

*A Responsible Citizen's Approach
to Same-Sex Politics*



PRESERVING SACRED GROUND



Edited by Stanley D. Rasmussen

PRESERVING SACRED GROUND

PRESERVING SACRED GROUND

A Responsible Citizen's
Approach To
Same-Sex Politics



EDITED BY STANLEY D. RASMUSSEN
SUTHERLAND INSTITUTE

Copyright © 2009 Sutherland Institute

First Edition 2009

*Preserving Sacred Ground:
A Responsible Citizen's Approach to Same-Sex Politics*

Although this book is a compilation of writings by several authors, this particular volume has never before been published and is a unique collection, and therefore, as a collection and compilation is copyrighted 2009 by Sutherland Institute.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system now known or to be invented, without permission in writing from the publisher, except by a reviewer who wishes to quote brief passages in connection with a review written for inclusion in a magazine, newspaper, or broadcast.

Published in the United States by
Sutherland Institute
Salt Lake City, Utah
www.sutherlandinstitute.org

ISBN: 978-0-692-00156-1

Printed in the United States of America
Content and Cover Design by Kent Hepworth

Contents



<i>Introduction</i>	<i>vii</i>
<i>Preserving Sacred Ground – Doing the Right Things</i>	<i>3</i>
<i>The Place of the Family</i>	<i>5</i>
<i>The Fundamental Unit of Society</i>	<i>11</i>
<i>The Physics of the Family: Why Families Don't Fall Down</i>	<i>30</i>
<i>Stone Tablets or a Golden Calf?</i>	<i>42</i>
<i>Preserving Sacred Ground – For the Right Reasons</i>	<i>63</i>
<i>Questions and Answers</i>	<i>65</i>
<i>When Tolerance Turns Against the Family</i>	<i>68</i>
<i>The Myth of Sexual Orientation</i>	<i>86</i>
<i>When Dysfunction Becomes the Norm</i>	<i>112</i>
<i>The Real Danger of Same-Sex Marriage</i>	<i>125</i>
<i>Does the Family Have a Future?</i>	<i>168</i>
<i>Preserving Sacred Ground – In the Right Ways</i>	<i>201</i>
<i>All Talk, No Walk: Dissonance in Utah's Family Politics</i>	<i>203</i>
<i>Now That They've Made It Your Business</i>	<i>208</i>

Introduction

Allan C. Carlson, Ph.D.



One of the great modern deceits is the argument that the family is malleable or plastic, and that it evolves over time, taking new forms to meet ever-changing circumstances. This idea was born among the Darwinists in the late Nineteenth Century, and adopted by some influential early anthropologists. More ominously, Friedrich Engels — co-author of *The Communist Manifesto* — used this idea to argue that the modern family under industrial conditions must also evolve: away from monogamy and private home life toward free-love and collective child-care.

The same argument now resurfaces over the question of same-sex marriage. A few years ago, a judge in Washington struck down that state's Defense of Marriage Act, arguing that "as time marches inexorably on, human society evolves." Libertarian columnist Virginia Postrel argues that "gay marriage" is "the result of an evolutionary process." Columnist Ellen Goodman agrees, concluding that the Massachusetts Supreme Court's embrace of same-sex marriage "may be as evolutionary as it is historic."

Dr. Allan C. Carlson is president of The Howard Center for Family, Religion & Society and is the director of Sutherland Institute's Center for Community and Economy. Dr. Carlson founded the World Congress of Families in 1997. He has written for numerous publications including the *Wall Street Journal*, *National Review*, and *Intercollegiate Review*, and is the editor of *The Family in America*. He is the author of nine books, including *The Natural Family: A Manifesto* (Spence, 2007), which he co-authored with Paul T. Mero.

In truth, marriage evolved only once: at the beginning, when “to be human” came to mean “to be conjugal.” This is, of course, the lesson of Judaism and Christianity, wherein Genesis 1 and 2 cast human marriage as an immutable aspect of the creation, fixed from the beginning:

So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth....Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.

More surprisingly, for many, contemporary science actually agrees with the author of Genesis: the social creation of marriage between one man and one woman was the decisive step in human evolution, and it occurred “in the beginning.” As C. Owen Lovejoy of Kent State University explains, the new and distinctive human creature featured a special “character system, which included intensified *parenting* and *social relationships*, *monogamous* pair bonding [and] specialized sexual-reproductive behavior [‘husband/father’ and ‘wife/mother’].”¹

This remarkable convergence of religious and scientific narratives regarding the origin and meaning of marriage underscores the importance of the current debate. The issue is not over enabling a new step in social evolution. Nor is it some tangential public question involving access to certain state benefits. Nor is it a matter of legal equality and civil rights.

Instead, this debate cuts to the heart of what it means to be human. Faith and science agree that humankind is *defined* by heterosexual monogamy, by “long-term pair bonding” or marriage, by a special devotion by fathers to their natural offspring, and by a home economy rooted in altruism. These are not arbitrary or variable traits; these are essential and necessary to human happiness and even human existence.

This is why an honest account of human history shows that *every* healthy human society, through thousands of examples and years, has restricted the special status of marriage to heterosexual pairs. Hu-

man life is naturally heterosexual. A man and a woman must come together (even if in our day via a Petri dish) to beget new life. Such reproduction is an essential task for any society, and the honor and benefits bestowed through marriage exist to protect the act of responsible reproduction.

Centuries of folk wisdom alongside thousands of recent research inquiries in psychology and sociology also testify to a common truth: children do best in all aspects of life if they grow and develop in an intact home with their two natural parents.

The valuable complementary roles of fathers and mothers in child rearing enjoy complete expression in such homes. In such a setting, children will — on average — be healthier, happier, brighter, better behaved, and more socially engaged than when living under any other configuration. In brief, the institution of heterosexual marriage exists to maximize the number of children who reside in such settings.

It is true, of course, that not all heterosexual couples are able to produce children, some due to age, others due to involuntary sterility. All the same, even these couples can contribute to the effective rearing of children. The complementarity of man and woman also works in cases of adoption, or among grandparents rearing their grandchildren. It is not just a matter of two people. One man and one woman are emotionally best equipped to rear successfully the children committed to their care. For this reason, even the sterile heterosexual couple deserves the blessing of marriage.

In addition, heterosexual marriage plays a vital political role. It forms the first cell of society, on which homes, extended families, villages and neighborhoods, and even states ultimately rest. As President Theodore Roosevelt explained a century ago: “It is in the life of the family, upon which in the last analysis the whole welfare of the Nation rests.... The nation is nothing but the aggregate of the families within its borders.”² This is particularly true for *free* societies, where strong families shelter and protect individuals from the expansive tendencies of government.

This explains why the first target of any totalitarian regime is marriage. Russia's Communists, Germany's Nazis, Sweden's radical Social Democrats, and China's Maoists: all sought to strip marriage of identity, function, and authority. Why? The great English journalist G.K. Chesterton explains:

The ideal for which [marriage] stands in the state is liberty. It stands for liberty for the very simple reason ... [that] it is the only ... institution that is at once necessary and voluntary. It is the only check on the state that is bound to renew itself as eternally as the state, and more naturally than the state.... This is the only way in which truth can ever find refuge from public persecution, and the good man survive the bad government.³

In sum, the “same-sex marriage debate” actually involves the most important of public issues. The push for “same sex” marriage openly mocks the religious heritage of Western civilization. It flies in the face of scientific inquiry. It ignores the hard-won lessons of human history. It puts children at risk. And it threatens the foundations of ordered liberty.

For these reasons, this new collection of essays from Sutherland Institute is most welcome. They clarify the issues facing the people of Utah. They ably dissect the arguments surrounding marriage. And they point toward the strengthening, rather than the weakening, of the most basic and vital of human institutions.

The Sutherland stable of scholars is impressive. I have had the pleasure of working closely with Bryce Christensen and Paul Mero through The Howard Center. Both are capable and expert on matters pertaining to family and society. Bill Duncan's legal work in behalf of family policy has influenced judicial standards in many crucial cases. Add to these the quality insights of the rest of the Sutherland team represented in this book and you have at your disposal an effective bulwark in defense of the natural family. Their combined talents uniquely position them to facilitate reasoned dialogue and right-

thinking for responsible citizens looking to make their communities a better place to live, work, and raise a family.

Good policy builds on accurate and true information, free from politically-correct cant. With this volume as a resource, the citizens of Utah can address the contemporary marriage debate with fairness, wisdom, and clarity.

ENDNOTES

1. C. Owen Lovejoy, "The Origin of Man," *Science* 211 (Jan. 23, 1981): 348.
2. Theodore Roosevelt, speech given at the New York State Fair, Syracuse, NY, September 7, 1903, *Presidential Addresses and State Papers of Theodore Roosevelt, Part Two*, New York, NY: P.F. Collier & Son, 1904, 479, 493.
3. G.K. Chesterton, "The Superstition of Divorce," *Collected Works, Volume IV: Family, Society, Politics*, San Francisco, CA: Ignatius Press, 1987, 256.

PRESERVING SACRED GROUND

PRESERVING SACRED GROUND



Doing the Right Things

The Place of the Family

William C. Duncan



The family enhances ordered liberty by allowing parents to transmit their values to their children even if those values do not coincide with those of a particular governmental regime.

Radical ideologues assume that the atomistic individual is the only unit, other than the state, that can make any claim to authority or separate existence. Conservatives, to the contrary, recognize the family as the basic unit of society. They understand that individuals are born and usually raised in the context of family and that among the individual's deepest ties and highest aspirations are those related to family life. The natural ties of family provide goods like socialization and provision that cannot be supplied as effectively by any other instrumentality, and without exacting unacceptable costs in terms of human freedom.

In fact, as Professor Bruce Hafen explains, the family enhances ordered liberty by allowing parents to transmit their values to their

William C. Duncan, J.D., is director of the Marriage Law Foundation and is the director of Sutherland Institute's Center for Family and Society. He formerly served as acting director of the Marriage Law Project at the Catholic University of America's Columbus School of Law and as executive director of the Marriage and Family Law Research Grant at J. Reuben Clark Law School, Brigham Young University, where he was also a visiting professor. This essay was first published in November 2007 as part of Sutherland Institute's *Governing Principles Series*. Copyright © 2007 Sutherland Institute.

children even if those values do not coincide with those of a particular governmental regime:

[I]t remains fundamental to democratic theory that parents, through this institutional role of the family, control the heart of the value-transmission process. As that crucial process is dispersed pluralistically, the power of government is limited. It is characteristic of totalitarian societies, by contrast, to centralize the transmission of values. Our system thus fully expects parents to interact with their children in ways we would not tolerate from the state — namely, through the explicit inculcation of intensely personal convictions about life and its meaning.¹

In addition, the Utah Supreme Court has noted “family autonomy helps to assure the diversity characteristic of a free society.... Much of the rich variety in American culture has been transmitted from generation to generation by determined parents who were acting against the best interest of their children, as defined by official dogma.”²

Conversely, the family is viewed with disdain by radical levelers seeking to advance causes like pure equality or unfettered self-expression. Professor Robert Nisbet notes:

I have always found treatment of the family to be an excellent indicator of the degree of zeal and authoritarianism, overt or latent, in a moral philosopher or political theorist. Basically, there have been two traditions in Western thought here. In one, reaching from Plato to Rousseau, the family is regarded as an insurmountable barrier to the achievement of absolute virtue or justice in a social order and therefore is to be obliterated. In the other, reaching from Aristotle to Burke and Tocqueville, the family is declared vital to the achievement and preservation of freedom and order alike in society.³

Unlike the relationships between citizens or between citizens and the state, family relationships are primarily based on obligations rather than rights. Typically, family duties are not enforceable in le-

galistic ways. That does not, however, make them less powerful or binding. Indeed, an important contribution of family life is that it instills in its participants recognition of the good of fulfilling responsibilities they may not be “forced” to discharge. Professor Scott Fitzgibbon says “[a]n excellent person recognizes more things as morally binding than ordinary people might do, but a debased person, it appears, will acknowledge fewer.”⁴ Because family obligations are not “chosen” in the ordinary sense, they can shape character in ways not easily done by activities such as paid employment.

These realities regarding the family allow for additional conclusions about the family, particularly as it relates to other units in society.

First, the family is not the creation of the state. It has a prior existence. Referring to the example of marriage, Professor F.C. DeCoste points out:

[T]he facts are these: (a) prior to the thirteenth century, when the Church finally managed to take control of it, marriage was an entirely social practice; (b) marriage only became a sacrament in 1439; and c) the Catholic Church only began requiring the attendance of a priest for a valid marriage in 1563, after the Reformation. The state came to marriage even later than did the Church. Indeed, it was not until 1753, with the passage of Lord Hardwicke’s Marriage Act, that the British state became a significant player in the joining together of men and women as husbands and wives.⁵

In the U.S context, “[t]he rights inherent in family relationships — husband-wife, parent-child, and sibling — are the most obvious example of rights retained by the people. They are ‘natural,’ ‘intrinsic,’ or ‘prior’ in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property.”⁶ This means that the authority of the family is independent of, not derived from, the state. Thus, the family is a mediating institution, standing between the individual and the state to provide the individual with identity, purpose, security and protection.

Flowing from this is the reality that the state cannot define and redefine family without doing harm. When it attempts to do so, the

state enhances its own jurisdiction over the individual by making the family an instrument of social control rather than an independent unit that can temper the demands of the state on the individual. Then, the individual becomes naked before the state, subject to its whims and projects. Where the family typically relies on persuasion and asserts its demands through conscience and sentiment, the state asserts its demands by coercion and prescription.

This does not mean that the state has no role to play in regards to the family, only that its role must be strictly limited. One thing the state can and ought to do is to provide a legal structure for the family to be recognized and protect the integrity of that structure. Professor Hafen says, “the contribution of family life to the conditions that develop and sustain long-term personal fulfillment and autonomy [as well as political freedom] depends...upon maintaining the family as a legally defined and structurally significant entity.”⁷ This structure can assist third parties in their interactions with the family and create lines of demarcation beyond which the state itself should not pass except in the direst emergency. Nebulous legal definitions of the family (such as legal status for cohabitation) impede these functions. The state may also clear the way for the family in performing its vital functions, such as by treating the family as an economic unit (as with the child tax credit, to use one example).

The limitations on the state’s role, however, are crucial partly because there is constant pressure to erase them in order to allow the state’s reach to extend further and also because the family cannot do its work properly without significant independence. “[T]he formal law stops at the family threshold not merely because it *should not* regulate intimate relations but because it *cannot* regulate them without impairing their very existence.”⁸

Parents cannot transmit their values to children if they are expected to be transmitters of state messages. Family members will not learn to accept unchosen obligations if they have judicially enforceable rights to refuse any responsibility that is not freely chosen. A demanding state can make it difficult for parents to provide for children

or spouses for one another. An intrusive state can impair all family functions by subjecting them to constant scrutiny.

A chief limitation has historically been that the state will not interfere with the workings of an intact family. (When a family breaks down, as in divorce or abandonment, the law assumes family members are subjecting themselves to its jurisdiction.) In the words of Richard Weaver, "...the policy of a state toward the culture or cultures within it should be *laissez faire*, except at those points where collisions may be so severe that they imperil the minimum preservation of order with which the state is charged."⁹ Thus, in the absence of a compelling reason, such as child or spousal abuse, the state's jurisdiction ends at the threshold of the home. This principle of family autonomy has been recognized in our constitutional tradition.¹⁰

Obviously, the principle involves risk, but its abandonment does as well. Professor Stephen Carter has written:

Parents, of course, may do wicked things. Despite our occasional inability to agree on what constitutes abuse, we do know that some mothers and fathers beat their children within an inch of their lives — or beyond. We do know that some mothers and fathers will raise their children to be vicious racists. We do know that some mothers and fathers will train their children to mock the religions of others. We do know that some mothers and fathers will teach their children (through example) that nothing is more important in life than the pursuit of wealth, power and position.

But are such possibilities reason enough to reject the parental power that the Court discovered in *Pierce*? I would suggest not. After all, the state, too, might do many wicked things, and often has. And the evil that the state does affects far more people than the evil done by any particular parent.¹¹

Conservatism's respect for natural realities and its opposition to an overweening state will lead it to consistently defend the integrity and autonomy of the family. The conservative will recognize in this defense an opportunity to preserve liberty, ensure the well being of

many who would not otherwise be cared for and to perpetuate the best in culture and faith. Conservatives will look homeward for renewal and inspiration and watch outward to guard against incursions on the family's prerogatives. In all this, they will be doing the work of civilization itself.

ENDNOTES

1. Bruce C. Hafen, "Law, Custom and Mediating Structures: The Family as a Community of Memory," *Law and the Ordering of Our Life Together*, Grand Rapids, MI: Eerdmans Publishing Company, 1989, 100 (Richard John Neuhaus, ed.)
2. *In re J.P.*, 648 P.2d 1364, 1373 (Utah 1982).
3. Robert Nisbet, "The Pursuit of Equality," *Public Interest*, 103 (Spring 1974).
4. Scott T. FitzGibbon, "The Formless City of Plato's Republic," *Issues in Legal Scholarship, Single-Sex Marriage* (2005). <http://www.bepress.com/ils/iss5/art5>
5. F.C. DeCoste, "Courting Leviathan: Limited Government and Social Freedom in Reference Re Same-Sex Marriage," 42 *Alberta Law Review* 1099 (2005).
6. *In re J. P.*, 648 P.2d 1364, 1373 (Utah 1982).
7. Bruce C. Hafen, "The Family as an Entity," 22 *University of California Davis Law Review* 865 (1989).
8. Hafen, "Law, Custom, and Mediating Structures: The Family as a Community of Memory," 82, 106-107.
9. Richard M. Weaver, "The Importance of Cultural Freedom," *Modern Age*, 21, 23-24 (Winter 1961-1962).
10. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *In re J.P.*, 648 P.2d 1364 (Utah 1982).
11. Stephen L. Carter, "Parents, Religion, and Schools: Reflections on *Pierce*, 70 Years Later," 27 *Seton Hall Law Review* 1194 (1997).

