Universal Declaration calls founding a family. After all, under nearly any foreseeable future arrangement, marriages would still have something to do with families, and families would still have something to do with children. In any legal regime in which marriage exists, marital status and rights would continue to overlap with and affect parental status and rights. In this regard, no one denies that extending marriage rights to same-sex couples would mean greater social acceptance and more legal protections both for same-sex couples already raising children and for those wishing to become parents. Indeed, proponents of gay marriage frequently point out that gaining more support for gay and lesbian parenting is a major reason to support same-sex marriage. *Whenever we change marriage, we are also changing parenthood.*¹⁷

Because same-sex pair-bonding cannot produce children from the union of one spouse's eggs with the other spouse's sperm, parenting by same-sex couples in every instance relies decisively on at least one of three additional factors. The first is any of a growing number of assisted reproductive technologies. The second is the involvement of third-party participants such as sperm donors, egg donors, or surrogates. And the third is the granting of parental status to at least one member of the couple who is biologically unrelated to the child.

Embracing these trends as normative clearly necessitates a redefinition of parenthood itself and therefore a thorough reformulation of the right to found a family. Here is the simplest way to say it: *Individuals have the right to form the families they choose*. The idea of gay marriage carries with it the idea that individuals have the right to form families of their own choosing and bear children in the way that they wish, with the support of available medical and scientific technologies and without restriction or interference by society.

Now let's put the two rights claims together and get the new proposal: *Adults have the right to marry the person they choose and form the families they choose*. Robert Goss sums up this new rights claim

admirably in *Our Families, Our Values*, where he proposes that everyone "has the right to create family forms that fit his or her needs to realize the human potential for love in non oppressive relationships." And: "Everyone has the right to define significant relationships and decide who matters and counts as family."¹⁸

Kath Weston succinctly conveyed this idea in the title of her influential 1991 book, *Families We Choose*.¹⁹ In 2001, praising the gay and lesbian community's "growing tendency to affirm positively both the right to parent, and the responsibilities that this entails," Jeffrey Weeks, Brian Heaphy, and Catherine Donovan, in a chapter called "Families of Choice," strongly endorsed the validity of "claiming as 'family' whatever our own arrangements are."²⁰

Similarly, Mary Bernstein reminds us that same-sex couples as parents "imply the separation of sexuality from procreation," just as partners' parental rights and the use of surrogates, sperm donors, and the new reproductive technologies for gay and lesbian couples "separate children from procreation." For Bernstein, all this separation is not only necessary but also good, insofar as it challenges "hegemonic notions of family."²¹ In the same vein, Cheshire C. Calhoun argues that same-sex couples wishing to bear and raise children are properly insisting that "in spite of their multiple deviations from norms governing the family, their families are nevertheless *real* ones and they are themselves naturally suited for marriage, family, and parenting, *however* these may be defined and redefined."²²

Proponents of this new rights claim are actively pursuing it today in the courts. In the spring of 2005, attorneys for Basic Rights Oregon, a group of lawyers representing same-sex couples, sued the State of Oregon, as the *Portland Mercury* put it, "over what constitutes legal parenthood." In the first of what the group says will be a series of such legal challenges, a lesbian mother, who had conceived the child through artificial insemination, wants her partner (whom she also wants to marry) to be automatically recognized in law as the child's second parent, in just the same way that a married man is legally presumed to be the father of his wife's child. The mother's partner, Jeana Frazzini, could have tried to adopt the child through a process called second-parent adoption, and probably would have succeeded, but she decided against that course

of action on the grounds that, as she put it, "we had already decided that this was our family." Her lawyer added: "We shouldn't have to adopt our own children."²³

So here is the new claim: A woman in a close relationship with a mother is automatically the parent of that mother's child. Why? Because she and the mother say that she is. She is not just a caregiver, not just the mother's lover and partner. *She is the child's parent.* She should not have to suffer the indignity of seeking to adopt the child, because she and her partner have "already decided" the issue of parentage, and parents do not need to adopt their own children! As we saw in Chapter Six, the law professor David L. Chambers, a prominent supporter of this claim, describes such a reform as the "automatic registering of parenthood for the nonbiological female partner."²⁴ The philosophy professor Julien S. Murphy similarly sees the need to "alter perceptions of lesbian reproductive capacities" and "obtain parental rights for nonbirthing partners."²⁵

Now we can see more clearly the essential dimensions of the new rights claim coming from proponents of same-sex marriage and from others seeking to reformulate the right to marry and found a family as stated in the Universal Declaration of Human Rights. Compared with the current right, the proposed revision is much simpler. It retains none of what the current right implies about marriage's structure, institutionality, or public purposes. Instead, the new claim fundamentally privileges the values of privacy, autonomy, and personal choice. Probably the most consequential implication of the new claim concerns parenthood, which must be radically redefined. Above all, the new idea embraces the norm of adult individual freedom.

Michael Ignatieff, a human rights scholar (and a former teacher of mine), strongly endorses the new rights claim as a key part of "the rights revolution in private life." Referring to this revolution-in-progress, he concludes that "it is hard to imagine that it will not run its full course." He explains, "The reason is simply that the human rights revolution appeals to the idea of equality and against this idea there is no remaining court of appeal."²⁶

He may be right. A newly formulated right to marry the person you choose and form the family you choose does appeal unmistakably to important human goods. It appeals to freedom, which

Michael rightly calls modernity's core value. It declares that the individual has agency. I can shape my life the way I want to shape it. And it appeals to equality, saying that, insofar as policy can make it so, gay and lesbian couples by right can do whatever heterosexual couples can do, including marrying and bearing and raising children.

Whatever else it is, this idea is deeply American. Our nation's central idea is freedom. Our Declaration of Independence, itself a divorce document, affirms that all persons are created equal. Writing in *Harper's Magazine*, Fenton Johnson captures an important truth when he describes gay marriage as a "logical culmination of the American democratic experiment, which provides its citizens with an open playing field on which each of us has a responsibility to define and then respect his or her boundaries and rules."²⁷

Appealing to the basic American values of freedom and equality is a powerful argument for a reformulated right to marry and to found a family. But is its eventual success, as Michael Ignatieff suggests, all but inevitable? Is there any legitimate court of appeal?