The Fundamental Unit of Society

Allan C. Carlson, Ph.D.
and Paul T. Mero



*The family — not the individual, church, corporation,
or the state — is the basis of a free and prosperous society.*

If you could create society the way you think it should be, what would that society be centered around? The individual? The church? The corporation? The state? Or the family?

Prior to the World Congress of Families II held in Geneva, Switzerland, November 1999, the Wirthlin Worldwide research firm surveyed people on five continents, asking the above questions. Persons in Europe, Asia, Latin America, the Middle East and Africa, and the United States, representing 19 countries and varied cultures,

Dr. Allan C. Carlson is president of The Howard Center for Family, Religion & Society and is the director of Sutherland Institute's Center for Community and Economy. Dr. Carlson founded the World Congress of Families in 1997. He has written for numerous publications including the *Wall Street Journal*, *National Review*, and *Intercollegiate Review*, and is the editor of *The Family in America*. He is the author of nine books, including *The Natural Family: A Manifesto* (Spence, 2007), which he co-authored with Paul Mero.

Paul T. Mero is president of the Sutherland Institute. Prior to his service at Sutherland, he was executive vice-president of The Howard Center for Family, Religion, & Society where, among other duties, he administered the Second World Congress of Families meeting in Geneva, Switzerland in 1999. A noted writer and speaker, Mr. Mero also worked in the United States Congress serving two conservative House members from 1987 to 1997. He co-authored *The Natural Family: A Manifesto* (Spence, 2007), wherein "The Fundamental Unit of Society" was originally published as Chapter Three. Copyright © 2007 The Howard Center for Family, Religion, & Society and Sutherland Institute.

religions, and socio-economic backgrounds, formed the survey mix. The results cut across these cultural divisions. The Wirthlin team reported widespread support for marriage and family:

Nearly eight in ten respondents (78%) worldwide agreed that “A family created through lawful marriage is the fundamental unit of society.” Almost six in ten (57%) strongly agree with this statement. Only 15% disagree, while 7% are neutral or don’t know.

Opinion regarding this statement is so universal that majorities in every region of the world agree. The only region where support is not over 70% is in Europe, where 54% agree and 30% disagree.

Not only do most people acknowledge that the family is central to civilization, they prefer it that way. When presented with the hypothetical possibility of creating their own society and asked to identify which institution would be central components of that society, 64% — including a majority from each region — say they would center their society around the family. Others would center their society around government (17%), the individual (17%), the church (12%), or the business community (10%).¹

In short, the global consensus is that the natural family is the fundamental unit of society.

Of course, alternative possibilities exist, each with its own story and claims. The table on the following page offers an overview of their respective qualities. We consider them here as ideal types.

THE STORY OF THE INDIVIDUAL

A lone man in his own wilderness. He wakes to a morning of his own making. He surveys his environment and sees only possibilities, an extension of dreams from his sleep. The only other person in view is the man in the mirror. The day is his to capture and conquer. There is no one to get in his way. No one to interfere. No one to cast judgment, to impose a threat, to make afraid. Just a lone man with limitless imagination to claim the day.

	INDIVIDUAL	FAMILY	CHURCH	CORPORATION	STATE
SOCIALLY	Atomistic	Small group autonomy	Parochial	Darwinistic	"Common good"
CULTURALLY	Narcissistic	Generational	Insular	Class-oriented	Multiculturalism
POLITICALLY	Utilitarian	Democracy	Theocracy	Meritocracy	Statism
ECONOMICALLY	"Invisible Hand"	Altruistic	Communal	Transactional	Central Planning
SPIRITUALLY	Self	Stewardship	Piety	Profit-seeking	Secularism
PRONOUN	Me	We	Us	Our	It
BOOK	<i>Looking Out for #1</i> Robert Ringer	<i>The Quest for Community</i> Robert Nisbet	<i>The Institutes of the Christian Religion</i> John Calvin	<i>The Rise of Industrial Man</i> Peter Drucker	<i>The Social Contract</i> Jean-Jaques Rousseau

Copyright © 2009 Sutherland Institute

He will ponder in the still of the morning, “Should I go fishing? Should I build a house? Should I comb my hair? Should I invent a cure for cancer?” The mattress upon which he still sits feels very comfortable. He could just lay the day away. There is no pressure to do anything. He might be tempted to act basely. There is certainly no other person for whom to do anything. There will be no one calling him, no one knocking on the door, no mail to open, no one to impress.

The world he meets he faces alone. He will cry alone and face sickness alone. Life has very little meaning because, for him, life has very little contrast. While he might smile, he will not feel joy. While he might weep, he will not feel sadness. The lone man cannot provide meaning, context, or definition to his life. His perspective is one-dimensional. His ideals, if any, are dull. The lone man might do anything but he will rarely recognize what he has done.

But even a lone man must survive — his one true purpose in life. He must be fed. He must be sheltered. He must be safe. Furthermore, he might choose to be comfortable, as he has been in the bed of his own making. He begins the day with “must” and then moves on to “might.”

Happiness? A full belly. Progress? The sure prospect of a full belly. Safety? Protection from the elements. Comfort? Protection from the elements by degree. And so he ventures out of bed in search of survival. His quest is simple — what will it take to stay alive today? Or, on a good day, if he is motivated, his quest might include a larger thought — what will it take to stay alive this week? Or, stumbling upon a degree of comfort, how can that level be maintained?

In an isolated world, our lone man is truly on his own. As if booted singly from a terrestrial Garden of Eden, he looks warily at the trials of a celestial world facing him and sees only a vast nothingness. Or, undaunted, he might instead see unlimited resources and no one preventing him from consuming them. Either way, he is both captain and king of his destiny, not to mention both slave and laborer.

There is a little of the lone man in all of us. It is what makes us selfish, narrow-minded, impatient, prideful, carnal, and otherwise self-absorbed. It also can drive us habitually to get what we need and want out of life. In consequence, any society focused chiefly upon the individual will soon confront a unique set of problems and promises.

While few people actually live isolated from other human beings, the ideology and psychology of atomistic individualism creates social frameworks of isolation. That is, amidst the masses, the atomistic individual is hard pressed to cope effectively day in and day out because at every turn his internal wiring runs contrary to social conformity and function. And even when conformity is in his best interests, he fails to recognize that beyond mere conformity lies cooperation; self-interest simply offers no perspective on such cooperation, let alone the productive values of a working community. Again, he is left to operate within a social framework without understanding its meaning, context, and definition.

Not conforming to the natural order around him nags his individualist psyche. “Why is my approach wrong? Why must I conform? Surely I am not isolated. I have friends and associates — those other individuals who help me get what I need and want out of life. Besides, I am free and they are free and together we are a free people. In fact, our society is both free and prosperous because it is inter-

dependent, requiring all individuals to work toward their own best interests, and cooperative, for without each other we would truly be left a lone man in our own wilderness.”

Within this psychological framework he is economic man, if he is anything. This is his obvious strength to a society based on the individual. His survival instinct drives him to care for himself. As an economic creature, he says that when everyone is looking out for his or her own self-interest, such selfish behavior will also serve the interests of others. A man who knows how to build homes needs to eat while another man has food but no home. Their respective self-interests allow them to trade a skill for a commodity and satisfy both needs. This “community of self-interest” seems to have all of the answers. It seems to explain all sorts of behaviors, social as well as economic. Individuals marry out of self-interest; they commune spiritually out of self-interest; they organize politically out of self-interest; they build societies out of self-interest. The “invisible hand” really seems to work!

So we ask, if everyone is getting what they desire out of self-interest, then why not build a society on the fundamental unit of the atomistic individual? The answer to this question might be surprising to some people; no doubt it will sound as simplistic as its counter-claim. The answer is that such a community of self-interest cannot preserve its freedom, over the long haul.

The individual is incomplete. And a society of individuals is just as incomplete. Contrary to its proponents’ claims, a society based upon the individual is not like a puzzle in which all of the pieces come together neatly to complete a picture. When everyone has a different vision, there is no vision. Rather, the picture it creates is vague and chaotic. While this situation offers incentives for every person to work out the possibilities in each new reality, it fails to offer peace, stability, order, and function. It offers its participants a very fragile house of cards built to collapse in the end. All persons become laws unto themselves, self justified, because every vision has some merit.

The key to understanding individualism’s innate weakness is to grasp its innate strength: such individualism is simply a choice, as to

how each of us will live in an existence that transcends our individual life. It is a choice of how to be purposeful and how to belong. And this is why we value our individualism so highly — it is the pathway to other possible lives. We value our ability to choose, but to choose something more than the self, not something less. This is especially so as we contemplate building a society.

In a world where the individual is the fundamental unit, people are socially isolated. Culturally, they are narcissistic. Their art and literature reflect their self-absorption — a world of autobiographies and self-portraits — literally reflective but not genuine. Politically, they are very utilitarian or, we might say today, libertarian. As the conservative scholar Russell Kirk once observed, “We flawed human creatures are sufficiently selfish already, without being exhorted to pursue selfishness on principle.”

To conclude this brief analysis of how the story of the individual contrasts with the story of the family, let us turn to a geological metaphor. Sand is nothing more than atomized stone. Though substantial in the aggregate, it is no more than the accidental product of stones and shells as they slowly disintegrate.

Individualism as a force is no more than the atomization of the family unit. Individualism is the sand; family is the stone. A society built upon the foundation of atomized individualism will never be able to sustain the weight of human experience. Family is the fundamental unit of society for good reason; it is the stone upon which humans can rely even as waves break upon it. We might think we can build our human institutions from the sand of individualism. However, at some point, no matter how high we build our sand castles, they dissolve in the first real storm.

THE STORY OF THE CHURCH

The church, meaning here an organized structure focused on the worship of God and the promotion of the faith, is another potential center for social organization. As a reflection or, perhaps, a conduit

for the divine, the church can claim a special authority. This might even include privileged communication with the Creator.

Relative to individuals, the church can motivate persons toward sacrifice, through the subordination of selfish interests to a common creed. With an ultimate grounding in faith rather than in reason, the church can show a special authority and mobilize its followers toward effective action.

Concerning morality, the church is ideally suited to bring out the good (or at least the better) in all people. It inspires and channels charity and good works, which can alleviate the needs of the poor, the sick, and the suffering. It creates educational structures that rest on solid virtues and teach wisdom and heritage. By insisting on self-discipline, the church motivates its followers to good health and social stability. As a community of saints, it inspires happiness.

Relative to the economy, the church transcends the narrow views and selfish demeanor of *homo economicus*. The divine economy has a different purpose and structure, where the marketplace is irrelevant and money holds no value. Instead, the church relies on altruism, or selfless giving based on love and duty. Rejecting raw materialism, it can focus instead on matters of the spirit. In place of money, the church delivers compassion, charity, and personal care.

Regarding order, the church holds to an orthodoxy that changes only slowly, if at all. Adherence to core doctrines alleviates uncertainties, doubts, unhappiness. Rejecting rival truth claims actually frees individuals to live in *their* version of truth, with a certitude that brings inner peace.

All of these qualities reinforce the potential role of the church as the fundamental unit of society. However, on further examination, such a claim falters before the lessons of history, and of scripture itself.

Regarding the latter, the Book of Genesis — sacred to Jews, Christians, and Muslims alike — clearly show the *family* as pre-existing the church. The creation of humankind in the image of God, “male and female created he them” (Genesis 1:27), the admonition that they “be fruitful, and multiply, and replenish the earth” (1:28), the charge

that a man “shall leave his father and his mother and shall cleave unto his wife: and they shall be one flesh” (2:24), and the conception and bearing of children (4:1-2) all occurred well before men “began ... to call upon the name of the Lord” (4:26).

We also have an historical record of attempts to build a City of God on earth. Many of those that worked for a time were marked by a modest size and geographic isolation: the Massachusetts Bay Colony of the early 17th Century; and the Amana Colonies of Iowa and the United Order of the Mormons, both founded in the 19th Century. Such experiments worked, and even thrived, for a period of time. Eventually, though, they integrated back into a larger and more complicated social order. In addition, some small experiments in building a City of God ended in apparent exploitation and violence: remember Jonestown in Guyana or the Branch Davidians in Texas.

Of greater import have been efforts to build national or imperial projects premised on a practical union between state and church. The Holy Roman Empire of Charlemagne, the Hapsburg Empire of Charles V, the Ottoman Empire of the Caliphs, and the contemporary Kingdom of Saudi Arabia — all can claim impressive achievements and world-historic influence. And yet, all have proven vulnerable to another force: dissent. The close union of church and state mandates the steady suppression of heresy. In Medieval Europe, violent campaigns targetted the Albigensians, the Hussites, and others. The Ottomans allowed Jews and Christians to exist as tribute-paying communities, albeit stripped of political influence and unable to proselytize. The Saudis prohibit any non-Islamic activity on their soil.

Such structures cannot survive in the modern world. They are incapable of accommodating free thought, innovation, diversity, or real democracy. The Holy Roman, Hapsburg, and Ottoman Empires are gone; the Kingdom of Saudi Arabia now falls victim to its internal contradictions. Indeed, the pervasiveness of organized religion in this world actually proves the unlikelihood of a city of God — too

many gods, too many prophets, too many doctrines, and too few like-minded adherents.

All the same, a city of God can and does exist in the family. The family is a perfect home for God. Organized religion then becomes a true complement to society and an effective facilitator of religious expression. In the family, religious expression has no limits and differences among families and how they are expressed become strengths for the community. The family provides the best opportunity for religion to flourish — it allows for diversity of belief and encourages communities of belief. It provides a proving ground of faith for children to test religious values and ideals safely.

It is true that religious expression in some families is a hard and austere experience for children. However, the alternative — the lack of any religious experience — usually sends children into an emotional and social tailspin.

The power of religious faith centered in the family comes as no surprise. The family is prior to organized religion. The latter was created, in part, to serve the former. The story of the church recognizes an ordered universe. The family is at the center of that universe. It is the nearest point to heaven in our fallen world.

THE STORY OF THE CORPORATION

Unlike other possible organizing units of society, the story of the corporation is short, and it comes in two parts: the transaction and the money. To establish the corporation as the fundamental unit of society is to base society's entire existence on the free exchange of goods and services and the quest for wealth. We might be tempted to say at this point that neither purpose is bad in and of itself, but we should reserve judgment on this point because it will become crucial in discerning exactly why the corporation fails as a fundamental unit.

Like the story of the church, the story of the corporation can be framed by the walls it occupies. It too has its cathedrals and towers, its prophets and seers, its organization and policies. Even

so, uniquely different within this particular story is the identity of those it serves. Almost uniformly throughout the world, the corporation is established with a governing board of directors whose sole purpose is to serve its shareholders, and to do so in only one way: to make them money.²

It is rather an ingenuous model. Shareholders, the investors and owners, willingly part with their capital and place it in the hands of the board of directors. They do so with confidence because the directors are capable men and women who will care for the operation and maintenance of the business. The shareholders (again, the owners of the business) are not burdened with the day to day management of their investment. They simply turn their money over to the corporation and it serves them. Moreover, the shareholders typically are not liable for anything that goes awry. They risk one thing and one thing only — their money.

But the ingenuity of the model does not stop there. The corporation is a legal person, in some respects independent of its owners. In fact, its owners, even the most important among them, will come and go, die even, and the corporation is structured to outlive them all. A corporation is a person and, in the United States as in most of the Western world, it is protected by due process and equal protection. It has rights.

Its story can be summed up neatly by United States Supreme Court Chief Justice John Marshall:

A corporation is an artificial being, invisible, and existing only in contemplation of law. Being the mere creation of law, it possesses only those properties which the charter of its creation confers upon it.... These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality and if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, so that they may act as a single individual. A corporation manages its own affairs, and holds property without the hazardous and endless necessity of perpetual conveyance

for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being....³

Immortality. That is a remarkably solid basis for the future. It has a charter, a purpose, and functions for its associates to fulfill. It is organized and governed strictly through its by-laws. Better yet, it is single-focused, uncomplicated. All the men and women involved know their roles, for despite a necessary division of labor within the corporation, their varied tasks collectively become one — to make money.

But there is something more to the story of the corporation than just money. This story is incomplete without also understanding its remarkable allegiance to transactions. Advocates of the corporation often defend this allegiance as essential to the integrity of the free flow of goods and services. Even in competition among its own kind, corporations will stand unified in defense of this free flow. The freedom to transact should not be encumbered. If making money is its primary object, then the ability to transact must be held inviolate. In many respects the corporation represents liberty — the power to transact freely, to work, to make money, and to prosper. Add to this liberty its organizational prowess and a keen argument could be made that the corporation is an ideal basis for an aspiring society.

However, while the corporation has blessed the economies of men, it would be extremely short-sighted to assume that it has the wherewithal to carry the weight of being the fundamental social unit. Indeed, its problems here are many-fold, not the least of which is the counter-social behavior for which it creates incentives.

Withhold judgment for the time about the innate goodness of the corporation's two purposes, maintaining complete freedom of transaction and making money. After all, making money through honest work or trade is a good thing and transactions facilitate it. However, the innate goodness of this two-fold purpose does not ex-

ist in a vacuum. It must compete with other reasonable purposes. When Milton Friedman said, “the business of business is business,” he authoritatively sided with the two-fold purpose to the exclusion of others. For instance, the business of business is not promoting social welfare. The business of business is not maintaining a family. The business of business is not even primarily advancing the well-being of its employees and administrators. What the esteemed economist was saying is that the business of business is to make money for the shareholders. In a society so organized, the work of care is done by those who do it for money. Those without money receive no care.

The other half of this dual purpose appears in a similar context. The transaction facilitates the making of money and the freer our transactions, the more money that can be made. It is important to note that for the transaction to maximize its value, it must be completely unrestrained. This is important, for it reveals that the transaction alone is the value, not what is being bought and sold. It recognizes no distinction between oranges and guns, no distinctions between human flesh and poultry. The price of a good or service is a function of a corporate “bottom line,” but the real value of anything is whether or not it can be part of a transaction. If distinctions are drawn between commodities, it is not the result of some kind of corporate discernment, only some external proscription. There is no incentive for a corporation to proscribe, for instance, the sale of pornography. It is a commodity like any other to be bought and sold. Such a prohibition must be handed down from elsewhere in society.

Initially we held to the proposition that to establish the corporation as the fundamental unit of society would be to base society’s entire existence on the free exchange of goods and services and the quest for money. And then we were tempted to say that neither purpose was bad in and of itself, but that we should reserve judgment. This is why. Like the goodness of the individual, the goodness of the corporation depends ultimately on choice — a choice as to how we will lead and conduct our lives according to purposes much greater than simply making money and trading. However, life itself

is about more than making money. Any healthy society will reflect this broader definition of life. As such, the corporation is only a part of this broader life, and certainly not its center.

Were we to place the corporation at the center of our society, we would find ourselves in a world lacking in order, beauty, and grace. We would find ourselves competing with other family members and neighbors in a setting of social Darwinism that would divide rather unify. Our culture, too, would be fiercely competitive — creating a Marxist portrait of haves and have-nots painted not only on an economic canvas but everywhere — an environment in which money alone made something right, or its lack made something wrong. Politically, we would function in a perverse meritocracy, claiming to reward meritorious achievement but, as in *The Richest Man in Babylon*, only finding a standard in our ability to make and handle money. And imagine our spiritual lives — the profit motive as religious doctrine?

We see the great value of the corporation. It creates jobs, wealth, and many other benefits. We recognize that money is required in this life and that we must have sufficient sums for our needs. We appreciate the liberty afforded transactions within the story of the corporation. We see the value in creating incentives for industry and competition.

What we do not see is why these qualities should be the center of our lives and the foundation upon which we build everything else.

The story of the corporation is much too narrow to drive a healthy society. Only the natural family can do that. As much as families can benefit from the wealth generated by corporations, the value of such surplus does not even come close to the bounty required for lasting peace and happiness in a context of ordered liberty.

THE STORY OF THE STATE

Try to paint a picture of the state as the fundamental unit of society. Would it look like the *Republic*? *Leviathan*? *Animal Farm*? 1984?

The Communist Manifesto? Mein Kampf? A New World Order? Or would its shades and hues be more subtle? Like perfectly planned communities? Government schools? A social welfare program? Public mass transit? The New Deal? The Fair Deal? The Great Society? Or would such a portrait be a series of revolutionary representations? The French Revolution? The Russian Revolution? The Asian genocides from Mao to Pol Pot? Mass starvations in Eastern Europe? The gas and torture chambers in Nazi concentration camps?

Of course, these portraits beg a very important question. Is there one among them, or any other we can recall, that depicts a productive, healthy, peaceful, and joyous picture of community life and personal freedom? And if not, why?

The story of the state should not be confused with the need for government. Purposeful lives require governing and, when formalized, we call such a task government. There is self-government, family government, contractual government, local or neighborhood government, state or provincial government, federal or national government, and even international government. The story of the state actually separates the spiritual from the physical, essence from matter. This story is the tale of a harsh reality — unforgiving, uniform, relentless, given to extremes, and as intrusive as a small piece of stone in our shoe.

This story is not a pretty one, no matter how it is told. But it always begins in the same place — the quest for perfection. And it always ends the same way — in failure. The narrative in between goes something like this.

This abstract state lies in waiting, the would-be servant of the people. It will do no more or no less than what is requested of it. Of course, it is eager to help. It is just waiting to be asked. Not impatiently, mind you. It understands its place, role, and functions perfectly. It would never pretend to assume a responsibility not delegated to it by the people.

However, it does observe the world around it. It sees disorder and chaos. It sees need and want. It sees unhappiness and disease.

It sees starvation and poverty, classes and conscience, waste and destruction, greed and envy. It sees the crushing burden of tradition. And it asks why such things must exist? Surely it could be called upon to intercede, to fix what is broken. After all, it has the power to fix anything. So there it sits perplexed, but patient — why are the people not calling on it to help?

It sees that there is and always has been a sinister force behind nearly every social problem. This conspirator against perfectability goes by many names — agency, free will, liberty — but the state knows it by its most pejorative expression: the freedom to choose or, simply, choice. It wonders why the people cannot see this self-evident problem. To be able to do what you want to do is to possess exactly the kind of power needed to correct so many problems. Yet, to see that power reduced to the individual whims of the people is inefficient. People could be so much better served by letting the state exercise that power by dictating all decisions. In fact, allowing this control only makes sense; it is efficient.

Alas, the state's patience pays off. Finally, a few people emerge who see the world the way it does. Better yet, they see the value of the state in finding solutions to their various problems. Slowly but steadily come the flow of requests for assistance. "People are much too different. What can the state do to help correct this inconsistency? People are not diverse enough. How can the state encourage multiculturalism? Some people have too much money while others go without the basics of life. What can the state do to correct this inequality? Surely some people are brighter and more intelligent than others. How can the state help the others understand what is good for them? Religious-based morality is too exclusionary. How can the state rid itself of any such influences? People are not morally sensitive to the circumstances of others. How can the state shape an acceptable public morality?"

The state feels liberated to do what it was created to do. It can help. Very soon, things appear to get done. The problems seem like they are being addressed. The trains run on time. The people are

grateful for answers to their problems, especially their money problems. The state is more than happy to step in to fill the inadequacies of the people.

Sooner rather than later, however, the apparent answers begin to fall short. The state struggles with more solutions. Perhaps not enough resources have been allocated to address the problem properly? Perhaps the right operatives were not in place to execute the “recovery plan”? Perhaps the people have not transferred enough authority to government?

Then the real answer emerges. People are the problem. Of course! Perfectability is not possible so long as people are allowed to choose activities and behaviors that run counter to the quest for efficiency. The state ponders the matter. It faces the ultimate dilemma — how does it effectively deliver to the people complete safety and optimal welfare without the ability to control their lives and decisions?

It is at this point that the story of the state turns ugly. This is the point of the final option — it must save the people from themselves and it must do so with rapidity and force. A helping hand becomes a back hand. The servant becomes the master. The state becomes the fundamental unit of society. The people are now the problem; all will suffer; some must die.

Choosing this path is deceptively easy. After all, the state is only trying to help. And, by the way, the people asked for the help. The state is only doing what the people asked it to do. The requests were reasonable enough — work for the common good, for decency, for the common man, for the provision of order, and for the unity of the people. We must all live together in peace. This can only be accomplished if the state is allowed to fulfill its purpose, and if people are not allowed to choose their own existence.

This story of the state has been lived and relived, tried over and again with the result always being failure. To place the state as the fundamental unit of society is to dehumanize people. No longer are people the reason for, or the purpose of life. Perfection becomes the end game — a game lost even before it is played.

THE “MIXED” UNIT

In answering our initial question — “if you could create society the way you think it should be, what would that society be centered around?” — we might be forced to ask another obvious one. Must we choose just one axis? This is a very reasonable question, reflecting an obvious sentiment. Perhaps there is a more eclectic, menu-driven way of settling upon what combination of center-points actually work best. Why must we be forced to choose one over another? After all, we need each of these organizing principles in our lives. So, if we need the strengths of each, why not craft a blended center-point taking the best from each? What is the result?

Let us define a center-point utilizing the primary strength of each (you can craft a mixed unit however you like using the matrix in the table on page 13): the economic power of the individual (the “invisible hand”), the cultural power of the family (traditional and generational), the social power of the church (communal), the spiritual power of the corporation (yes, spiritual power ... the “profit motive”), and the political power of the state (its coercive power).

Immediately, we run into a dilemma. The invisible hand runs head long into the coercive power of the state. And then the communal, or cooperative, sociality of religion, which asks people to care for others altruistically, runs up against the profit motive impelling people to act selfishly. Cut and paste, pick and choose as we might, we consistently face dilemma after dilemma. We discover a world of never-ending and frustrating conflict.

Perhaps this is the way the world is supposed to be, especially within democratic government. The give and take. The checks and balances. The selfishness of the individual held in check by the higher expectations of the church and the altruism required of family life. The obsessive/compulsive priority of making money through the corporation balanced against the broader priorities of the state. Perhaps it all works out in the end. Perhaps asking for just one center-point is not only unrealistic but unfair.

THE FAMILY UNIT

Actually, it is neither unrealistic nor unfair to demand that we settle on one fundamental unit of society. We are not asking that one path be chosen to the exclusion of all others. The reason that each organizing principle is a viable option is that each is so fully integrated into our lives. We are individuals. We do express religious faith in meaningful ways. We do enjoy work and making money. And we recognize that a modicum of order and submission is required to live safely and peaceably in community.

However, here is our claim.

Every strength of each potential organizing center is maximized through the filter of the natural family as the fundamental unit of society. The unique strengths of the individual are magnified within the context of the natural family. Religious life has greater meaning in this context. Work and earning money are given full purpose. And the state is more effective in its role when families are strong and autonomous. All of the other organizing principles become stronger when we base society on the natural family. The same cannot be said of any of the others.

All facets of life are enriched when we choose the natural family as the fundamental unit of society. Our social life is richer — we experience broad diversity within a context of stable familiarity. Our cultural life is richer — we are better able to take advantage of generational experience and the lessons of tradition. Our political life is richer — strong, autonomous families maximize the best functions of democracy. Our economic life is richer — we work with lasting purpose, cooperatively and altruistically, for others and not just for ourselves. And our spiritual life is richer — we are motivated to become our better selves as we give birth and nurturing to the rising generations.

The natural family is the key to the fullness of life. It does what no other organizing principle can do — it makes everything around it better, it amplifies the best elements of all other institutions. It is the foundation of ordered liberty.

ENDNOTES

1. The Howard Center for Family, Religion & Society, *Special Report: Results of a Global Survey on Marriage and the Family*. Prepared by Wirthlin Worldwide (November 1999). Some responded with two choices; hence the numbers total over 100 percent.
2. The authors recognize that, in the United States and a number of other countries, non-profit corporations exist.
3. *Dartmouth v. Woodward*, 17 U.S. 518 (1819).

The Physics of the Family: Why Families Don't Fall Down

Paul T. Mero



The same laws of nature that govern physical structures also govern familial structures — adherence to these laws will determine future lives, generations and societies.

The science of physics governs the integrity of all structures in the known Universe, and this includes family structures.

From a very young age, most of us were taught an important physics lesson through the fairy tale of the Three Little Pigs. You might recall that the Three Little Pigs lived initially with their mother (and, reasonably speculative, with their father for some time) in a comfortable brick home safe from the evils that faced them out in that Big Bad World. Of course, Mother Pig eventually told her sons that it was time for them to leave home to become the pigs they were meant to be. So all in agreement, the Three Little Pigs confidently left the safety of their childhood home and set their sights on building homes of their own.

We all know where the story takes us from there. Each Little Pig built himself a house. But while the first Two Little Pigs chose to indulge their passing fancies with merriment rather than focus on the fundamentals of home building, their brother, the one unselfish Little

Paul T. Mero is president of the Sutherland Institute. This address was presented in plenary session at the World Congress of Families IV in Warsaw, Poland, May 2007. Copyright © 2007 Sutherland Institute.

Pig, made the arduous sacrifice to build a home like the one he left behind. When their neighboring Big Bad Wolf came huffing and puffing only the house built like the old family structure withstood the torrent of abuse leveled against it. Clearly, the structures of the other two houses were ill-prepared for what awaited them in the Big Bad World.

People who naturally form families are challenged to turn houses into homes. Some parents choose to build houses made of straw — structures easily victimized by challenges of the Big Bad World. Other parents, perhaps parents with a little more self-control and focus, or even the added help of that second parent, build themselves houses made of stick — structures a bit more sturdy, a tad more protective, but ultimately, unstable ones postponing the inevitable destruction to come. Still other parents build houses made of brick — safe havens wherein individuals can be nurtured successfully and where the abuses of the world, though universal, common, tragic and often times devastating, have little or no effect.

Anyone can throw together stick and straw. Building with stick is easy and quick. It doesn't require much self-sacrifice. And as the First Little Pig demonstrated, a straw house allows even more time to pursue worldly interests. Fluff it, snip it here and there, and voila! It looks like a real house. It has a roof and a doorway and window openings. The façade is familiar. But without a solid foundation and lacking substantive building materials, the first good strong wind will turn it inside out. In other words, the houses the First Two Little Pigs had created were cheap imitations of where they had been reared and what they could have recreated if they had just made home building their highest priority.

The brick house of the Third Little Pig was irrefutable evidence of his commitment to the safety and security of family. It took so much more work. Bricks are rough, hard, and heavy to handle. Bricklaying is back-breaking work that combines endurance with precision and planning. It takes time and real personal commitment. Because of his sacrifice and preparation, the Third Little Pig built himself and the rest of his siblings a safe haven to last a lifetime.

As it so happens, there are natural reasons why structures fall down or stay standing. Every physical structure is governed by laws of nature and its existence can be explained through the science of physics. Family structures are no exception to any of these laws or science. There are scientific reasons — quantifiable and empirical — why certain families fall down and why many others stay standing.

When we think of families rarely do we think in terms of their physical makeup or how they are structured. All of us do what we can to survive day to day. Human relationships are so heart-felt and emotional that to consider them in terms of structure seems to dehumanize them. So when families fail, and society is left to pick up the pieces and clear the rubble, we don't often prescribe rational answers to the questions of structures. Such was the response from medieval masons, carpenters, and shipwrights who, when asked why their physical structures remained intact, might typically have responded that the hand of God was responsible for keeping them standing or afloat. Such sentiments led to ceremonies, sometimes celebratory, sometimes superstitious, such as the christening of a ship with a bottle of champagne or the laying of a cornerstone by the chief citizen of a community.

Ceremony and sentiment do not explain science. Buildings stand, ships float, and airplanes fly for specific scientific reasons. So, too, do family structures survive or fail. As difficult as it might be for non-scientists to study physics, the corner of the world of physics dealing with structures has been required to build the vast cities in which we live and through which most of the world's relationships are transacted. Again, because of emotions, we prefer not to think of families in honest and objective terms. This exercise is often tiring and painful. It requires introspection when families fail and humility when they survive. It requires learning from our mistakes and honesty in our reflections about the natural human experience. And just as ceremony and sentiment do not explain the survival of physical structures, neither do ideologies explain (or excuse) the physics of natural family structures.

We might wish away gravity; indeed, we might create a whole political movement toward that end. But such an effort would be futile against the laws of nature and science. Ideology is defenseless against truth, and ideologies denying the strength and durability of the natural family structure are as delusional and arrogant as the Babylonian effort to build a tower to heaven.

To understand the physics of the natural family we begin by understanding the scientific intersection of both structure and material. We cannot talk about the one without talking about the other, and there is no clear-cut dividing line between the two except that we know that both must be considered. Referring back to the Three Little Pigs, straw, stick, and brick are materials and each created structures whose integrity was determined largely by the materials used.

The same is true in families. Even the best family structures can fail to sustain the load of life when its materials (its family members) are too weak. We also know of family structures that defy the odds primarily because the material utilized is exceptional. But, alas, “odds” do not really exist in science. If an unconventional family structure survives it will do so within certain bounds and limitations and, probably, only up to a certain point of force against it. So material is as important as structure — the two go hand in hand.

The next thing we must understand is that structures, such as the natural family, are never indestructible — that is, there is no structure that can withstand all forces set against it. There exists a force in nature that can topple, spill, or break any structure. When we speak about structures — their strength, integrity, or endurance — we must be very clear to understand that we are not speaking of anything impervious to failure. We are, in fact, speaking about the ability to carry a load, handle stress and strain, maintain resiliency under pressure, and bend but not break. The power of the natural family is just this: it handles the forces set against it, natural and man-made, not perfectly, but better than any other family structure we know.

The analogies between physical structures and family structures are numerous and often exact, and every analogy begins by

asking a question that goes something like this: why don't people fall through floors?