There should be. For no single good thing, no matter how good it is, should override all other good things. Here is a key principle of human rights: *A right exists only in community with, and at times in tension with, other rights.*

Freedom of speech is a very good thing, but so is public safety, which is why I cannot walk into the proverbial crowded theater shouting "Fire!" Parental rights are a good thing, but I cannot torture my child. We cannot understand any human right by imagining that it stands by itself, in splendid isolation. Rights exist only in relationship to other rights. Moreover, no single human right, no matter how important, is the lodestar for all other related priorities, which can also be expressed as rights. The inevitable result of these facts, in free societies, is the phenomenon of rights in conflict. Often enough, an important right comes into genuine conflict with another important right.²⁸

So we must ask ourselves whether today's proposed reformulation of the right to marry and found a family—I *have the right to marry the person I choose and form the family I choose*—comes into conflict with any other important human goods or bumps up against any other basic human rights.

It does. It bumps up against the rights of children. Adults certainly have rights. But so do children. As societies change and philosophies evolve, adults can and do make for themselves new rights claims to fit new situations. But they also, in response to changing circumstances, can and do make new rights claims *on behalf of children*. For when it comes to human rights, everyone, including the children, gets a seat at the table.

At times, these new rights claims will inevitably come into conflict with one another. When this happens, all that we can do in a free society is consider the claims *together*, weighing the human good at stake on all sides, and seeking to arrive at an ethically responsible resolution.

When it comes to the adult right to marry and found a family, we therefore need to think carefully about the complementary rights of children. Let's start with the U.N. Convention on the Rights of the Child. Adopted by the United Nations in 1989, this Convention is intended to elaborate, develop, and enforce legally the principles of the Universal Declaration of Human Rights and its direct cognates insofar as those principles apply to the world's children. Here is the first section of Article 7:

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.

Every child in the world has three birthrights. She deserves a name. She deserves to be a citizen of a nation. And she deserves her two parents.

Let's consider what is meant by "his or her parents" and "as far as possible." As we've seen, the Universal Declaration of Human Rights plainly suggests that society's basic ("natural") social unit is the biological mother married to the biological father, together raising their children. So when the Convention says "his or her parents," it is clearly talking about the two natural parents, the biological mother and the biological father.

"As far as possible" is an important qualification and exception. It is intended to recognize the reality of human failure and loss, while providing protection for the child. Sometimes natural

parents die. Sometimes they do not or cannot competently parent their child. Sometimes they become threats to their own children. In such cases, society can and must intervene directly on behalf of the child, primarily through institutions such as adoption and state-run residences for children. "As far as possible" is *not* an escape clause for indifferent policy makers or for parents who would rather do whatever, but is instead a sober recognition by the state that sometimes, tragically, children are denied their birthright to their two parents.

The United Nations Convention declares that *I have a right as a child to the mother and father who made me*. I am owed this right "as far as possible"; the only exception is when, due to tragedy, it is either not possible or not in my best interests to be raised by my natural parents. This right is as essential to me as having a name.

Yet across the world today, and especially in the rich countries of the West, children are increasingly denied this basic birthright. The divorce and unwed childbearing revolutions of recent decades mean that, with each passing year, more and more of our children are *not* living with and being cared for by their own two natural parents. In the United States, for example, the astonishing truth is that the proportion of all children who do *not* grow up living with their own mothers and fathers is now roughly as large as the proportion who do.²⁹ We are witnessing, with a considerable degree of indifference, a widespread and growing breach of a basic human right. This fact alone ought to concern anyone who cares about children—and anyone who cares about human rights.

But today, a new and potentially lethal threat to this right is emerging and gaining momentum. We can see the threat in any number of recent policy recommendations, commercial ventures, court decisions, interest group claims, and expert arguments, in the United States and in several other countries as well. The threat is the proposed elimination in law of the idea that there is something normative or desirable about a child being raised by her natural mother and her natural father. According to the researcher Frank Furstenberg and colleagues,

Numerous studies have shown that individuals generally fare best both in childhood and in later life when they grow up with

both of their biological parents. . . . Put simply, children benefit from the economic and emotional investment of parents who reside together continuously, and these investments are generally higher among biological than among surrogate parents.³⁰

Until now, all cases of a child being denied its two natural parents have been viewed by international law and civil society, *without exception*, as something profoundly unfortunate and therefore as something that "as far as possible" should be avoided. But this idea is now under direct assault. The proposed replacement idea is that it doesn't really matter.

In "The Other Mother," a 2004 article in the *New York Times Magazine*, Peggy Orenstein writes about the growing use of sperm donors, egg donors, embryo donors, surrogates, and other third-party participants by same-sex couples wishing to become parents. These children by definition will not be raised by two natural parents. Does it really matter? To give us the answer, Orenstein quotes Leonard Glantz, a professor of health law at Boston University: "Once you have legalized adoption, that's the end of the picture in terms of genetics. It's a very broad statement of social policy by legislature that genetics and parenthood are different issues."³¹

In my public discussion with Andrew Sullivan on gay marriage in 2005, I said that I was alarmed by the fact that Canada, as a part of its implementation of same-sex marriage, was eliminating the term "natural parent" from Canadian law and replacing it with the term "legal parent." That is a hugely important change. It stems directly from—in Canada it is literally a part of—the adoption of same-sex marriage. This change demonstrates incontrovertibly that, at least in Canada, *changing marriage changes parenthood*, not just for a few children, but for all Canadian children. For same-sex marriage advocates who so frequently and confidently ask, "Where's the threat?" one answer is: *Right there!* Before same-sex marriage, Canadian law gave specific recognition to natural parents. Now, with same-sex marriage, it no longer does. The change could not be any plainer or any bolder. For anyone who believes that children have a birthright to their own two natural parents, it is most definitely a threat.