Before I enumerate a few answers to this question by analogy to family structure, let me give you a brief example of what I mean. There is a law of physics that governs why I can stand before you and not fall through this floor.

Basically, there exists an exactly equal and opposite force pushing back against my weight on the floor. It is no small point of fact that the floor would give way to my weight if the pressure I applied to the floor, all things being equal, were simply one pound of force more than what the floor pushes in return. If I weigh 200 pounds and the floor can push back enough force on me equivalent to only 199 pounds, the floor would give way from under me.

In other words, for me to stand here comfortably and reliably to address you there must exist a complementarity between the force of my weight and the force of the floor. Natural family structures share this same complementarity between a man and a woman within the bonds of marriage. Again, I would qualify my claim — this complementarity, or balance, assumes many things including the right mix of material to create the structure. For instance, what if my family structure were comprised of two men or two women? The complementary nature of the materials combined to create the structure would alter the relationship between the structure itself and the external forces applying pressure to it.

Under these altered circumstances, not only would I fall through the floor but an alternative family structure would be weakened, not able to bear a full load of pressure against it. The complementary nature of the natural family structure, assuming the best materials, is a stronger, more durable structure.

All structures and materials change shape, or deflect forces, when they are called upon to bear a load. When an apple tree is laden with fruit, or with heavy wet snow, its limbs bend. In physics, this effect is called elasticity and regards the relationship between forces and how structures deflect those forces. The apple tree deflects the force of the

weight of its fruit or snow by bending — and by bending it goes on to live and produce fruit for another season.

The natural family structure is highly elastic. Single-parent homes are not very elastic. That is, the natural family structure can bear tremendous loads of force while bending but not breaking. A single-parent family structure is not equipped for the heavy loads of force life will impose upon it. And we can scale this result not only to family structures but to communities of families. Materials comprising structures are stretched or contracted constantly. Larger, more tightly knit, families reaching across generations are able to bear heavier loads. A community of such families will be stronger than a community of families comprised of alternative structural materials and non-complementary structures. On a much larger scale, this same science of elasticity works as well for nations or civilizations. Highly elastic family structures will endure the ages; less elastic family structures will die off through the ages.

Elasticity is important in the physics of structures. The higher something's elasticity, the more likely that something will recover its original shape after bearing a heavy load. This is a highly desired, if not essential, quality in family matters. We want to be able to bear the burden of the loss of a loved one, or sickness, or financial hardships, or the forces required of successful enterprises, and still be able to reclaim the balance and stability of our original family structure. Of course, some natural materials such as plastic or putty have innate properties that do not allow them to reclaim their original form. Likewise, the character of some people is like putty under pressure that never recovers from hardship, thereby threatening the integrity of the whole family structure.

We also can analyze structures at any given point within the material. So, rather than looking at the whole of the structure, we can look at specific points of stress and strain in the materials comprising the structure.

Stress is a very human experience. The pressures of the day can create so much stress within us that we can actually become sick as a

result. In terms of structures and materials, stress is how hard a material is pushed together or pulled apart by external forces. It is interesting to note that stress actually can bring things closer together — of course, our coming together motivated by stress is not always in that loving sort of way, but it can be in an ultimately constructive way.

Strain concerns how far things are pulled apart or how close they are pushed together. We can see both stress and strain in a piece of chewing gum. If we pull the gum from both ends the material will stretch; if we pull hard enough the material will break. The amount of force we apply in stretching the gum is called stress; the distance we pull the gum without breaking is called strain. For us humans, stress comprises the daily forces that stretch us, while strain comprises the inner strength we have to stretch without snapping. Stress and strain are two different forces. The former is external to us, the latter is internal to us. What is most relevant for our analogy to family structures is that the good ones are comprised of materials that can handle the most stress and bear the most strain of daily living. Families deal with many stresses. They might face financial stress when a member of the family loses their job. Families often cope with stress from modern cultures that counter the values being inculcated from within our homes. And then we strain as families to counter these stresses by trying to reinforce our family structures.

When we speak of the strength of any structure we are simply describing the load it can bear. On the other hand, the strength of any material is equivalent to the stress required to break it. What we learn from the science of structures is that the best ones will be flexible and strong. They will bend but not break, and they will return to their true form after being tested or stretched. The human experience is completely analogous to this science.

There is a purpose in discussing family structures. All of this talk of stress and strain, elasticity and strength, is only means to an end about structures. Just like with our efforts in constructing buildings, ships, and airplanes, our study of family structures matters because we seek the most safe and effective families we can design. Champions

of the natural family conclude that nature is a much better engineer than man or the state because nature provides more give, or latitude, for us to live our lives in the best manner possible. It is nature, not man or state, that builds elasticity into structures and flexibility into materials. Nature is the best architect. It routinely works to maximize the ability of structures to carry the biggest loads.

Man, on the other hand, seems to have a mad penchant for perfectibility. It is no small coincidence that in the social sciences we refer to these people as “social engineers.” It is interesting to note that the ability to carry a load is largely dependent on two factors: the uses made of it and the forces it has resisted over its lifetime. A tendency among some engineers seeking to cut costs and maximize efficiencies is to tamper often with the very factors of structures that keep them safe and strong over the long run. Essentially, these engineers strip structures and materials of the very qualities that make them strong because they believe that perfect structures are unbending and immovable. Structural disasters can be frequently attributed to engineers seeking perfectibility when, all along, they should have had more trust in the science of structures derived from nature.

With nature's laws as the standard by which the integrity of all structures and materials can be measured, it is not surprising that man-made structures and materials would have flaws. Humans love to put holes in stuff to tie materials together and, if they are men, the more holes the better! The only problem is that holes and creases and cracks come with a price — they can create irregularities. All building materials have what are called “stress trajectories,” that is, lines of strength that pass stress from one molecule on to the next to properly bear a given load. So guess what happens to a stress trajectory when you punch a hole in any building material?

Families have their stress trajectories as well. Punch a hole in a family, that is take one family member out of the natural family structure, or preclude intergenerational bonds or the complementary constructs of supportive public institutions, and that structure will be weakened. We can attempt to patch up our familial holes but, as

physics would have it, adding materials to weak points can also cause stress concentrations. In other words, an artificial patch can be very dangerous because a patch gives the appearance of safety while maintaining the structural weakness. The operating rule is that “partial strength produces general weakness.” This is because a patch does not relieve the breach in a stress trajectory nor does it solve the problem of a stress concentration — in other words, a patch is never as strong as the original material.

Before I close my remarks, I would like to touch on one last aspect of the science of structures, an aspect called “strain energy.” It is not enough to know how and to what effect structures and materials are exposed to stress and external forces. We need to know how to manage and withstand them. As I mentioned earlier, strain is an internal variable measuring the amount of pressure we can take before we pop. We manage strain energy to avoid cracking or even exploding. Ideally, we want to dissipate our strain energy before it, too, acts against us.

We know that a certain amount of stress can break us, but it can only do so if we let it by allowing our strain energy to build uncontrolled. Let me give you an example of what I mean. Did you realize that you can break a bow without shooting arrows? You can break a bow by not putting it to good use. A bow stores kinetic energy and that energy is typically released every time the bow shoots an arrow. When a bow sits idle it stores kinetic energy and some of that energy is released over time through small cracks within the material of the bow itself. Left idle long enough and the bow will be rendered useless.

Strain energy is a self-destructive mechanism. All elastic substances face this dilemma. Humans are elastic and when we do not fill the measure of our creation or act according to our nature, we, too, can crack or break even without any external force being applied to us. I would argue, for instance, that the exercise of building a natural family enables individuals to avoid the self-destructive influences of unused energy. The culture of individualism is narcissism and it

is one self-destructive influence among humans that in non-human structures we call strain energy. If a person is not striving to create a natural family structure, there is a high probability that that person will become self-destructive. In Utah, we have a saying that an unmarried man over the age of 30 is a menace to society. This local saying embodies my point.

Nature has offered us a solution to strain energy. We are able to transfer energy throughout a material thereby mitigating its stress concentration. In the architecture of our physical structures we can do this by creating joints to transmit load from one part of a structure to another. Interestingly for us humans, joints seem to do their job best when their bonds at the point of contact are substantial. The “overlap” of the joints is not as significant as the point of contact between the joints. This is analogous to our relationships with the institutions of civil society such as churches, local neighborhoods, voluntary charitable organizations, and the free market. That families overlap with these other civil institutions is not quite so important as is the significance of the bond that families have with each of them. If the bonds (or joints) are significant enough, these civil institutions can help families share the load of daily stresses thrust upon them.

By the way, it is interesting to note that governments are about as helpful to families as they are in building good structural joints. Author James Gordon shares a story of government involvement in ship making,

The great skill of the old shipwrights and millwrights lay in somehow combining sufficient strength for safety with the modicum of flexibility needed to allow for the ‘working’ of timber. The older shipwrights erred on the side of flexibility, and, though their ships were often excessively leaky, they seldom actually broke at sea. It required the administrative abilities of modern war-time governments to produce wooden ships which really did fall to pieces.

Troubles with joints in ships and aircraft were a fairly prominent feature of both the World Wars. During the first war the Americans built a large number of wooden ships, both steam and

sail, frequently by unorthodox methods; and many of these ships broke up. In the second war they produced even greater numbers of welded steel steamers, of which an even higher proportion broke, either at sea or in harbor. (J.E. Gordon, *Structures: Or Why Things Don't Fall Down*, New York, NY: De Capo Press, 1978.)

Yes, our natural family structures can be as “leaky” as the product of old shipwrights, but they have proven to hold together on the open seas. Government ship projects, built “frequently by unorthodox methods,” rarely held together when needed most.

A second way to transfer energy throughout a material thereby mitigating its stress concentration is called “resiliency.” A fascinating principle of structural science is that the same force that can break a short piece of string can break a long piece of string, despite our intuition that the longer piece of string is stronger. But the longer piece of string does have one advantage: a longer piece of string has greater elasticity and can stretch further under a load thereby reducing the stress of a sudden pull. In other words, the longer piece of string is better able to store strain energy under a load.

The resiliency in natural family structures works the same way. We might call this resiliency our “intergenerational bonds.” Maintaining intergenerational bonds is the long piece of string. It enables a family to share the load of daily stress. Every young mother appreciates the extra set of hands from her mother to grandmother to great-grandmother, and every young father can appreciate the wisdom, counsel, and even financial assistance of dad, grandfather, and great-grandfather. Throw aunts, uncles, and cousins into the mix and that long piece of string becomes truly resilient.

I have not said a lot about the nature and quality of particular building materials such as steel, wood, iron, nylon, or plastic. Each material has its strengths and its weaknesses. So, too, do individual members of a family structure. There is an interesting relationship between human muscles and human tendons. Muscle mass is a soft tissue. Its value lies in its ability to shorten itself creating tensile force

by pulling actively. But it is not a very strong material. To make muscle strong in its operation it must be tied to solid bones by tough and inflexible tendons. There exists an ecology of strength within the human body that human structures must also emulate. Lasting family structures require exceptional material strength, and this material strength among family members is comprised of moral character, virtues, and reliable behaviors. Each part of the family structure must be able to rely confidently upon the other parts to comfortably bear the stresses of life.

In closing, I would challenge all of us to assume the material make-up of a child. The bones of a child are not terribly brittle; they are strong and tough but not stiff. Young children, on the whole, bounce but don't break. They represent the archetype of a durable family. Jesus Christ once counseled his disciples to humble themselves and become as little children, "submissive, meek, humble, patient, full of love, willing to submit to all things which the Lord seeth fit to inflict upon him, even as a child doth submit to his father." (Mosiah 3:18,19, *Book of Mormon*)

The natural family structure represents the best familial structure science and the laws of nature can offer us. It is flexible and resilient. Its component members are complementary and form an efficient ecology of service and support. Its "long piece of string" — its inter-generational bonds — helps to share the load of daily life. We know scientifically and empirically that the natural family is the best structure in support of personal development, educational attainment, physical safety for women and children, emotional well-being, and temporal prosperity.

As Allan Carlson and I have written in *The Natural Family: A Manifesto*, "Science, after all, is the study of the natural order."

Stone Tablets or a Golden Calf?

LaVar Christensen



*When Biblical guidance is set aside,
society must grope for authority
to resolve moral questions.*

A virtuous, informed and responsible citizenry is essential in America, where our laws represent the “witness and external deposit of our moral life.”¹ The wisdom of Socrates teaches that “the unexamined life is not worth living.”² Neutrality regarding the defining questions of our time is an illusion and not an option. “The only choice we have is to be consciously aware of our world views and criticize them where they need criticizing, or let them work on us unnoticed and acquiesce to living unexamined lives.”³

Consider the many alarming indicators that family life in these United States is not what it was a half century ago. The “changing

LaVar Christensen is an attorney, businessman, and trustee of the Sutherland Institute. From 2002-2006 he was a member of the Utah House of Representatives and was the primary author and chief sponsor of Utah’s Constitutional Amendment in support of marriage which passed and was ratified by voters in 2004. This essay was originally titled *Stone Tablets, A Golden Calf and “What God Hath Joined Together.”* It was selected by Sutherland Institute as the best paper by a public official in 2005, marking the 10-year anniversary of “The Family: A Proclamation to the World” issued by the Church of Jesus Christ of Latter-day Saints. The Institute invited public officials to address Paragraph Nine of the Proclamation: “We call upon responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.” It was subsequently published as a booklet. Copyright © 2007 Sutherland Institute.

times” have not been good for America. The scale of marital and family breakdown in this country since 1960 is unprecedented:⁴

- The marriage rate has declined by $\frac{1}{3}$ and the divorce rate has doubled.⁵
- More than one half ($\frac{1}{2}$) of all first-born children are born out of wedlock. In general, births outside of marriage have increased from 1 in 20 in 1960 to 1 in 3 currently.⁶
- Cohabitation among couples without marriage has increased 11-fold from under 500,000 to 5.5 million. Among those who choose to “live together” before marriage, the divorce rate is twice that of those who do not.⁷ Forty-seven percent (47%) of children now spend some of their first 16 years with their mother and her cohabiting partner.⁸
- More than 25% of all pregnancies end in abortion.⁹ (Approximately 1.3 Million per year. The number of abortions in this country doubled in the first seven years following the U.S. Supreme Court decision in *Roe v. Wade*).
- The number of single parent families has tripled.¹⁰
- A generation ago, 1 in 4 children would experience a parental break-up. It is now 1 in 2. Only $\frac{1}{3}$ of children in divorced families saw their father at least once in the last year.¹¹ This is a reflection of what is increasingly becoming a “fatherless society.”
- A *Washington Post*/Harvard study reported in 1998 that “76% of Americans believe the country’s values and moral beliefs have gone seriously off track.”¹²

Where is the moral outcry? Only limited, at best, it seems. Why? Because the historical meaning of “separation of church and state” has been changed and misapplied to effectively purge God and religion from all public debate.¹³ Thus, our culture is allowed to weaken and decline with only muffled resistance from what for generations was hailed as a “moral and religious society.” Laws are

changed (weakened) to legalize and sanction practices and ideologies that have long been rejected. Permanence, public virtue and order are expected to give way to self-indulgent theories of relativism and radical individualism in the deceptive and desensitizing name of “tolerance,” “fairness” and “diversity.” These liberal changes in our laws typically come from judges rather than the elected representatives of the people. This has the effect of trumping representative democracy. The result is a potentially standardless society where anything goes until everything is lost. Such was never intended by the Founders. As one scholar has written:

It is undeniable that marriage as we have known it is a declining institution. This is a moral disaster, not just an expansion of multi-cultural options... When Thomas Jefferson asserted that the function of the new Republic was to protect life, liberty and the pursuit of happiness, the last thing he had in mind was an egocentric dash for consumer goods and sexual pleasure, both of them acquired, if necessary, by violence.¹⁴

The hope of America as it is passed from one generation to the next lies not in its economic might or military power but rather in the life of its conscience. That is where we find the soul of American politics. That is what defines the true nature of humanity and gives life its ultimate meaning. Professor Jacob Needleman in *The American Soul: Rediscovering the Wisdom of the Founders*, writes:

Each aspect of the idea of America and much of what we can recognize as noble or hopeful in the American character draw strength from a hidden connection to the teachings of wisdom that have guided humanity throughout the millennia. And many of the distortions of the American vision and the American character can be seen as perversions of this timeless vision of human nature and its possibilities...

[We need to look] once again and a little more closely at the startling contrast between a more profound meaning of some of America’s ideals and what they are now in danger of becoming.

The names, the words, have remained the same over the centuries, but the meanings are slipping away and, often enough, turning into their own opposites.¹⁵

In this dense “fog of abstraction,”¹⁶ as Judge Robert Bork has called it, where constitutional principles such as liberty and equality are too often “turned into their opposites,” American society is continually tempted to trade settled truths based on divine authority and the wisdom of the ages for a new “golden calf” of our own making. Claims of modern “enlightenment” and suggestions that yesterday’s public recognition of the *Bible* as moral authority was either wrong or is now simply outdated are reminiscent of what happened when Moses left for a time to commune with God and receive further instruction. Although a chosen people were in route to their promised land and had already been miraculously delivered from Pharaoh and his advancing army by the parting of the Red Sea, in no time at all, an idol (a golden calf) of their own making was substituted and became their new object of worship. (See Exodus 31:18; 32:1-9, 15-23)

As with ancient Israel, it may also be said of a society that espouses as their national motto, “In God We Trust,” but then sets the *Bible* aside to potentially sanction and confer new “rights” on same-sex couples plus other departures from the moral and religiously-based truths upon which our nation was founded: “They have turned quickly out of the way which I commanded them.” (Exodus 32:8) Thus, the need for “The Family: A Proclamation to the World” from the First Presidency and Quorum of the Twelve Apostles of the Church of Jesus Christ of *Latter-day* Saints.

When the Proclamation was first issued in 1995, I was serving as counselor in a stake presidency in the Church of Jesus Christ of Latter-day Saints. In that capacity and as a member of the church, I sought to honor the principles expressed in that important declaration. However, in 2004, it affected me in yet another and more unique way. As an elected member of the Utah Legislature (an “officer of government”), I focused specifically on the charge in paragraph

nine to “promote those measures designed to maintain and strengthen the family as the fundamental unit of society.” By then, the following conditions had developed: Massachusetts legalized same-sex marriage in their state based on a 4-3 majority directive from their Supreme Court; Vermont embraced “civil unions;” California created “domestic partnerships” even though the people by statewide vote affirmed marriage as the legal union of a man and a woman; the Mayor of San Francisco was offering marriage to same-sex couples in willful disregard of that state’s laws (those illegal “marriages” were later invalidated by the Court); there were actual cases in Utah of judges disregarding our own laws in order to force shared custody and visitation of children following the breakup of a same-sex relationship as if it were a legally recognized marriage, divorce or adoption. To strengthen the public policy of our state regarding marriage and family and to elevate it from statute to constitutional authority, I worked with many “responsible citizens” and “officers of government” (as the proclamation calls for) to author, sponsor and pass the following amendment to Utah’s Constitution:

Marriage consists only of the legal union between a man and a woman. No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.

In just thirty-three words (two sentences), this Amendment to the Utah Constitution answers two very basic but important questions:

First: Does Utah recognize and support traditional marriage and family as the foundation of our society?

Second: Is Utah opposed to same-sex marriage or its equivalent under some other name?

The answer to both questions is YES!

At a point in our nation’s history when time-honored values are being distorted, discarded or simply defined out of existence by a threatening combination of forces, two-thirds of Utah’s elected state

representatives and senators voted to amend our state Constitution and affirm marriage as the “legal union between a man and a woman.” Marriage predates our government and our Constitution. It has existed since the beginning of time. It is co-equal with the origin of mankind and it is the means by which the human race has perpetuated itself over thousands of years.

Shortly before the general election when “Amendment 3” was adopted by the people of Utah, the First Presidency of the Church of Jesus Christ of Latter-day Saints issued this statement:

We of The Church of Jesus Christ of Latter-day Saints reach out with understanding and respect for individuals who are attracted to those of the same gender. We realize there may be great loneliness in their lives but there must also be recognition of what is right before the Lord.

As a doctrinal principle, based on sacred scripture, we affirm that marriage between a man and a woman is essential to the Creator’s plan for the eternal destiny of His children. The powers of procreation are to be exercised only between a man and a woman lawfully wedded as husband and wife.

Any other sexual relations, including those between persons of the same gender, undermine the divinely created institution of the family. The Church accordingly favors measures that define marriage as the union of a man and a woman and that do not confer legal status on any other sexual relationship.¹⁷

As expressed by the First Presidency, there is certainly great compassion and respect for the feelings and desires of those who seek to promote same-sex unions. However, “what is right before the Lord” is irrefutable. The “rights” which same-sex couples claim or seek to establish are not ours to give nor are we free to dismiss and discard history and scriptural authority except at our peril as also warned in the Proclamation. (See paragraph eight). The Declaration of Independence clearly states that our rights come from the Creator. These are referred to in the Declaration as “the Laws of Nature and of Nature’s God.” The

preeminent English jurist and widely-accepted legal scholar, Sir William Blackstone, provided this clarifying commentary:

Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being...And, consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will...[T]his will of his Maker is called the law of nature.

These laws laid down by God are the eternal immutable laws of good and evil...This law of nature dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity if contrary to this...¹⁸ (emphasis added)

President John F. Kennedy acknowledged that “the rights of man come not from the generosity of the state, but from the hand of God.”¹⁹ Only if we are willing to trade a “golden calf” of our own contemporary creation for the “stone tablets” that have guided us for generations would we ever cease to preserve, protect and promote traditional marriage and family in America.

The Massachusetts Supreme Court openly characterized its radical ruling that marriage is now available in that state to any “two persons” (of whatever sex) as a “change in the history in our marriage law,” a “reformulation” and a “significant change in the definition of marriage as it has been inherited from the common law, and understood by many societies for centuries.” The claimed justification for turning their back on more than 200 years of legal, social and historical precedent is what they call the “changing realities of the American family,” the “evolving paradigm of civil marriage,” and “evolving constitutional standards.”²⁰ In short, a “golden calf” — a sudden judicial creation in a barren wilderness of new thinking completely divorced from the moral and religiously-based law that so clearly marked the path before in this country.

The dissenting Justices in the Massachusetts case correctly argued that any new creation of “novel rights” (change, in other words) is re-

served for the people themselves through the democratic and legislative process.²¹ They also stressed that there is no established “right to marry someone of the same sex.”²² Unless expressly identified in the Constitution (which it is not), such a professed legal right must be “deeply rooted in the history and traditions of our country and our state... [and have] played a critical role in the culture and traditions of the nation.”²³ Unlike marriage between a man and a woman and a traditional parent-child relationship, same-sex unions have no such historical roots and there is no recognized precedent to support their claims. The dissent further noted that even if “changing times” and a more “liberated” or “enlightened” culture could somehow justify such a drastic departure from current law, the only true guide to supposed “contemporary values” is legislation duly enacted by the country’s state legislatures.²⁴ Again, the impropriety of a plurality of one state Supreme Court Justice assuming authority to reverse 200 years of precedent and redefine marriage and family to suit his own evolving opinions is astounding and ominous in its implications.

The unabashed liberal activism of the Massachusetts decision and the chaos it has sparked are evident in the fact that the following view that so clearly mirrors what the majority of this country believes and what the law has so steadfastly upheld in the past is now cited as the “dissent”:

Marriage is the very basis of the whole fabric of civilized society...

Each is free to marry a willing person of the opposite sex...The Court [however] has transmuted the “right” to marry into a right to change the institution of marriage itself...

Civil marriage is the institutional mechanism by which societies have sanctioned and recognized particular family structures... [By limiting marriage to opposite-sex couples] society is able to communicate a consistent message to its citizens that marriage is a (normatively) necessary part of the procreative endeavor.... [The consequences of a policy shift away from normative marriage, procreation and child rearing] would be a diminution in society’s ability to steer the acts of procreation and child rearing into their most

optimal setting....This case is not about government intrusions into matters of personal liberty. It is not about the rights of same-sex couples to choose to live together, or to be intimate with each other, or to adopt and raise children together. It is about whether the State must endorse and support their choices by changing the institution of civil marriage to make its benefits, obligations, and responsibilities applicable to them.²⁵

The United States Court of Appeals for the Eleventh Circuit has ruled in line with the dissent in the Massachusetts case. (See *Lofton v. Secretary of Department of Children and Family Services*, 358 F.3d 804 (2004 U.S. App.), *aff'd* 377 F.3d 1275 (2004)(en banc)). In Florida (as in Utah), the Legislature has prohibited adoption of children by same sex-couples. To support their claim of a constitutional right to have their same-sex domestic union officially recognized by society and thereby be allowed to adopt children, the Appellants argued in *Lofton* that they were a “psychological family” with an “emotional bond” resulting from a “shared daily life.” The Court rejected such claims and stated that there is no recognized precedent for such a “novel proposition.” *Id.* at 815. The Court explained further that “under Appellant’s theory, any collection of individuals living together and enjoying strong emotional bonds could claim a right to legal recognition of their family unit and give rise to a constitutional claim.” That argument is unfounded and was rejected by the Federal Court.

The *Lofton* Court found that it was a rational decision and a legitimate state interest for the Florida Legislature to prohibit adoption of children by same-sex partners and to give preference to the placement of children in a “home anchored by both a father and a mother.” *Id.* at 820. The Court stated that such policy judgments are best exercised in the legislative arena and noted that their task was simply to determine whether a reasonably conceivable rationale was used by the Legislature to preclude same-sex couples from adopting as provided in statute. The well-known and accepted benefits of being raised in a “home anchored by both a father and a mother”

(which is consistent with all recorded history) more than meets that test as held by the Federal Court in *Lofton*.

Regarding the liberal myth that “morality cannot be legislated” (the entire criminal code is one collective moral judgment), the Federal Court in *Lofton* cited the following compelling authority that there is not only a legitimate interest, but a “substantial government interest in protecting order and morality.” *Id.* at 819; See also *Barnes v. Glen Theatre Inc.*, 501 U.S. 560, 569, 111 S.Ct. 2456, 2462 (1991) (“[I]n a democratic society, Legislatures, not Courts, are constituted to respond to the will and consequently the moral values of the people.”); *Gregg v. Georgia*, 428 U.S. 153, 175, 96 S.Ct. 2909, 2926 (1976) (“[T]he furtherance of public morality is a legitimate state interest.”); *Williams v. Pryor*, 240 F.3d 944, 949 (11th Cir. 2001).

In *Lofton*, the Court fielded and rejected every conceivable legal claim to official recognition of same-sex relationships. The Court held that a right of “privacy” does not equal a fundamental constitutional right to public sanction and official recognition. (The Legislature and the People of Utah by democratic due process have amended the State Constitution to clearly and decisively make that same important distinction). Citing but distinguishing *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472 (2003), the Eleventh Circuit in *Lofton* stated that *Lawrence* created no new fundamental rights for homosexuals. (The Appellants in *Lofton* argued that *Lawrence* supported the right of homosexuals to adopt children). The *Lofton* Court emphasized that *Lawrence* “[did] not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.” 358 F.3d at 817. The Court also emphasized that unlike *Lawrence*, the state action in the *Lofton* case was not criminal prohibition but rather grant of a statutory privilege (adoption).

[T]he asserted liberty interest is not the negative right to engage in private conduct without facing criminal sanctions, but the affirmative right to receive official and public recognition. Hence,

we conclude that the *Lawrence* decision cannot be extrapolated to create a right to adopt for homosexual persons. (Ibid., 817.)

The Federal Eleventh Circuit appropriately noted in *Lofton* that extreme caution is required “when asked to take sides in an ongoing public-policy debate such as the current one over the compatibility of homosexual conduct with the duties of adoptive parenthood.” *Id.* at 827. Noting that the state of Florida had made a determination that it is not in the best interest of its displaced children to be adopted by individuals who “engage in current voluntary homosexual activity” and having “found nothing in the Constitution that forbids this policy judgment,” the Court reasoned that the Legislature is the proper forum for that debate. *Id.* at 827. As a model of judicial restraint, the *Lofton* Court concluded, “We do not sit as a super legislature to award by judicial decree what was not achievable by political consensus.” *Id.* at 827 (citing *Thomasson v. Perry*, 80 F.3d 915, 923 (4th Cir. 1996)).

On April 30, 1789, George Washington took the oath of office as this nation’s first President under the newly adopted Constitution. Swearing fidelity to his office, he instinctively added the words, “so help me God,” to the prescribed oath. He then gently kissed the *Bible* on which his hand rested. Fast forward to the present day and the President still places his hand on the Bible to take the oath of office but is not as free to open the *Bible* and actually quote and follow it while striving to perform those same constitutional duties.

In the case of public debate over the issue of same-sex marriage, what might we find if we included the *Bible* in our public discourse and deliberations?

“And the Lord spoke unto Moses saying...Thou shalt not lie with mankind, as with womankind: it is an abomination.” (Leviticus 18: 1, 22)

To the Romans in New Testament times, the Apostle Paul spoke against those who “changed the truth of God into a lie” and

were “without natural affection” when “women did change the natural use into that which is against nature: And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly.” (Romans 1:24-31) In contrast, the *Bible* also declares that “marriage is honorable in all.” (Hebrews 13:4) “So God created man in his own image, in the image of God created he him; male and female created he them. And God blessed them, and God said unto them, be fruitful, and multiply, and replenish the earth....Therefore shall a man leave his father and his mother, and shall cleave unto his wife; and they shall be one flesh.” (Genesis 1:27-28; 2:24) Jesus Christ recounted those same scriptural truths and then declared, “What therefore God hath joined together, let not man put asunder.” (Matthew 19:6)

When such Biblical guidance is set aside, society must grope for authority to resolve moral questions. Too often, the dialogue results in naked pleas for “tolerance” of “different points of view” as if there is no such thing as fixed moral absolutes (truth) and all proposals are of equal validity. Society tends to congratulate itself for such “openness” but as the Catholic writer, G.K. Chesterton, noted more than 100 years ago, “tolerance is the virtue of people who do not believe in anything.”²⁶

Only when God is removed from our public discourse and deliberations does confusion arise to the point that eternal truths are first declared to be “relative,” then outdated and then discarded. Contrast that condition with the wisdom and leadership of President Abraham Lincoln. He invoked the *Bible* as a source of moral obligation and authority that bound the nation:

In regard to this Great Book, I have but to say, it is the best gift God has given to man. All the good the Savior gave to the world was communicated through this book. But for it we could not know right from wrong. All things most desirable for man’s welfare, here and hereafter, are to be found portrayed in it.²⁷

As long as America openly acknowledged the *Bible* and sought to ensure that our laws do not conflict with the laws of nature and the Creator, the issue of same-sex marriage never even arose. Why then has it taken 200 years for this to become a question? Is that a sign of progress or decline? Did the sun just come up? Were our ancestors all misguided bigots and is society today simply more “enlightened”? I do not believe that is the case.

In the midst of the Civil War, President Abraham Lincoln overheard someone remark that he hoped “the Lord was on the Union’s side.” Lincoln’s straightforward reply was: “I am not at all concerned about that for I know that the Lord is always on the side of the right. But it is my constant anxiety and prayer that I and this nation should be on the Lord’s side.”²⁸ Answering the question, “Are we on the Lord’s side?” is hard to do when God is dismissed from our public deliberations. Even so, it is foolishness to think that man can hide from the Creator and eternal truth. (See Psalms 139:7-12,17) That issue was settled in Eden. (Genesis 3:8-24) Do we really need to go back that far?

Given these conditions in our society today, Thomas Jefferson’s warning is all the more sobering. Engraved in the Jefferson Memorial in Washington, D.C. are these words spoken in 1781:

God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the Gift of God? That they are not to be violated but with his wrath? Indeed, I tremble for my country when I reflect that God is just; that His justice cannot sleep forever.²⁹

Abraham Lincoln quoted this warning from Thomas Jefferson while adding, “When a nation thus dared the Almighty every friend of that nation had cause to dread His wrath.”³⁰

As the great emancipator, Lincoln argued passionately for equality and natural rights but never apart from the *Bible*, which he quoted and relied upon in tandem with the Declaration of Independence.

When Stephen Douglas unconscionably tried to justify a moral wrong (slavery) by making it merely a matter of “popular sovereignty” or what the collective vote of the masses might tolerate, Lincoln would not let him transform such a fundamental moral issue into a mere political question. Lincoln warned that Douglas was “blowing out the moral lights around us.”³¹ The Republicans, said Lincoln, believed that slavery was “a moral, a social and a political wrong” but the party of Douglas did not.³²

Thus, Lincoln pleaded,

“That is the issue that will continue in this country when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles — right and wrong — throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle...”³³

The issue of what is right (and not merely politically palatable) is indeed the question and the “eternal struggle” rolls on.

The present activist agenda of an extremely small percentage of the population who are aided by random judges in a push to reverse generations of scripture-based objections to same-sex unions is surely a test of America’s continuing belief in and reliance upon the *Bible* and its decrees. President John Adams framed the issue perfectly. To Thomas Jefferson on June 20, 1815, he wrote: “The question for the human race is whether the God of nature shall govern the world by His own laws.”³⁴ Now, even public prayer and the Pledge of Allegiance with its acknowledgement of one nation “under God” (which Congress added by official act in 1954, 35 U.S.C.A. Section 172) are challenged as unconstitutional. Abstract equality apparently means unanimity to some to the point that minority instead of majority rule is, unfortunately, becoming the new reality in our country. In 1924, Will Rogers said Americans thought they were getting smarter because, “they’re letting lawyers instead of their conscience be their guide.”³⁵ Hopefully, that is not the case in our day and the American

soul has not been so stilled or scarred that it cannot reassert itself and regain control of the moral direction of our Country.

At a critical moment during the Constitutional Convention of 1787, the aged, wise and beloved Benjamin Franklin spoke to the body of delegates assembled in Philadelphia. He said:

I have lived, Sir, a long time; and the longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings, that “except the Lord build the house, they labor in vain that build it.” I firmly believe this; and I also believe that, without his concurring aid, we shall succeed in this political building no better than the builders of Babel...³⁶

Like the misguided “builders of Babel,” any proposed “remodeling” of our constitutional law to construct a new “left wing” for an “alternative lifestyle” is contrary to the “sacred writings” to which Franklin referred. Those writings are still available to us today if we will accept and abide by their counsel. Without those “sacred writings,” contention and difficulty ensue when all that remains is human logic and reason. How illogical and unreasonable is that?