But Andrew saw it differently. Just like Professor Glantz, he responded to this entire issue by bringing up the subject of adoption. By definition, adoptive parents are not biological parents, and yet we as a society don't feel threatened or alarmed by adoption. So where's the problem? Being a parent is one thing, and "genetics," as Glantz calls it, is a "different issue." Adoption proves that the two are not really connected.

Here is how the argument works: First, identify two dimensions of parenthood—the natural dimension and the social/legal dimension—that typically go together and that all or nearly all human societies have strongly insisted *should* go together. Then, as casually as saying the word "adoption," break them apart and pit them against one another! Insist on this disconnection and polarization, justified by a small piece of evidence taken completely out of context, in order to destroy a big idea: that children have a right to their own mother and father.

In more general terms, declare that any exception to the rule means that no rule exists. Then declare that any complicating feature of a social institution—in this case, the role of adoption within the institution of parenthood—proves that the institution itself has no fixed or intrinsic meaning. Such an argument is easy enough to make. But it is intellectually vacuous.

Adoption is a wonderfully pro-child act. Adults respond to a child's loss with altruistic, healing love. Spouses who are not biologically related to the child promise to act as if—and are viewed by society essentially as if—they were the child's natural parents. Adoption does not deny but in fact presupposes the importance of natural parents.

For this reason, despite all the good it does, adoption is ultimately a derivative and compensatory institution. It is not a stand-alone good, primarily because its existence depends upon prior human loss. Almost everyone believes that in a good society, the great majority of children should be cared for by their own two natural parents. But it would never occur to anyone to believe that, in a good society, all or most children should be adopted.³²

Leonard Glantz's and Andrew Sullivan's proposition about adoption is therefore utterly specious. The idea that the world's

children have a birthright to know and be cared for by their two natural parents is not invalidated merely by pointing to the existence of adoption. Legalized adoption does not mean that parenthood is one thing and "genetics" is something entirely different. It does not imply that there is nothing distinctive or normative about natural parents. Nor does it mean we must pretend that adoption is unconnected to loss. Most of all, the existence of adoption does not mean that society is obliged to smile benignly and pretend that all is well when individuals or couples decide to take unprecedented steps—not as an altruistic response to a child's loss, but as a personal prerogative for which they seek society's support and collaboration—to bring into this world children who by definition can never be cared for by their two natural parents. So much for the argument based on adoption.

Some proponents also try to justify the new rights claim—both explain its inevitability and insist that there is nothing really novel about it—by invoking the reality of divorce and unwed childbearing. Both of these practices undermine the child's right to her two natural parents, yet we as a society tolerate them. Few if any of us are prepared to outlaw them. So proponents of the new rights claim pose this challenge: Isn't the new assertion about family formation just a bit more of the same—a further expression of essentially the same cultural values?

It is true, of course, that all three of these behaviors result in higher numbers of children in nontraditional family structures. But the right to marry the person you choose and form the family you choose departs sharply, and in the most alarming possible way, from the already disturbing cultural precedents set by the spread of divorce and unwed childbearing.

Divorce is failure, an unhappy ending. No one gets married planning or hoping to divorce. Almost no one denies that divorce is a major cause of childhood suffering today.³³ Although divorce is sometimes necessary, and even at times can open a pathway to future adult flourishing, a choice to divorce can never be anything better than the least bad choice. As the novelist Pat Conroy put it, "Every divorce is the death of a small civilization."³⁴

Conversely, the new rights claim concerns a novel approach to *founding a family*—a birth, not a kind of death. It is not about

what we sadly must do, but instead about what we joyfully want to do, and therefore what we want and expect society to recognize and assist. Creating a family is not anchored in loss and suffering; it models for individuals and society what we aspire to, for ourselves and for our children.

When a divorce results in a child no longer living with both of her natural parents, today's basic understanding is that something bad has happened. We as a society have failed to sustain an important relationship. We are witnessing loss. But if tomorrow a couple intentionally brings into the world a child with no chance of being raised by two natural parents, the new right to form the family you choose would suggest that something *good* has happened. We as a society are sustaining an important relationship, one that is worthy of recognition and support. We are witnessing human flourishing. This astonishing claim requires an enormous change in our evaluation of natural parenthood. What was, in the case of divorce, a partial failure to meet the norm is now *an entirely new norm*.

The world's main human rights statements say that children have a right to their two natural parents. The divorce revolution has weakened that right by separating too many children during too much of their childhood from at least one of their parents. But the moment we collectively declare, as a matter of principle, that adults forming their families can get babies any way they choose and define parentage any way they choose, with society's full recognition and acceptance, we have done more than weaken that right. Legally and culturally, we have fully overturned it.

In the case of unwed childbearing, family formation itself occurs in a way that undermines the institution of marriage and is likely to make children vulnerable. The children of unmarried parents are far more likely than children of married couples to spend at least some of their childhood living apart from one or both of their natural parents.³⁵ And since unmarried parents never made a legal promise in the first place, unwed childbearing probably outdoes divorce in weakening the child's right to her two natural parents.

Yet as a social phenomenon, unwed childbearing is much closer to divorce than to surrogate or contract pregnancy, the use of third-party sperm or eggs, or other forms of what the legal scholar John

A. Roberts (who supports the trend) terms “collaborative reproduction.”³⁶ From the perspective of a child hoping to be raised by her two natural parents, unwed childbearing is a risky business, but it is not a final verdict. Many unmarried parents do live together and raise their children together, and some eventually marry. Societies typically expect, and in some instances compel, both of the unmarried parents to help care for their offspring. Whenever an unmarried parent walks away from his or her offspring, both law and custom typically view that conduct as reprehensible and possibly criminal. Tolerating unwed childbearing does not require us to renounce the principle that children have a right to be cared for by their two natural parents.

Accepting “collaborative reproduction” as a human right, flowing from the right to marry the person I choose and form the family I choose, clearly *would* require us to renounce the principle that children have a right to be cared for by their two natural parents. It would create a new standard in which individual adults have the approval of society and the support of scientific technology to do *anything they want to do* regarding the production and rearing of children. If you were a child coming into the world today and were able to understand your interests, how would you feel about such a standard?

In fact, what if you were born *today* in Britain? British law used to require doctors who facilitated conception through procedures such as anonymous sperm donation at least to consider, as an ethical matter, the welfare of the child who may be born, including specifically “the need for a father.” But those words are now being scrapped. Apparently the whole idea has become too inconvenient for the adults involved. The old regulation was “judgmental and insulting,” according to one activist who fought to get rid of it. The father reference had become “nonsense,” according to another activist. The headline in *The Times* of London tells the story well enough: “No Father Needed.”³⁷

Recently the Law Commission of New Zealand recommended several key legal changes to help New Zealand move beyond what the “strict two-parent model” of what is desirable and normative for childrearing. In the area of parenthood, if you want to permit adults to move beyond the strict rule of two, you can either go

down to one, or up to three or more. The recommended changes in New Zealand are intended to facilitate and normalize both options.

For example, depending on the wishes of the adults involved, egg or sperm donors may elect to “opt out” of legal parenthood. In recognition of this option, the Law Commission helpfully recommends several changes in New Zealand’s birth certificates. For example, instead of reporting that the father of the newborn is “unknown”—the commission reports that some mothers find such terminology unpleasant—a mother could instead request that the birth certificate simply stipulate that the child was born of the mother and “by donor.” The commission also recommends in such cases that the birth certificate inform the child—“the person whose certificate it is”—that “other information” about the child’s origins may be available from the federal Register of Births, Deaths and Marriages. Such “other information” could include the fact that the father—excuse me, the donor—“opted out” of legal parenthood. (“Tough luck, kid, sometimes they opt out!”)

On the other hand, if a sperm or egg donor reaches such an agreement with the intended parental couple—either heterosexual or homosexual, married or unmarried—the Law Commission also recommends permitting the egg or sperm donor to “opt in” to parenthood. In these cases, the child in question would have *three* legal parents. Four or more parents might be possible in some cases. Exactly how many would depend on the agreements reached by the collaborating adults.³⁸

So, if some children in New Zealand are going to have three legal parents, why can’t those parents all marry one another? Allowing three persons legally to co-parent a child but not to marry would surely constitute arbitrary discrimination against those parents, wouldn’t it? Please whisper hello to group marriage.

Of course, in the public debate on same-sex marriage and the alleged right to found families of choice, anyone who brings up polyamory or polygamy is usually chastised harshly for offering “slippery slope” arguments. But as we’ve seen, legal scholars are already publishing articles in law journals making the case for legally recognized polyamory. I’ll bet that these advocates, who are just as passionate and serious about their goal as gay marriage

proponents are about theirs, are delighted to see that New Zealand has apparently decided it's fine for one child to have three parents. Will someone please explain why this child's parents cannot marry?

Same-sex marriage, by tossing out both the rule of opposites (marriage is man-woman) and the rule of sex (marriage involves sexual intercourse), renders the one big rule left standing, the rule of two, largely incoherent and increasingly vulnerable to assault. Now we can see the full threat to the form of two. The threat comes not only from "I can marry whomever I choose," but also, and *especially*, from "I can form the family I choose."

Regarding childbearing, the critics of the rule of two are anything but shy or subtle. The philosopher Cheshire C. Calhoun has clearly run out of patience with what she calls "the rule of one-mother, one-father per child." Here is how she puts it:

As a result of remarriage, semen donation, and contract pregnancy, the rule of one-mother, one-father per child (both of whom are expected to be biological parents) that has dominated legal reasoning about custody and visitation rights has ceased to be adequate to the realities of many families. Multiple women and/or multiple men become involved in children's lives through their biological, gestation, or parenting contributions.³⁹

An article by the influential Canadian legal scholar Alison Harvison Young is revealingly titled: "This Child Does Have 2 (or More) Fathers."⁴⁰ Any questions?

Marriage is a compound right. Erasing the rule of two parents therefore aids the process of erasing the rule of two spouses. The reverse is also true. Either way, the final result is likely to be the same. If the proponents of the new rights claim have their way, the form of two in marriage and parenthood is going down.

If this happens, some children will indeed have "2 (or More) Fathers," but a far greater number will have no father at all. For if we smash the form of two, almost certainly the single most important consequence will be the further weakening of fatherhood as a social role for men and a great increase in the proportion of children growing up without fathers. In Chapter Six, I mentioned a New Jersey company, Family Evolutions, that sells T-shirts for children. One says "Let My Parents Marry!" and another says "My

Daddy's Name Is Donor." The founder of the company, in fact, has a child by donor insemination. Whenever her son asks about a father, she tells him that he came in part from "some chemicals from a guy."⁴¹ Is that really what we think a father is?

In a powerful phrase, the feminist philosopher Sylviane Agacinski insists that each child has a right to its "double origin." Humanity is divided into male and female. Each new child is born of one man (its father) and one woman (its mother). In a good society, the double origin of every child is recognized and respected. Unalterably denying or effacing a child's double origin in the name of adult freedom is morally wrong.⁴² For those who ask "Where's the harm?" regarding same-sex marriage, here is the inescapable fact: Changing marriage changes parenthood, and changing parenthood in ways that permit and even encourage adults to wipe out the double origin of some children is a threat to all children.

In light of today's trends, ethicists such as Margaret Somerville of McGill University in Canada are urging the world community not only to maintain but also to strengthen and further specify the right of children to their natural parents. The Universal Declaration of Human Rights and the other main rights instruments of the modern era affirm that every child has the right, insofar as society can make it possible, to know and be raised by its two natural parents, except when it is contrary to the child's best interests. The clear implication is that society should recognize and seek to strengthen marriage, our only social institution that seeks fully to unite, in the persons of the spouses, the biological, social, and legal dimensions of parenthood.