The true task of culture is not wandering expansion but rather principled selection and rejection. Out of all the thundering voices of the day, we must manage to hear a voice. “Out of all this awful and aching battle of blinding lights, without one shadow to give shape to them, we must manage somehow to trace and to track a star.”³⁷ The Proclamation does that and I am profoundly grateful for it.

It has been a privilege to serve in the Utah House of Representatives. I am continually inspired by our historic state Capitol. At the foot of the marble stairs leading to the House Chamber, near the heroic bronze statue of Brigham Young, is a glass case holding a hand-written copy of the Utah state Constitution as it was adopted

in 1896. The Preamble is plainly visible for all to read and ponder: “Grateful to Almighty God for life and liberty, we the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this Constitution.” Every time we take a stand in defense of what we know to be the laws of the Creator, we reaffirm that founding expression of gratitude to Almighty God in our Constitution.

The Proclamation calls upon responsible citizens and officers in government to “promote those measures designed to maintain and strengthen the family as the fundamental unit of society.” Through its sound reliance on doctrinal principle and scriptural authority and issued many years before the recent outburst of liberal changes in our marriage laws, it stirs the “mystic chords of memory” and appeals to the “better angels of our nature.”³⁸ It is a clear statement of fixed eternal principles at a time when America is dangerously adrift from its original moorings.

Yes, we are a free people and we can have and do whatever we may choose with that freedom. However, our ancestors based their trust and confidence in the future of our country on the assumption that their posterity would remain virtuous and not abandon the “firm reliance on the protection of divine Providence”³⁹ that must forever anchor our independence as a nation. As John Adams declared, “Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other.”⁴⁰

History will record that during the first decade of the 21st Century, America’s morality and founding principles were sorely tried and tested. However, at the critical hour when the winds of radical change were felt from the east and the west and when traditional values were under attack, the record will also show that Utah stood firm and passed the “precious inheritance” received from our forefathers to the succeeding generation “unimpaired.”⁴¹ When others trusted in a “golden calf,” we chose instead to follow and adhere to the “stone tablets” that have stood the test of time.

ENDNOTES

1. Justice Oliver Wendell Holmes, Jr., “The Path of the Law” 10 *Harvard Law Review* 457 (1897); Alschuler, Albert W., *Law Without Values: The Life, Work and Legacy of Justice Holmes*, Chicago, IL: University of Chicago Press, 2001, 151.
2. Roger Kimball, *The Survival of Culture: The Fortunes of Permanence*, Chicago, IL: Ivan R. Dee, Inc., 2002, 233.
3. Houston Smith, *Why Religion Matters: The Fate of the Human Spirit in an Age of Disbelief*, New York, NY: Harper Collins Publishers, 2001, 21.
4. William J. Bennett, *The Broken Hearth: Reversing the Moral Collapse of the American Family*, New York, NY: Doubleday, 2001, 10; David G. Myers, *The American Paradox: Spiritual Hunger in an Age of Plenty*, New Haven, CT: Yale University Press, 2000, 40.
5. Bennett, 12; Myers, 39, 49.
6. Bennett, 13, 179; Myers, 20.
7. Bennett, 13, 76-77, 179.
8. Myers, 27.
9. Bennett, 18.
10. Bennett, 13, 179.
11. Bennett, 12, 148; Myers, 68.
12. Myers, xi.
13. Contrary to what most citizens have been conditioned to believe, the phrase “separation of church and state” is not found in the Constitution. It comes from an exchange of letters in 1802 between President Thomas Jefferson and the Baptist Association of Danbury, Connecticut. The concern at the time was to prevent the federal establishment of an official state church or national religious denomination. The Baptist Association sent a letter of praise to President Jefferson, commending him for his defense of the principle of freedom of religion. Jefferson replied: “Believing with you that religion is a matter that lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion or prohibiting the free exercise thereof,’ thus building *a wall of separation between Church and State.*” (emphasis added). See, David Barton, *Original Intent: The Courts, the Constitution, & Religion*, Aledo, TX: WallBuilder Press, 2000, 45-46.

In 1947, in *Everson v. Board of Education*, the U.S. Supreme Court dusted off this metaphor of a “wall of separation between Church and State” and began misapplying it to strike down religious activities and expressions, which had been constitutional for the previous 150 years. (Barton, 13). The meta-

phor of a “wall of separation” was not an original expression of Jefferson. It is a paraphrase of what the Baptist Minister, Roger Williams, had said many years before. Williams used a metaphor of “the garden and the wilderness.” As explained by Yale Law Professor, Stephen L. Carter:

“[T]he garden was the domain of the church, the gentle, fragile region where the people of God would congregate and try to build lives around the Divine Word. The wilderness was the world lying beyond the garden wall, uncivilized and potentially quite threatening to the garden. The wall separated the two, and the reason for the wall was not that the wilderness needed protection from the garden — the wall was there to protect the garden from the wilderness...”

“[I]t was the responsibility [of] the wilderness to stay out of the garden — not the other way around...The religion clause of the First Amendment is designed to limit what the state can do, not what the church can do... [The purpose of the wall was] not to keep the faithful in, but to keep the world out...We have turned poor Roger Williams inside out. The wall of separation is no longer for the protection of the people of the garden; it is for the protection of the people of the wilderness...The metaphor...has been inverted...So the wall of separation turns out to be not a garden wall but a prison wall, surrounding the church to keep the people of the garden inside, with barbed-wire escarpments, angled inward, lest the religious try to clamber over...” Stephen L. Carter, *God's Name in Vain: The Wrongs and Rights of Religion in Politics*, New York, NY: Basic Books, 2000, 75-81.

Chief Justice William Rehnquist described the phrase “wall of separation between church and state” as a “misleading metaphor.” He maintained that it should be “frankly and explicitly abandoned” (Barton, 20, 43-48) but it is hard to reverse the damage that has already been done and the extent to which it has become ingrained in our modern culture that the voice of religion is unwelcome and somehow inappropriate when moral issues are being publicly debated in this country.

14. Lawrence Stone, “Family Values in a Historical Perspective,” The Tanner Lectures on Human Values, delivered at Harvard University, November 1994, 110.
15. Jacob Needleman, *The American Soul: Rediscovering the Wisdom of the Founders*, New York, NY: Penguin Group, 2003, 20.
16. Robert H. Bork, *The Survival of Culture: Adversary Jurisprudence*, Chicago, IL: Ivan R. Dee, Inc., 2002, 222.
17. Statement by the First Presidency of the Church of Jesus Christ of Latter-day Saints, October 19, 2004.
18. William J. Federer, *America's God and Country*, Coppell, TX: FAME Publishing, Inc., 1994, 52.
19. John Gabriel Hunt, *The Inaugural Address of the Presidents: From George*

- Washington to George W. Bush*, excerpt from John F. Kennedy's inaugural address, New York, NY: Gramercy Books, Random House, Inc., 2003, 428.
20. *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003), pp. 312, 334, 337, 339, 343.
 21. *Ibid.*, 356.
 22. *Ibid.*, 370.
 23. *Ibid.*, 370.
 24. *Ibid.*, 374.
 25. *Ibid.*, 352, 353, 365, 381.
 26. William J. Bennett, *The Death of Outrage: Bill Clinton and the Assault on American Ideals*, New York, NY: The Free Press, 1998, 122.
 27. Joseph R. Fornieri, *Abraham Lincoln's Political Faith*, DeKalb, IL: Northern Illinois University Press, 2003, 35; William Lee Miller, *Lincoln's Virtues: An Ethical Biography*, New York, NY: Alfred A. Knopf, 2002, 83-84.
 28. Federer, 387-388; John Wesley Hill, *Abraham Lincoln – Man of God*, New York, NY: G.P. Putnam's Son's, 1920, 330.
 29. Fornieri, 32.
 30. *Ibid.*, 33.
 31. Robert W. Johannsen, *The Lincoln Douglas Debates of 1858*, New York, NY: Oxford University Press, Inc., 1965, 233.
 32. David Herbert Donald, *Lincoln*, London: Jonathan Cape, 1995, 223.
 33. Donald, 224.
 34. Federer, 13.
 35. George Will, "The Law vs. Good Sense," *Jewish World Review*, June 3, 2002.
 36. John Eidsmoe, *Christianity and the Constitution: The Faith of Our Founding Fathers*, Grand Rapids, MI: Baker Book House Company, 1987, 208.
 37. G.K. Chesterton, *What's Wrong with the World*, San Francisco, CA: Ignatius Press, 1994, 154-155.
 38. Hunt, excerpt from Abraham Lincoln's first inaugural address, 197.
 39. Declaration of Independence
 40. Eidsmoe, 292; John Adams, *Thoughts on Government*; quoted in John R. Howe, Jr., *The Changing Political Thought of John Adams*, Princeton, NJ: Princeton University Press, 384.
 41. Hunt, excerpt from John Quincy Adams's inaugural address, 76.

PRESERVING SACRED GROUND



For the Right Reasons

Questions and Answers

Paul T. Mero



There is a rational basis to oppose gay marriage.

There are several key questions at the heart of gay marriage and answers to which serious people will discern before, right or wrong, they dive into new legal constructs.

What is the compelling state interest in marriage? Why does the state even recognize a private matter such as marriage? Answer: the state (“we, the people”) naturally seeks to perpetuate its existence and seeks its own welfare. America wouldn’t be much of a state if it didn’t encourage the best arrangements for people to reproduce themselves and rear generations that most benefit society.

In pursuing these ends, of course, the state has chosen to recognize the complementarity of male-to-female marriages. What is the rational basis for this historical decision? Answer: What humans have known intuitively and now, thanks to modern social sciences, is backed by unending mountains of empirical evidence is that “traditional” marriage does the best job of child-bearing and child-rearing (i.e. the state interest).

Even so, the “best job” is a relative concept among imperfect humans. Why not encourage other marital relationships, such as gay

Paul T. Mero is president of Sutherland Institute. This brief article was first published, in an edited and abbreviated form, by *The Salt Lake Tribune* on November 2, 2008. Copyright © 2008 Sutherland Institute.

marriage? Indeed, in the Hawaii Supreme Court case several years ago, gays argued that, empirically, they are at least as good as the worst heterosexuals in raising children. So why not let them marry and adopt children? Answer: “As good as the worst” is a pretty low standard to codify. All children deserve the best standard — the complementarity of a male father and a female mother.

But isn’t gay marriage a civil rights issue? Answer: Possibly. If you believe that innate “sexual orientation” should be a protected characteristic along side of race, color, religion, and national origin, to name the staples, then yes. If you don’t believe people are born gay, then you might hesitate to draw the equation — you might be reluctant to equate a sex act with other human choices such as your choice of religion.

What are the benefits to society of gay marriage? Answer: gay advocates and their friends argue that happier people are a state interest, and that the now-famous 1,049 legal benefits of marriage would make gays happier. Of course, the question doesn’t address subjective personal happiness, the question addresses the objective benefits to society. Those same advocates are silent on this point.

Certainly gays can love one another just like anybody else. Why not afford gays equal protection to love each other? Answer: if love is the sole basis of legal marriage, the state interest in marriage disappears. Remember, gays can marry in every state of the union in private commitment ceremonies and not infringe on the state interest. Oscar Wilde is famous for speaking about homosexuality as the “love that dare not speak its name.” The love-as-marriage formula begs a slipperly rendition of Wilde’s theme: would there be a love that dare not speak its name?

Will gay marriage destroy civilization? Answer: actually, it seems the converse is more accurate. Apparently, a crumbling familial infrastructure gives momentum to gay marriage. The states with the highest rates of divorce, late marriages, cohabitation, single living, low remarriage, delaying children, childlessness, and out-of-wedlock births are exactly those states which have embraced gay marriage to date.

Perhaps the best case for gay marriage comes from conservative gays who argue that there is surely a state interest in domesticating promiscuous gay males. Doesn't society want to encourage responsible gay relationships? Answers: 1) marriage doesn't domesticate men, women do, and 2) laws don't make people good, people do. Our laws are a reflection of our collective prevailing morality at any point in time, plain and simple. Our laws reaffirm what we already endorse.

Finally, how do gay marriages hurt heterosexual marriages? Answer: they don't, personally. But, in terms of law and policy, they would redefine marriage and, by so doing, evaporate the state interest.

Marriage has been a diverse and multi-purpose human arrangement for millennia, but no matter its purposes or justifications the arrangement always has had a common denominator: the complementarity of male and female. The best rational basis to oppose gay marriage is our unwillingness to codify familial dysfunction — if, by “functional,” we mean this complementarity. Gay marriage severs it leaving men, women, and especially children handicapped in the sort of personal development a truly progressive civilization requires.

When Tolerance Turns Against the Family

Bryce Christensen, Ph.D.



*The New Tolerance advertises itself as a very positive virtue.
And this New Tolerance is positively deceptive.*

William Allen White, the 20th-century American editor, wrote, “Since others have to tolerate my weaknesses, it is only fair that I should tolerate theirs.”¹ For any imperfect and reflective person, tolerance indeed counts as an attribute essential to a harmonious personal and public life.

With good reason, writer Wilbert E. Scheer has identified tolerance as “the oil that takes the friction out of life.”² Unfortunately, however, in recent years the tolerance spoken of by White and Scheer has been replaced in American public life by a radically new attitude bearing the same label. And far from taking the friction *out* of life, this new version of Tolerance is fast filling American life with corrosive ideological friction, as it undermines the virtues that sustain family life and compels Americans to tolerate the intolerable consequences of family failure.

Dr. Bryce J. Christensen is assistant professor of English at Southern Utah University and adjunct fellow of Sutherland Institute’s Center for Family and Society. He is a contributing editor to *The Family in America* and author of *Divided We Fall: Family Discord and the Fracturing of America* (Transaction, 2005). He has also published articles on family issues in *Society*, *The Public Interest*, *Policy Review*, *Modern Age*, and other journals. This essay, originally published as *Intolerable Tolerance: When Tolerance Turns Against the Family*, is reprinted with permission. Copyright © 2005 The Howard Center for Family, Religion, & Society.

In any traditional understanding of moral probity, tolerance took its place as an important *secondary* virtue, one that provided a much-needed civil margin *around* primary virtues. As White's explanation of toleration makes clear, tolerance emerges as a necessary concession to human fallibility, an accommodation to the human error in every life and a recognition of each individual's precious (if at times painful) freedom to learn through personal error. But in traditional morality, tolerance — though necessary — never merited the praise accorded to more positive virtues. As the British novelist Edward M. Forster perceptively explained, "[Tolerance] is negative. It merely means putting up with people, being able to stand things."³ Given this understanding of tolerance, neither White nor Forster nor any of their contemporaries ever supposed that it could replace primary virtues such as honesty, fidelity, and courage. But exposed to the cultural poisons of recent decades, tolerance has now mutated into something troublingly different. It is now not only *one* of the primary virtues; it is *the* primary virtue, the possession of which excuses man, woman, and child from the cultivation of *any other* virtue.

No longer a necessary but negative accommodation to inevitable human error, the New Tolerance advertises itself as a very *positive* virtue. But this New Tolerance is positively deceptive. It is deceptive in that it elides the difference between tolerance and acceptance, deceptive in that it entangles its adherents in philosophical contradictions, deceptive in that it provides rhetorical cover for the ideological ambitions of those who advance it, deceptive in that it justifies complete intolerance toward any who would frustrate these ambitions, and deceptive in that it hides the intolerably high costs it imposes on society.

Without sliding into attitudes that White, Scheer, Forster, or any other moral traditionalist would recognize as *intolerant*, those who would now defend the family from the onslaught of Tolerance sloganeers must understand both the deceptions inherent in their slogans and the painful consequences of allowing such deceptions to prevail.

TOLERANCE AND ACCEPTANCE

The first deception characteristic of the sloganeers of the New Tolerance is that of consistently eliding the difference between tolerance and acceptance. Traditionally, tolerance meant making allowances for other's errors and mistakes; for the new sloganeers of Tolerance, it means accepting every choice as morally equivalent. Tolerance once meant an attitude of patience and forbearance toward those who failed to live up to social ideals; the New Tolerance means denying the existence of such ideals. For those who now fly its banner, the New Tolerance no longer means simply granting public space for others' moral and religious convictions; the New Tolerance now means actually endorsing all beliefs as equally (un)true. In place of the tolerance that required discretion and humility in affirming moral absolutes, the new tolerance demands that Americans jettison the very notion of moral absolutes in favor of an indiscriminating acceptance of every option on the moral smorgasbord.

Thus, educators who *say* they are “bringing tolerance and diversity into the classroom” actually aim to “help all students develop more positive attitudes” toward those who differ from them in race, culture, *family structure*, or *sexual orientation*.⁴ Such educators explain that adoption of a curriculum focused on “teaching diversity” means children must be “taught ‘the positive aspects’ of different households” and must be led in “discussions on accepting different family structures.”⁵ Some of the more candid evangelists for Tolerance even admit that they want “people [to] move beyond tolerance to embrace and rejoice in diversity.”⁶ The Tolerance at work here is light years away from the “negative” virtue Forster recognized as essential, but limited.