In view of the emerging threat to children's interests posed by both collaborative reproduction and the subjective redefinition of parenthood, here for the twenty-first century is a proposed new elaboration of the child's right:

- Every child has the right to a natural biological heritage, defined as the union of the father's sperm and the mother's egg. Society as a rule should not intentionally deny or efface a child's double origin.
- Every child has the right to know his or her biological origins. Society should typically refrain from creating what Somerville

calls genetic orphans, or children who do not and cannot know their natural origins.⁴³

- Children have the right to be heard. Today, the rights claims of adults come through loud and clear, but children's voices are much harder to hear. That could and should change.

In a good society, when it comes to making new rights claims, everybody gets to play.

So here are two basic but conflicting rights claims:

1. *I have the right as an adult to marry the person I choose and form the family I choose.*

2. *I have the right as a child to be cared for by my natural mother and father.*

The conflict is not between good and bad—each claim affirms valuable human goods. But the conflict can't be wished away. And so we must choose. For me, sustaining the right of the child to her two natural parents is ultimately more important than granting adults more freedom of choice. There are three reasons why.

First, virtually all of our religious and secular moral traditions emphasize that when we are forced to make hard choices between competing interests, we should seek first and foremost to protect the interests of those who are less able to protect themselves. In this case, that means children.

The second reason relates to the principle of the greatest good for the greatest number. The proportion of homosexuals in society is small. The proportion of homosexuals who would choose to marry is smaller. The proportion of homosexuals who would choose to marry and raise children together is almost certainly still smaller. On the one hand, the impact of the right to marry and to form families of choice would almost certainly be large and positive for that minority. So let's stipulate that a few in society would benefit greatly.

On the other hand, changing marriage, regardless of why we do it, changes marriage for *everyone*. In particular, it changes parenthood for everyone.⁴⁴ When Canada, by way of implementing same-sex marriage, erased the concept of natural parent from basic Canadian law, there was no asterisk saying "for gay and lesbian couples only." The idea of the natural parent got wiped out in law for every child and every couple in Canada.

Changing a public meaning is a collective event; the meaning changes for *everyone*. If the child's current right to her two natural parents goes down completely, as the proponents of the new rights claim insist that it must, then that right as a societal promise will no longer pertain to any child.

When a change of this sort takes place, we as a society seldom feel an immediate impact. It's not like an earthquake, but more like the imperceptible shifting of the earth's tectonic plates. Our foundations change, as deviancy is defined down.⁴⁵ The movement is slow, but powerful and ultimately determinative. On the principle of the greatest impact on the greatest number, and with what I hope is full knowledge of and respect for the competing goods at stake, I conclude that we ought to elevate the rights of the children over the freedom of the adults.

The third and final reason concerns the core purposes of marriage in human societies. The single most important purpose is to give to the child the mother and father who made the child. Marriage does not exist in order to address the problem of sexual orientation or to reduce homophobia. Marriage does not exist in order to embody the principle of family diversity or to maximize adult choice in the area of procreation and childrearing. A case can be made for each of these latter objectives, but marriage as a human institution was never intended to pursue any of them. It makes better sense to ask an institution to do what it is built to do, rather than something it was never meant to do. I conclude again that sustaining children's rights in this regard should outweigh new adult freedoms.

"Where's the Threat?"

A gay man writes in to *USA Today*: "Please clarify for me: How exactly would my marrying my partner of more than four years threaten the institution of marriage?"⁴⁶ In a similar tone of exasperation and bewilderment, a guest columnist for the *Los Angeles Daily News* writes: "I truly do not understand the argument that same-sex marriage somehow dilutes the institution of marriage. . . . How loving and committed gays or lesbians living together and creating homes and families threatens anyone is beyond me."⁴⁷

In July of 2004, about four months after officials in Multnomah County, Oregon, issued some three thousand marriage licenses to gay couples—the Oregon Supreme Court later voided those licenses—the editors of the *Statesman Journal* in Salem, Oregon, wondered where the harm was: “We have yet to hear of a happily married straight couple who called it quits because marriage licenses have been issued to gay couples in Oregon. . . . Those licenses did not entice straight people to suddenly ‘turn gay.’”⁴⁸

Similarly, Norah Vincent asserts: “There is no objective reason to believe that legalizing gay marriage would adversely affect traditional marriage.”⁴⁹ And Jonathan Rauch: “Would millions of straight couples flock to divorce court if they knew that gay couples, too, could wed?”⁵⁰

In court opinions on same-sex marriage cases, judges regularly pose this same basic question. For example, a justice of the Supreme Court of Canada writes, “it eludes me how according same-sex couples the benefits flowing to opposite-sex couples in any way inhibits, dissuades or impedes the formation of heterosexual unions. Where is the threat?”⁵¹ A superior court judge in Seattle opines:

It is good for children to be raised in stable families with a father and a mother. There is not the slightest question about this. But, can it be said that fewer children will have this stability because couples consisting of two men or two women are allowed to have a relationship that is state-sanctioned? There is no reasonable explanation for why this would be so. There is no reasonable expectation that, should such a legal result come to pass, married mothers and fathers will abdicate their parental responsibilities or young would-be parents will defect from the ranks of heterosexuals.⁵²

No mad rush to divorce courts. No sudden upsurge of parental neglect. No mass defections from heterosexuality. So what possible objection could there be? Where is the threat?

Would now be a good time to take this subject seriously? As we see from these examples, this “Where’s the threat?” question is almost always intended as purely rhetorical. The answer is apparently presumed to be so self-evident, so obvious to any rationally

thinking person, that merely asking the question is sufficient to clinch the argument.

But we know already that the answer is *not* self-evident. It’s not enough merely to ask the question. So let’s try in good faith to answer it.

There’s the Threat

I have suggested that permitting same-sex couples to marry would threaten the institution of marriage in two fundamental ways.

First, the deep logic of same-sex marriage is deinstitutionalization. This fact, it seems to me, is essentially beyond dispute. Deinstitutionalization may not require same-sex marriage, but same-sex marriage plainly presupposes and requires deinstitutionalization. Do we want, in pursuit of a good cause, to transform marriage once and for all from a pro-child social institution into a post-institutional private relationship?

Second, same-sex marriage would require us in both law and culture to deny the double origin of the child. I can hardly imagine a more serious violation. It would require us to change or ignore our basic human rights documents, which announce clearly, and for vitally important reasons, that every child has a birthright to her own two natural parents. It would require us, legally and formally, to withdraw marriage’s greatest promise to the child—the promise that, insofar as society can make it possible, I will be loved and raised by the mother and father who made me. When I say, “Every child deserves a mother and a father,” I am saying something that almost everyone in the world has always assumed to be true, and that many people today, I think most people, still believe to be true. But a society that embraces same-sex marriage can no longer collectively embrace this norm and must take specific steps to retract it. One can believe in same-sex marriage. One can believe that every child deserves a mother and a father. One cannot believe both.

Surely we can at least recognize that same-sex marriage is not a simple issue of good versus bad, enlightened versus reactionary. The real conflict is between one good and another: the equal dignity of all persons and the worth of homosexual love, versus the

flourishing of children. On each side, the threat to something important is real. It wastes everyone's time to pretend that this question is an easy one, and that only bad people can fail to see the right answer.

Is there some way to reach a balanced assessment, systematically adding up the pros and cons on each side and, on that basis, striving to see the issue whole? That is exactly what was attempted in 2004 when I co-convened and chaired three one-day seminars for researchers and family scholars on the topic of gay marriage—one in New York City, one in Washington, D.C., and one in Atlanta, Georgia. Altogether, about forty people participated, including a number of the nation's leading family scholars. Of that total, a few had already spoken out publicly in favor of gay marriage, and a few against, but most of the participants at the time of our meeting had taken no public position on the issue, and most of them, I believe, were genuinely undecided.

Each meeting followed the same format. After some introductory discussion, in which each participant expressed her or his primary questions and concerns, we conducted a group thought experiment. The game had three rules. First, we stipulated that gay marriage, like almost any major social change, would be likely to generate a diverse range of consequences, some of which would be positive and some negative. Second, we agreed to work together as a group to specify as many of those likely consequences as possible, both good and bad. Third, we agreed that everybody's ideas count.

On chalkboards and poster paper, we worked together for hours to come up with three lists. The first list was called "Positive Consequences": In what ways would legalizing same-sex unions be likely to *improve* our society? The second list was called "Negative Consequences": How would adopting equal marriage rights for same-sex couples be likely to *harm* our society? The third list was called "Other Consequences," including social changes that would likely occur as a result of adopting gay marriage, but that we as a group could not agree whether to label as positive or negative.

Positive Consequences

1. Same-sex marriage would meet the stated needs and desires of lesbian and gay couples who want to marry. In doing so, it would improve the happiness and well-being of many gay and lesbian individuals, couples, and family members.
2. Gay marriage would extend a wide range of the natural and practical benefits of marriage to many lesbian and gay couples and their children.
3. Extending the right to marry to same-sex couples would probably mean that a higher proportion of gays and lesbians would choose to enter into committed relationships.
4. Same-sex marriage would likely contribute to more stability and to longer-lasting relationships for committed same-sex couples.
5. Same-sex marriage might lead to less sexual promiscuity among lesbians and (perhaps especially) gay men.
6. Same-sex marriage would signify greater social acceptance of homosexual love and the worth and validity of same-sex intimate relationships.
7. Gay marriage would be a victory for the worthy ideas of tolerance and inclusion. It would likely decrease the number of those in society who tend to be viewed warily as "other," and increase the number who are accepted as part of "us." In that respect, gay marriage would be a victory for, and another key expansion of, the American idea.
8. Gay marriage would reaffirm society's commitment to social justice and equal treatment under the law.
9. Gay marriage, by establishing marriage for same-sex couples as a human right, would expand the concept of human rights for gays and lesbians and, at least indirectly, for all persons.
10. Gay marriage might contribute over time to a decline in anti-gay prejudice as well as, more specifically, a reduction in anti-gay hate crimes.
11. Because marriage is a wealth-creating institution, extending marriage rights to same-sex couples would probably increase wealth accumulation and lead to higher living standards for these couples as well as help reduce welfare costs (by

- promoting family economic self-sufficiency) and decrease economic inequality.
12. Because gay marriage would allow into marriage a group of people who, until now, have largely and effectively been kept out, it would make marriage as a way of living less exclusive and more universally accessible.
 13. Adopting same-sex marriage would demonstrate that marriage can be an adaptive social form that is responsive to new societal needs and requirements.
 14. Adopting gay marriage might slow down or stop altogether the legal proliferation of "marriage lite" schemes such as civil unions and domestic partnerships, which can harmfully blur the distinctions between marriage and nonmarriage and can contribute (among straights as well as gays and lesbians) to nonmarital cohabitation. In this respect, gay marriage would make marriage, and marriage alone, society's standard for socially approved committed relationships. An important likely result of such a development would be less nonmarital cohabitation than would otherwise have occurred.
 15. Extending marriage rights to same-sex couples would probably reduce the proportion of homosexuals who marry persons of the opposite sex, and thus would likely reduce instances of marital unhappiness and divorce.
 16. Adopting same-sex marriage would almost certainly reduce the proportion of Americans, particularly younger Americans, who believe that marriage is an outdated and discriminatory institution. This change might encourage more couples to choose marriage over cohabitation.
 17. Especially by increasing the proportion of couples eligible to marry, gay marriage, to the degree that it produced more marriage in society, might increase the (currently quite low) birth rate, especially among the highly educated and more affluent.
 18. By increasing the number of married couples who might be interested in adoption and foster care, same-sex marriage might well lead to fewer children growing up in state institutions and more growing up in loving adoptive and foster families.