Of course, those who would move their fellow Americans “beyond tolerance” also aim to move them beyond good and evil, beyond truth and falsehood. The search for *veritas* which long has defined one of the most ennobling of human aspirations simply disappears when the apostles of Tolerance take over. Thus when confronted by

the charge of moral relativism, two theorists of Tolerance can hide their retreat from truth with only the most pathetic of sophistries: “Teaching a tolerance for diversity implies that there are many morally correct and functional lifestyles and thus implies that a well-educated individual has enough information to be able to choose which lifestyle best fits his or her needs.”⁷⁷ In this way, advocates of the New Tolerance sophistically justify lifestyle expedience as the ultimate moral standard.

But then moral justifications do not have to deliver much consistency or rigor to satisfy the champions of the New Tolerance. For moral traditionalists — whose understanding of tolerance meant accommodation to inevitable human fallibility — truly tolerating a wide range of beliefs and behaviors did not mean embracing the logic used to defend those various beliefs or behaviors. Hence, traditional moralists could be tolerant without being philosophically inconsistent. But because the New Tolerance actually means *acceptance* of everyone’s beliefs and behaviors, it invariably requires its adherents to jettison the principle of non-contradiction, foundational to logical thought since Parmenides. For when the New Tolerance requires those who profess it to accept every family form and all types of sexual behavior, it also requires acceptance of radically incommensurable moral premises.

When today’s progressive thinkers claim that their Tolerance allows them to fully accept the domestic lives of, say, both conservative Catholic families *and* New Age lesbian couples, they betray an embarrassing intellectual incoherence. Consistent thinking means either accepting foundational Catholic doctrine identifying sexual relationships outside of wedlock as a sin or repudiating that doctrine. To claim that Tolerance allows acceptance of traditional family life *and* full acceptance of domestic life that flouts the doctrinal premises of traditional morality is not to advance to a higher social philosophy; it is merely to repudiate the burden of thought and to descend into intellectual paralysis.

Without question, Americans have long enjoyed the entertaining bravado of Walt Whitman when he asks, “Do I contradict my-

self? / Very well then I contradict myself / (I am large, I contain multitudes).”⁸ But no one should suppose that a coherent moral life can be based upon such poetic swaggering, even if it now bears the name of Tolerance.

But for its loudest advocates, the New Tolerance does not actually always entail the philosophical confusion that would seem inevitable in trying to embrace incompatible moral premises. For among many of its most outspoken champions, the profession of Tolerance is deeply insincere and serves merely as rhetorical camouflage, hiding their true ideological ambitions, ambitions that require them to attack, not accept, the moral premises of traditional family life. True tolerance requires those who practice it to pause thoughtfully before asserting their own moral convictions and to assert those convictions with humility and deference. But the New Tolerance requires no such restraint for those who deploy it as rhetorical camouflage while relentlessly attacking traditional understandings of marriage and family life, intolerantly characterized as mere prejudice and attacked as obstacles to sexual liberty and unfettered individualism. Among the apostles of this New Tolerance, Americans are in fact witnessing the emergence of a more-tolerant-than-thou form of self-righteousness, more unyielding than any of the old forms of bigotry.

THE NEW SELF-RIGHTEOUSNESS

It is this inflexible new self-righteousness that emboldens champions of the New Tolerance to boast that, yes, they are “intolerant of intolerance.”⁹ Though they may congratulate themselves on the rhetorical cleverness of an apparently paradoxical phrase, those who claim they are “intolerant of intolerance” have actually exposed philosophical premises barren of everything but hypocrisy. For if Tolerance is now to serve as *the* new prime virtue, why does it fail its first test — namely that of providing a guide for dealing with those with divergent views on the value of Tolerance? Worse, why is it that being “intolerant of intolerance” inevitably justifies special privileges for advocates

of liberal-left social orthodoxy while intolerantly marginalizing and censoring all social traditionalists?

With good reason, social traditionalists have learned to be very wary of those who profess a Tolerance that is part of an insidiously Orwellian Double-speak. The way this New Tolerance actually serves to enforce ideological orthodoxy has become increasingly clear in universities that create entire departments firmly closed — as columnist George Will has remarked — against any who “think that the nuclear family proves the best unit of social well-being.”¹⁰ The Orwellian workings of this New Tolerance also explain how high school Diversity Facilitators can now practice “pro-gay censorship” to silence any students whose conservative social views might “water down” the “positive message” they want to deliver about homosexuals.¹¹

And though advocates of the New Tolerance loudly claim they want to promote social diversity, columnist John Leo detects a systemic preference in their activism for “people with the same attitudes” on key issues such as abortion and homosexual liberation. Thus, the New Tolerance actually means advocacy for the views of selected constituencies from the “left to the far left” with “no Republican or conservative representation at all.” When the apostles of the New Tolerance run the show, social conservatives — whether Protestant, Catholic, Jewish, Mormon, Moslem, or Confucianist — quickly learn that they face discrimination if not outright intolerance.¹² As they push the causes of radical feminism and homosexual rights, the advocates of Tolerance are more than willing to gag social conservatives, then shove them out of sight and into a closet.

Though advocates of the New Tolerance typically claim that they simply want to widen options for individual choice, that claim will hardly bear scrutiny. For when individuals *choose* traditional social commitments, they soon learn that the architects of the New Tolerance have assigned *them* only a narrow and marginal place in their blueprint for society. Worse, those who choose traditional commitments soon learn that architects of the New Tolerance tolerate them

only so long as they help subsidize social pathology. Subsidies for social pathology naturally multiply when Tolerance prompts policymakers to frame statist policies that both foster alternative lifestyles *and* compensate for the harmful consequences of such lifestyles. For when the alternate family forms they support incubate lethal diseases and push women and children into poverty, the apostles of Tolerance worry very little about how much individual freedom taxpayers lose as the government coercively collects funds to treat those diseases and alleviate that poverty.¹³ The New Tolerance simply does not tolerate alternative lifestyles on April 15th, the day the tax bill comes due for all of the social costs that result from the disintegration of the traditional family. Lockstep conformity is the only legal response to the demands of the taxman collecting revenues for the public programs that swell when families disintegrate.

It is not voluntary charity that pays for the various government supports for single mothers — welfare funds, job training, child-care subsidies, food stamps, child-support collection agencies — which collectively have helped create what sociologists Randal Day and Wade Mackey have called “the mother-state-child family.” Day and Mackey indeed express concern about how the growth of the mother-state-child family has hurt traditional fathers, whose struggles to support their own wives and children are exacerbated by the state-imposed tax burdens that force them also to support single mothers and their children.¹⁴

But Americans will wait a long time to hear the new apostles of Tolerance express concern over the financial plight of traditional fathers or traditional families. In fact, a penetrating look at the social movements at work under the banner of Tolerance actually suggests a social agenda far more hostile to traditional families than simply an anything-goes libertarianism. Behind the preferential treatment that the New Tolerance accords sexual libertines, homosexuals, and radical feminists, the careful observer may detect something like the utopian impulses that create the thoroughly anti-family societies depicted in works such as Anthony Burgess’s *The Wanting Seed*, Yevgeny Zamy-

tin's *We*, or Aldous Huxley's *Brave New World*. It is certainly not difficult to see in the rhetoric and actions of today's Tolerance mongers the pro-homosexual propaganda, the sexual libertinism, and the hostility to traditional wedlock that Burgess, Zamyatin, and Huxley depicted as part of the utopian state's war against family life.¹⁵ It is likewise easy to think of these dystopian authors' portrayal of mind-controlling tyranny when contemplating the thought police that the champions of Tolerance have now put on patrol in classrooms and media outlets to guard against any expression offensive to sexual liberationists, homosexuals, or feminists.¹⁶

But loss of intellectual freedom counts as only one of the truly intolerable consequences of the new gospel of Tolerance. For as a more than trivial cause of family disintegration in recent decades, the New Tolerance must bear much of the blame for the child poverty, academic failure, physical and psychological illness, drug abuse, teen suicide, street crime, domestic violence, and other social pathologies spawned by this disintegration.

Some may discount Tolerance as a cause of family disintegration, believing that the advocates of the New Tolerance have merely accepted a multiplication of non-traditional families that they did not cause. But social analyst Christopher Jencks has very good reason for tracing family disintegration — especially among poor blacks — to shifts in “elite attitudes toward sex, marriage, divorce, and parenthood.” And, of course, in recent years those elite attitudes have been characterized by the New Tolerance. “Couples with neither money nor education,” Jencks remarks, “have always had more trouble keeping their marriages together than more privileged couples.” Nonetheless, many poor couples made the heroic efforts necessary to keep their marriages and families together because their cultural leaders continually told them it was worth doing so. But as prominent figures in law, the media, and entertainment have become advocates of the New Tolerance, they have begun to send the message that Americans who are “morally superior” look down *not* on “anyone who ha[s] a baby without marrying ... [but rather] on anyone who

disapprove[s] of unwed mothers.” Poor couples hearing that message from the “Tolerant” cultural elite have predictably given up making those heroic efforts to keep their marriages and families together. Divorce and illegitimacy rates have soared as a consequence.¹⁷

THE HIGH COST OF “TOLERANCE”

And living with the consequences of family failure has meant tolerating the intolerable. Family disintegration forces Americans to tolerate — for instance — intolerably high rates of child poverty, especially among black children. A 2005 study conducted by economists from the University of California, Davis, compellingly documents the economic hardship caused by family breakup: “Both white children and black children experience large reductions in income when their parents divorce,” the researchers report, though they acknowledge that the economic effect is both deeper and longer lasting for black children. White children see their family income “fall by approximately 30% during the two years after a parental divorce; black children see it plummet by 53%.” Even three or more years after a parental divorce, the income of affected black households “remains 47% lower than it would have been if the parents had remained together.”¹⁸ This is the kind of intolerable social evil that the new apostles of Tolerance are forcing Americans to live with — despite their loud protestations of special concern for impoverished minorities.

And there are, unfortunately, many other intolerable consequences of the family disintegration the New Tolerance has helped catalyze.

Intolerably depressed educational achievement, for instance, has grown distressingly common in recent years among children reared in broken homes, making it very hard for them to escape from impoverished circumstances. A 1992 study compellingly documented the way “residing in a non-intact family has adverse effects on [students’] ability to graduate from high school,” with graduation rates of only 67% for those living in single-parent homes and 65% for those living in stepparent families, compared to 85% for peers in intact families.¹⁹

Even when they do not drop out of school, students from stepfamilies and single-parent homes miss significantly more classes and earn significantly lower grades than peers from intact families.²⁰

And though children from broken homes may never enjoy the privilege of spending an hour in a graduation ceremony, the chances are intolerably high that both they and their parents will spend many miserable hours enduring physical or mental illness.

“Marital status,” remark the authors of a 1985 study, “is related to the health status of all the family members, including both parents and children.”²¹ A 1995 study, in fact, determined that experiencing parental divorce before age 21 is “associated with a 44% increase in mortality risk,” shortening the life of a white male or female by an average of 4.5 years.²² And the intolerable harm that family disintegration is now visiting upon American adults and children shows up in psychological as well as physical symptoms. Psychologists find that, compared to married peers, unmarried mothers are “almost three times more likely to have experienced a major depressive disorder.”²³ Characterized by researchers as “moody, sad, and nervous,” children of single-parent families account for between 50 and 80 percent of the patients in some mental-health institutions.²⁴ What is more, even after adolescence, adults reared in broken homes suffer from a “significantly lower level of general psychological well-being” than peers reared in intact families.²⁵

Given the intolerably high incidence of physical and mental illness among teens reared in broken homes, it should come as no surprise that many seek out the illusory escape of illegal drugs. The authors of a 2003 study find that teens whose parents have split up are one-and-a-half times more likely to use illicit drugs by age 14 as are peers from intact families and are more than two-thirds more likely to use illicit drugs at any time during their life. The authors of this study suggest that children who suffer from parental separation/divorce (like those who suffer from other adverse childhood experiences) may suffer from “feelings of helplessness, chaos, and impermanence and may have problems self-regulating affective states.” As a

consequence, they may turn to illicit drug use “as an avenue to escape or dissociate from the immediate emotional pain, anxiety, and anger that likely accompany such experiences.”²⁶

But illegal drugs provide no true or lasting escape from intolerable pain, anxiety, and anger. Over time, such drugs actually exacerbate such intolerably negative emotions. And when they discover that drug pushers offer them no real help, where else can the harried children of broken homes turn? All too many seek release from the pressures of an intolerably difficult life by taking their own lives. Because scholars have identified “turmoil in American families” as a prime reason that the suicide rate skyrocketed among teens and young adults during the latter decades of the 20th century, it is entirely predictable that broken homes would account for a high percentage of suicide deaths (52% in one representative California study).²⁷

Nor is all of the intolerable violence incubated in broken homes self-directed. Too much of this violence spills into the streets, claiming tens of thousands of innocent victims every year. Though the decades-long “birth dearth” has finally reduced the number of young American males enough to push rates for violent crime down from the stratospheric levels reached in the Eighties, these rates still remain intolerably high — especially in the inner city — by traditional standards. And the decay in American family life figures prominently as a reason for this violence.

Sociologists who have looked closely at the intolerably prevalent level of gang-related crime in inner city areas have concluded that “boys reared in father-absent homes gravitate to gangs and gang activities,” apparently in part because these fatherless boys lack a healthy domestic exemplar of masculine identity and are therefore trying to “demonstrate compensatory masculine development,” a kind of pathological “‘hypermasculinity’ evident in aggressive gang activities.”²⁸ No wonder social historian David Courtwright focuses on family disintegration in his analysis of intolerable levels of inner-city crime: “The root cause of the wave of black inner-city male violence that began building during the 1960’s and 1970’s and rose again in

the late 1980's and early 1990's," he writes "was the decline of stable two-parent families and the institution of marriage in the context of an entrenched culture of poverty in an isolated, youthful subsociety with diminishing opportunities and a chronically low gender ratio."²⁹ Nor, in a post-Columbine nation, should Americans ignore the research showing that it is students from single-parent or disrupted families who are the ones most likely to bring firearms to school.³⁰

Not all of the intolerable violence kindled by family disintegration, however, is found in the street crimes committed by gangs or in the classroom shootings committed by alienated boys with guns. An intolerable level of violence against women and children is characteristic of far too many American homes, often turned into domestic battlefields by family disintegration. Even progressive-thinking sociologists not initially inclined to regard marriage as superior to non-marital cohabitation have learned — to their own astonishment — that cohabitation exposes women to a risk of "extreme violence" that is five times as great as that faced by their married peers.³¹ Like their mothers, children also often suffer intolerable abuse when stable wedlock disappears. Social scientists report a clear "association between physical abuse of children and deviance from normative family structure," with researchers finding that "battered babies are likely to be reared in broken homes" and that premarital pregnancy, illegitimacy, and absence of the child's father are among the most common "precursors of baby battering."³² Available child-abuse data indeed indicate that children living in single-parent families are more than twice as likely to experience physical abuse than peers in two-parent homes.³³ Sociobiologists Martin Daly and Margo Wilson have calculated that "preschoolers living with one natural and one stepparent were *40 times* more likely to become child abuse cases than were like-aged children living with two natural parents."³⁴ A 1996 study even established that the domestic violence so intolerably harmful to women and children occurs most often in "disadvantaged neighborhoods" in which a large fraction of the households are headed by single females.³⁵

“ZERO TOLERANCE”

Quite understandably, Americans have responded to the increasing prevalence of crime, violence, and drug use not with the irenic language of tolerance, but rather with angry slogans of “Zero Tolerance.”³⁶ While their zeal against the real evils of violence and drug use is understandable and even laudable, many of the public officials and corporate executives now enforcing “Zero Tolerance” policies against violent acts and illegal substances are still continuing to cede public and workplace authority to the apostles of the new lifestyle Tolerance. Few of the “Zero Tolerance” warriors against violence and drugs seem even to recognize how seriously they are handicapped in their war so long as they quietly acquiesce in a lifestyle Tolerance that undermines family life and so incubates the very problems they would extirpate. Indeed, when the issues in question are domestic violence or violence against women, the apostles of Tolerance somehow manage to get *themselves* appointed as captains of the “Zero Tolerance” crusades — without having to answer any serious questions about their own philosophical incoherence or their own moral culpability.³⁷

When public officials press ahead with “Zero Tolerance” policies in the current social environment, they often appear merely “silly” to critics who see them expelling students for bringing an aspirin or rubber band into the classroom.³⁸ And they usually appear merely irrelevant to the apostles of the New Tolerance, who remain entirely unfettered in using the classroom to promote “positive attitudes” toward the sexual libertinism that destroys families and so fosters the use of real drugs and real weapons.

The apostles of the New Tolerance are hardly troubled that few see how their new gospel is generating the intolerable pathologies now targeted by “Zero Tolerance” campaigns. After all, widespread philosophical confusion actually provides the evangelists of Tolerance with an ideal environment for doing their dubious work. Because many of them believe in Tolerance only as a misleading slogan useful for hiding an ideological assault on traditional moral principles, they

do not even need to enlarge the public reservoirs of true tolerance to achieve their objectives. The zealots of Tolerance can press toward their real if rarely acknowledged social objectives if they can simply perplex and paralyze the defenders of the traditional moral principles undergirding family life.