19. Adopting same-sex marriage would likely be accompanied by a wide-ranging and potentially valuable national discussion of marriage's benefits, status, and future.
20. Adopting gay marriage would largely, over time, put an end to today's socially divisive and distracting debate over gay marriage.
21. Gay marriage would challenge and possibly reduce gender stereotypes.
22. Gay marriage would probably expand the possibility and likelihood of new scholarly research on a variety of topics related to marriage and parenting.
23. Same-sex marriage, to the extent that it would be adopted on a state-by-state basis (as against being established by Congress or the federal courts), would create a process of potentially valuable local experimentation in matters of marriage and marriage law.

Negative Consequences

1. Adopting gay marriage would contribute significantly to changing the public meaning of marriage from a structured social form to a private relationship, from an institution with defined social purposes to a right of personal expression.
2. To the degree that adopting same-sex marriage requires the further deinstitutionalization of marriage, adopting same-sex marriage would be likely to contribute over time to a further social devaluation of marriage, as expressed primarily in lower marriage rates, higher rates of divorce and nonmarital cohabitation, and more children raised outside of marriage and separated from at least one of their natural parents.
3. Accepting same-sex marriage would require explicit public endorsement of the idea that a child does not really need a mother and a father. The main likely consequence would be fewer children growing up with fathers.
4. Gay marriage would eradicate in law and weaken further in culture the idea that what society favors—that what is typically best for the child and the community—is the natural

mother married to the natural father, together raising the child. This change would likely result over time in smaller proportions of children being raised by their own, married mothers and fathers.

5. Same-sex marriage would likely mean, to some measurable degree, publicly replacing the idea that parenting is largely gendered (the sex of the parent matters a lot) with the idea that parenting is largely unisex (the sex of the parent is not very important). The main likely consequence would be that fewer men will believe that it is important for them to become active, hands-on parents.
6. Adopting same-sex marriage probably means supporting and subsidizing a range of reproductive technologies—including donor insemination, the sale of eggs, contract pregnancy, and other forms of third-party-participant procreation, as well as newer technologies up to and likely soon including reproductive cloning and creating a child from the genetic material of two persons of the same sex—all of which share one feature: almost by definition, the resulting child will not be raised by her own mother and father.
7. Adopting gay marriage will likely contribute to replacing the norm of the natural parent with the norm of the legal parent. The two main probable consequences of this change would be: a growing disjuncture between the biological and the legal-social dimensions of parenthood; and correspondingly, a significant expansion of the power of the state to determine who is a parent.
8. A likely consequence of shifting from a man-woman to a two-person conception of marriage is that U.S. law would effectively be viewing the homosexual experience, rather than the heterosexual experience, as its baseline model for evaluating the meaning and public purposes of marriage.
9. Social acceptance of same-sex marriage would likely increase the social acceptability of other alternative marriage forms, in particular polyamory and polygamy.
10. Gay marriage might encourage some U.S. Muslims and Mormons with historical and current ties to the institution of polygamy to press for its legal acceptance.

11. Adopting gay marriage would legally enshrine the principle that sexual orientation (as opposed to sexual embodiment) is a valid determinant of marriage's structure and meaning—even though orientation is more complex and subjective than embodiment, arguably much more fluid, and a subject about which our social understanding remains fragmentary and provisional.
12. If same-sex orientation becomes a legitimate grounding for same-sex marriage, it is likely that bisexual orientation could become a legitimate grounding for group marriage.
13. Insofar as society's endorsement of same-sex marriage would also signify society's endorsement of leading gay and lesbian understandings of the couple, sexual expression, and kinship, same-sex marriage would likely contribute to a further decline of the norm of sexual fidelity within marriage and a further weakening of the norm of marital permanence.
14. Adopting gay marriage would likely require all relevant branches and agencies of government formally to replace the idea that marriage centers on opposite-sex bonding and male-female procreation with the idea that marriage is a private relationship between two consenting adults.
15. Gay marriage would likely mean that the public socialization of heterosexual young people into a marriage culture—in children's books and entertainments, in church teaching, in school curricula, in youth organizations, and in the popular culture—would either end altogether or be significantly diluted in order to avoid what would have become the possibly illegal suggestion that marriage fundamentally concerns heterosexual bonding and procreation.
16. Adopting gay marriage might cause many Americans who dissent on gay marriage to abandon some or all of those public institutions that champion the new definition of marriage and declare the old one to be morally and legally repugnant, which probably would result in the weakening of those institutions and a further rending of our common culture.
17. The redefinition of marriage from man-woman to two persons implies that the understanding of marriage embraced by millions of orthodox Christian, Jewish, and Muslim

Americans would no longer be legally or morally acceptable, thereby probably forcing many of these Americans to choose between being a believer and being a good citizen.

18. Adopting gay marriage might lead to new state-imposed restrictions of religious freedom and freedom of expression.
19. Adopting same-sex marriage might mean that some religious organizations now receiving public support to provide services to the poor and to others would no longer provide them, due to state disqualification over refusing programmatically to endorse same-sex marriage.
20. Adopting gay marriage might catalyze an anti-gay backlash.
21. Adopting gay marriage could contribute to the public belief that marriage in our society is now politicized.
22. Especially if same-sex marriage is established primarily through court decisions, it would be likely, at least in the short term, to create a significant gap between legal and public understandings of marriage.
23. If same-sex marriage is established primarily through court decisions, the issue could contribute to public loss of confidence in, and resentment of, the judicial branch of government.
24. To the degree that adopting same-sex marriage means that marriage under the law becomes primarily a right of intimate expression, largely disconnected from defined public purposes, unmarried people might increasingly, and logically, complain that the legal and practical benefits currently attached to marriage properly belong to everyone, not just married people. Many single people also have interdependent personal relationships.

Other Consequences

1. Adopting same-sex marriage would likely increase the public visibility and social significance of same-sex couples and of gay and lesbian culture generally.
2. Adopting gay marriage might contribute over time to an increase in homosexual conduct.

3. For gays and lesbians, the right to marry a person of the same sex might serve over time to reduce some of the distinctiveness of gay and lesbian culture, thus possibly creating in both the gay and lesbian community and the society as whole less diversity and less respect for diversity.
4. Insofar as marriage has been a significant shaper of heterosexual identity, adopting gay marriage might challenge and complicate that identity.
5. Adopting same-sex marriage would likely mean that a higher proportion of all children would be raised by gays and lesbians.
6. Adopting same-sex marriage would likely lead to greater diversity in childhood experiences.
7. Adopting same-sex marriage might lead to a higher proportion of "intentional" children—that is, a higher proportion of children whose births are the result of specific planning.
8. Adopting same-sex marriage might contribute to the adoption of new policies aimed at imposing parental obligations, especially financial obligations such as child support, on more categories of biologically unrelated adults, including step-parents, partners, and ex-partners.
9. Adopting same-sex marriage would likely bring the United States closer to the European marriage model.
10. Adopting gay marriage would likely undermine some core tenets of the Jewish-Christian-Muslim conception of marriage and thereby contribute to the secularization of U.S. marriage.
11. Adopting gay marriage would probably reduce the influence of evangelical Christians in U.S. public life.
12. Adopting gay marriage would likely encourage some evangelical Christians to be more accepting of diverse and changing sexual and family norms.

These long lists of incommensurable goods are not exhaustive or scientifically exact. But as far as I am aware, they represent the best—in fact the *only*—effort by serious scholars and leaders to wrestle systematically with this issue whole, trying to see it as clearly as possible from both sides, and consciously avoiding the

temptation simply to make the best lawyer's case for one foregone conclusion or the other. What do these results tell us?

First, many people who favor the reform insist that permitting same-sex marriage would affect only a small minority and would not constitute a major social change. It would be closer to a modest adjustment, they say, letting just a few more people into the main room. Our lists indicate that this argument is wrong. Whether we ultimately favor gay marriage or not, let us recognize that the idea being proposed is a big one. These three lists add up to quite a bit of significant social change, affecting many aspects of our society. Not all of these predicted consequences are inevitable, but most of them do seem likely. A few might be considered relatively trivial, but most clearly cannot. Many of them are quite far-reaching. A few on each side are genuine culture-changers. Plainly, the stakes on this issue are extremely high.

Second, many people on both sides seem genuinely to believe that this issue is morally easy. For some, homosexual orientation is intrinsically wrong, homosexual conduct is shameful, and gays and lesbians should either change or live deep in the closet. For them, the issue of gay marriage hardly requires serious analysis; it's simply a *bad* idea. On the other hand, for many others who take general acceptance of homosexuality in our society as their starting point, establishing the right of gays and lesbians to marry the person they choose is nothing more or less than a matter of simple justice. If you are a bigot, you are against gay marriage. If you are not, you are for it. What other morally sensitive position could there possibly be?

I believe that both of these positions are wrong. One side makes the issue easy to decide by judging an entire demographic group as blameworthy on the basis of a dimension of personality that, as best I can tell, is closer to being a given than a choice. I am a Christian. I take the Bible seriously, and I know what the Bible says about homosexuality. I disagree with the Bible on this point. Or, if you'll permit me, I believe that Jesus' teachings are inconsistent with the idea that today in the United States we should judge people as blameworthy just for being gay or lesbian.

The other side makes the issue easy to decide by imagining that marriage is not a social institution but an expression of love,

a committed personal relationship. If marriage is the public recognition of a private bond, what could possibly be wrong with recognizing same-sex bonds? Much of this book has been a quarrel with this basic thesis. If I have persuaded you that marriage in human societies is both a private relationship *and* a pro-child social institution, we can agree that wishing away its institutionality might make everything appear simple, but it is not intellectually or morally serious. If marriage is fundamentally a pro-child social institution with clear and vital public purposes, then it simply cannot be true that the master idea, the one goal that trumps all other goals, is public recognition of the freedom of adults to do what they want.

This consideration leads to the third general conclusion from our seminars: Whenever important goods conflict, it's inevitable that any resolution, no matter how carefully arrived at, will carry with it elements of loss and even tragedy. Some people argue that our main moral priority in this case should be the gays and lesbians who want to marry the person they choose and form the families they choose. They are the victims of injustice, the ones whose needs demand our response.

I have argued in this chapter that people who make this argument are wrong—not because the interests of gays and lesbians hoping to marry are unworthy of our concern, but because the interests of all the children in our society are *more* worthy of our concern. When I look at the United States today, I see many problems, but to me, children are the group in our society who are most vulnerable. They are the ones most at risk, the ones whose needs most demand our response. When I had lunch in 2003 with Evan Wolfson, the executive director of Freedom to Marry and the main architect of the legal struggle for gay marriage, I tried to raise the issue of children's rights. He could hardly have been less interested, telling me simply (as I mentioned in this book's introduction) that he believes that children are "adaptable."

Yes, children are adaptable. But what exactly do we as a society want our children to adapt to? To growing up without the mother and father who made them? To being told that whoever happens to be taking care of them at the time is their "parent"? To not knowing their biological origins? To accepting without complaint whatever the grownups decide to do? To the shrinking of

their human rights? To listening to a lot of didactic happy-talk about families coming in all shapes and sizes?

Evan sees people who are suffering and wants to help them. As a leader of a grassroots movement, he has spent many years working for a certain kind of social change. For Evan, it's also personal. He is gay—one of the "them" in this matter. He is fighting partly for himself, and that accounts for much of his passion.

I have three children, so it's personal for me, too. I am fighting partly for them, for the society they will be adults in, for the future.

Evan is confident that his side, the side of new freedoms, is going to win. He may be right. New freedoms are hard to argue against, even in the name of children, and if you want to try something difficult, try telling freedom-loving Americans that what they really need is a stronger "social institution."

But there we are. What do you think, kind reader? The wheel's in spin. Nothing is inevitable. Both sides have a case. Which answer do you think *should* prevail?