Those who now wave their banners of Tolerance need not inculcate in the general public the precious old virtue that bore that name nor even the dubious new ideology that has stolen its label. They need only to badger and befuddle Americans with their misleading slogans long enough that most slide into the kind of tired surrender that once prompted Ogden Nash to wonder, "Which is mine — Tolerance or a rubber spine?" And as more and more schools and corporations adopt the catechisms of the New Tolerance, more and more Americans will discover how easily they can please their powerful new catechists. A few perfunctory words or gestures can provide an ideologically acceptable veneer for the weary apathy that once prompted W. Somerset Maugham to declare, "Tolerance is only another name for indifference."³⁹

But in a nation plagued by intolerable levels of child poverty, violence, drug abuse, and psychological illness, Americans can perhaps learn more valuable things than how to mask indifference by feigning Tolerance. With so many terrible social ills threatening our collective well being, perhaps even learning the true old virtue of tolerance should not be our highest priority. For if — as Edmund Burke once declared — "there is a limit at which forbearance ceases to be a virtue,"⁴⁰ the time is clearly past for tolerating the sophistry that weakens family life and so multiplies intolerable social evils.

Simple compassion will always entail some measure of leniency towards and understanding of those who fail to live up to marital and family ideals. In other words, compassion will always mean expressions of the traditional virtue of tolerance. But compassion does not require acquiescence in the sophistry of the New Tolerance, a sophistry now bringing intolerable suffering down on the heads of those whose confusion about domestic morality is exposing them

and others to entirely unnecessary poverty, pain, illness, and violence. The time has come for a “Zero Tolerance” campaign against the anti-family sophistry of the New Tolerance.

RELIGIOUS CONSENSUS

Americans may utterly refuse to tolerate anti-family sophistry not only because of the intolerably horrific social costs of family disintegration, but also because of the remarkably strong consensus about family morality among the country’s diverse religious communities, including its burgeoning non-Christian communities. The striking congruence of the moral teachings of diverse religious traditions with respect to the traditional family that Christian apologist C.S. Lewis has limned in his landmark book *The Abolition of Man* (cf. “Duties to Parents, Elders, Ancestors,” “Duties to Children and Posterity,” and “Sexual Justice” in “Illustrations of the *Tao*”) ought to reassure Americans that they are hardly being bigoted or *intolerant* when they stand up for the family.⁴¹ What is more, by refusing to tolerate the destructive mendacities of the New Tolerance, Americans will realize many much-needed social benefits — even some they may not expect.

For not only will repudiating the family-destroying sophistry of the New Tolerance reduce intolerable social evils such as child poverty, crime, physical and mental illness, and domestic violence, but it will also actually promote civic virtues that flourish best in intact marriages and families. Since sociologists have established that married persons are generally more committed than unmarried peers to “volunteering, civic association membership, voting, and religious participation,”⁴² Americans can realistically hope for a renaissance of civic culture when they start denying the apostles of Tolerance freedom to wage war on wedlock. Revoking the teaching privileges of the antifamily zealots who promote the New Tolerance may even deliver a piquant surprise: a 1980 psychological study revealed that compared to peers reared in single-parent homes, children reared in intact families manifest higher levels of individual tolerance.⁴³

ENDNOTES

1. White, quoted in "Famous Quotations – Tolerance," Nonstop English. <http://nonstopenglish.com/reading/quotations>.
2. Scheer, quoted in "Famous Quotations about Tolerance," Zaadz. <http://www.zaadz.com/quotes>.
3. Forster, quoted in "Famous Quotations – Tolerance."
4. <http://nonstopenglish.com/reading/quotations>. Sara Bullard, "Sorting Through the Multicultural Rhetoric," *Educational Leadership*, Dec. 1991 / Jan. 1992, 4-7.
5. Liz Willen, "'Rainbow' Gone; Storm Not: New teachers' guide doesn't please critics," *Newsday*, June 7, 1994.
6. Jon Barrett, "A Mother's Mission," *Advocate*, March 16, 1999, 20-22.
7. Elizabeth Socha Davis and Pauline G. Boss, "Using Class Profiles to Teach Tolerance for Diverse Values in Family Relationships," *Family Relations* 30 (1981): 590.
8. Walt Whitman, "Song of Myself," *Leaves of Grass*, New York, NY: W. W. Norton, 1965.
9. Cf. Pamela Lyons, "Intolerant of Intolerance," *The Oregonian*. October 3, 2000.
10. George Will, "Academic Stuck to the Left," *Washington Post*. November 28, 2004.
11. John Leo, "Behavior controls and speech controls are signs of our times," *Grand Rapids Press*. October 29, 2002. John Leo, "Anti-gay' students must keep quiet: Lawsuit filed against district's 'diversity training,'" *WorldNetDaily*. March 29, 2005.
12. John Leo, "'Diversity,' in fact, isn't very diverse," *Grand Rapids Press*. February 2, 2002.
13. Cf. Jane Eiser, "U.S. AIDS Policy Focuses on Too Few," *Knight Ridder Tribune News Service*. July 13, 2004. David Crary, "The Nation: Quality Child Care Needed – for a Bargain Price," *Los Angeles Times*. November 2, 2003.
14. Randal D. Day and Wade C. Mackey, "Children as Resources: A Cultural Analysis," *Family Perspective* 20 (1985): 258-262.
15. Cf. Bryce Christensen, "The Family in Utopia," *Renascence* 44 (1991): 31-44.
16. Cf. Jonathan Yardley, "Thought Police Spring to Action on the Campus," *The Record*. November 26, 2001. Norah Vincent, "Commentary: Liberal Media Ignore What They Don't Want to Hear," *Los Angeles Times*. February 14, 2004.
17. Cf. Christopher Jencks, "Deadly Neighborhoods," *The New Republic*. June 13, 1988: 28-29.
18. Marianne E. Page and Ann Huff Stevens, "Understanding Racial Differences in the Economic Costs of Growing Up in a Single-Parent Family," *Demography* 42 (2005): 75-90.

19. Gary D. Sandefur, Sara McLanahan, and Roger A. Wojtkiewicz, "The Effects of Parental Marital Status during Adolescence on High School Graduation," *Social Forces* 71 (1992): 103-121.
20. Barry D. Ham, "The Effects of Divorce and Remarriage on the Academic Achievement of High School Seniors," *Journal of Divorce & Remarriage* 42 (2004): 159-178.
21. John Guidubaldi and Helen Cleminshaw, "Divorce, Family Health, and Child Adjustment," *Family Relations* 34 (1985): 35-41.
22. Joseph E. Schwartz et al., "Sociodemographic and Psychosocial Factors in Childhood as Predictors of Adult Mortality," *American Journal of Public Health* (1995): 1237-1245.
23. Cf. Lorraine Davies, William R. Avison, and Donna D. McAlpine, "Significant Life Experiences and Depression Among Single and Married Mothers," *Journal of Marriage and the Family* 59 (1997): 294-308.
24. Cf. Gong-Soong Hong and Shelley I. White-Means, "Do Working Mothers Have Healthy Children?" *Journal of Family and Economic Issues* 14 (1993): 163-181. Helen S. Merskey and G.T. Swart, "Family Background and Physical Health of Adolescents Admitted to an Inpatient Psychiatric Unit: I, Principal Caregivers," *Canadian Journal of Psychiatry* 34 (1989): 79-83.
25. Cf. Timothy J. Biblarz and Greg Gottainer, "Family Structure and Children's Success: A Comparison of Widowed and Divorced Single-Mother Families," *Journal of Marriage and the Family* 62 (2000): 533-548.
26. Shanta R. Dube et al., "Childhood Abuse, Neglect, and Household Dysfunction and the Risk of Illicit Drug Use: The Adverse Childhood Experiences Study," *Pediatrics* 111 (2003): 564-572.
27. John S. Wodarski and Pamela Harris, "Adolescent Suicide: A Review of Influences and the Means for Prevention," *Social Work* 32 (1989): 477-484. Cf. Franklyn L. Nelson, "Youth Suicide in California: A Study of Perceived Causes and Interventions," *Community Mental Health* 24 (1988): 31-42.
28. Cf. Michael E. Connor, "Teenage Fatherhood: Issues Confronting Young Black Males," *Young, Black, and Male in America: An Endangered Species*, (Jewelle Taylor Gibbs, ed.), Dover, UK: Auburn House, 1988. Patricia Moran and Allan Barclay, "Effects of Fathers' Absence in Delinquent Boys: Dependency and Hypermasculinity," *Psychological Reports* 62 (1988): 115-121.
29. David T. Courtwright, *Violent Land: Single Men and Social Disorder from the Frontier to the Inner City*, Cambridge, MA: Harvard University Press, 1996.
30. Cf. David C. May, "Scared Kids, Unattached Kids, or Peer Pressure: Why Do Students Carry Firearms to School?" *Youth and Society* 31 (1999): 100-127.
31. Kersti Yllo and Murray A. Straus, "Interpersonal Violence Among Married and Cohabiting Couples," *Family Relations* 30 (1981): 339-347. Jan E. Stets and Murray A. Straus, "The Marriage License as a Hitting License: A Comparison of

- Assaults in Dating, Cohabiting, and Married Couples,” Paper presented at the 1988 meeting of the American Sociological Association. July 8, 1988.
32. Cf. Selsyn M. Smith, Ruth Hanson, and Sheila Noble, “Social Aspects of the Battered Baby Syndrome,” *Child Abuse: Commission and Omission*, (Joanne V. Cook and Roy T. Bowles, eds.), Toronto, CA: Butterworths, 1980.
 33. Cf. Jocelyn Brown et al., “A Longitudinal Analysis of Risk Factors for Child Maltreatment: Findings of a 17-Year Prospective Study of Officially Recorded and Self-Reported Child Abuse and Neglect,” *Child Abuse & Neglect* 22 (1998): 1065-1078.
 34. Martin Daly and Margo Wilson, “Child Abuse and Other Risks of Not Living With Both Parents,” *Ethology and Sociobiology* 3 (1982): 197-209.
 35. Cf. Lauren J. Krivo and Ruth D. Peterson, “Extremely Disadvantaged Neighborhoods and Urban Crime,” *Social Forces* 75 (1996): 619-650.
 36. Cf. Craig Savoye, “Putting Rock-Solid Faith in Zero Tolerance,” *Christian Science Monitor*, 20 (June 2001). Samuel Greengard, “Zero Tolerance: Making It Work,” *Workforce*, (May 1999): 28-33.
 37. Cf. Bridget Samburg, “Nipping Domestic Violence in the Bud; A Summit to Focus on Plugging Cutbacks,” *Boston Globe*. October 3, 2004.
 38. Editorial, “Zero Tolerance Turns Silly,” *Detroit News*. October 7, 2000. Sean McCullem, “Zero Tolerance: Safer Schools or Unfair Rules?” *Literary Cavalcade*, (September 2004): 20-21. Editorial, “Harsh Medicine,” *Times-Picayune*. December 9, 2003.
 39. Maugham quoted in “Famous Quotations – Tolerance.” <http://nonstopenglish.com/reading/quotations>.
 40. Burke quoted in “Famous Quotations – Tolerance.” <http://nonstopenglish.com/reading/quotations>.
 41. Cf. C.S. Lewis, *The Abolition of Man: Or Reflections on Education With Special Reference to the Teaching of English in the Upper Forms of Schools*, New York, NY: Macmillan, 1978.
 42. Cf. Corey L.M. Keyes, “Social Civility in the United States,” *Sociological Inquiry* 72 (2002): 393-408.
 43. Edgar Howarth, “Birth Order, Family Structure, and Personality Variables,” *Journal of Personality Assessment* 44 (1980): 299-301.

The Myth of Sexual Orientation

Paul T. Mero



All that can be said honestly about the origins of our human sexuality is what the biblical God first said: we are all born male or female with moral agency. While human sexuality is obviously innate, all of its expressions are a function of moral agency.

A myth is the science of a primitive people. The subjects of myths are usually realities such as forces of nature, the cosmos, and the origins of things. Even so, the processes and details ascribed to these realities are always fiction. A myth is a special kind of story which tries to interpret some aspect of the world around us.

Sexual orientation is a myth. It is a special kind of story, created by homosexuals and their supporters, which explains a very specific reality — men have sexual relations with men and women have sexual relations with women. This special kind of story has been created of necessity to answer the plaintive cry of “why did God make me this way?,” more commonly stated as, “why would anyone choose to be homosexual?”¹ The myth of sexual orientation is used to explain why some boys are unusually effeminate and why some girls are unusually “tomboyish.” The myth is used to explain away the personal despair

Paul T. Mero is president of the Sutherland Institute. This essay was first published by The Howard Center for Family, Religion & Society as a part of its SWAN Database Project. Copyright © 2009 Sutherland Institute; Copyright © 1999 The Howard Center for Family, Religion & Society.

and heartache associated with childhood abuses and/or uncontrolled physical appetites. Ultimately, just as with most other myths, it is used as a tool to abandon personal accountability. "I can't help it. And if I can't help it, then I am not to blame, and neither can what I do be wrong, if it is innate."

Homosexual author Chandler Burr has been arguably the best of the best among the mythmakers of sexual orientation.² To read Burr is to catch a glimpse of the original and ancient dialogue which must have occurred millennia ago in creating this myth. Only now, instead of tales of Jupiter and Ganymede, we have scientific tales of biology and brains to enthrall us. The myth has simply adapted to technological advancements.

Befitting the mythology with which he associates, Burr's first step is to construct an impenetrable defense of the myth. He begins with "The Black Box." Burr explains that in biological circles the Black Box is a reference to any observable human trait whose origins remain a mystery. Cleverly, he leads followers down a questionably analogous path which he describes as parallel to sexual orientation: handedness.

Fascinatingly similar to the contrived science surrounding sexual orientation, Burr summarizes the traits of handedness for us. It is expressed behaviorally. Ninety percent (90%) of the population expresses handedness one way (right-handed), while the remaining minority express themselves an alternative way. Only a relatively few people express handedness both ways. Handedness cannot be identified by merely looking at a person, and the only way to identify handedness is to visibly observe someone in the act. Even though one or the other form of handedness comes naturally, some people can express their handedness "unnaturally" because of social pressures. Neither form of handedness is considered a disease or mental illness. Handedness is detected very early in life. Adoption studies and twin studies each, contrasted, confirm a biological, not environmental, origin for handedness. Left-handedness is higher among males and this form also seems to run in families. Lastly,

the minority trait seems to be passed down by the mother and it is found in all cultures.

Burr reminds us that, like sexual orientation, we have not found the gene that governs handedness. Yet, we see expressions of handedness all around us.

He then also reminds us that *gravity* is a Black Box as well. “We can describe it in exquisite detail: The force of gravity is equal to the gravitational constant ... times the mass of the first and second objects divided by the distance between them.... On the surface, we know everything about gravity. And under the surface, we know nothing. We know nothing about gravity’s origins or actual physical operation or ‘mechanism.’”³

As with gravity and handedness, Burr bemoans the fact that evidence of things not seen is everywhere, but most people simply refuse to believe it. “Or perhaps it is simply the refusal to recognize the evidence before our eyes since that recognition would ruthlessly change so much.”⁴

Compelling arguments. And maybe Burr is right. Perhaps traditional opponents of sexual orientation are motivated by the “ruthless changes” that would occur as a result of a discovered innate origin. And what would change? Well, nothing less than the entire premise of life for many biblical faiths. We would be “stuck” with an unjust God who at once breathes life into the homosexual, only to then condemn him. The idea of “created male and female,” while still physiologically intact, would dissipate in meaning. The construct of the natural family would dissolve. Sexuality would be lost in diversity and overcome with sensate anarchy. The purpose of life would no longer have resolve amidst the heterogeneity and relativism of lives. The “natural” would cease to exist, even as “Nature” would rule unbridled. And, theologically, “eternal life” would take on whole new meanings as aspirants struggle with confusing, chaotic, and empty definitions surrounding its requirements.

But, then again, maybe Burr is wrong. Maybe *he* is the one who is wearing blinders. Worse, maybe he is seeing things which sim-

ply do not exist only because he wants them to exist so badly. In fact, maybe all he and his colleagues really care about is in arguing anything, anywhere, and any time they can to justify their pursuit of homosexual sodomy. Can this urge to justify themselves be so powerful that even the best minds can be fooled into thinking that what is ultimately uncontrolled is innate? Can this urge to justify themselves be so overwhelming that they might waste away their lives searching for the “something” that can prove their tormentors wrong once and for all?

When seen in this light, it is not hard to feel as if Burr and his colleagues are on the quest for the mythical Atlantis, or a UFO, or Big Foot, or the Lochness Monster. The Black Box analogy is apropos to this way of thinking. In that world, evidence of the unexplained is license to legitimate any and all explanations. The Black Box analogy assumes some kind of biological causation for innate human traits (e.g., handedness) and illnesses (e.g., cancer). The analogy does not apply to causation that is neither an innate human trait nor an illness. If indeed homosexuality is neither an innate human trait nor an illness, then the analogy does not apply. Do Burr and his bright colleagues ever entertain this possibility? No. All of their hypotheses begin and end with the hypnotic and fanatical conviction that homosexuality is innate, or as they would put it, sexual orientation exists. In fact, to think otherwise is, in Burr’s words, “anachronistic.”⁵

The analogy of handedness is fun and very interesting, but drawing the analogy against the mystery of origin each example shares is disingenuous and only makes sense if there really does exist a predetermined causation for both subjects.

Also curious is Burr’s use of gravity to explain our general understanding of sexual orientation. We know everything about the properties of gravity, he tells us, and yet we know nothing about gravity because we do not know its origins. This is actually a fascinating piece of logic — we know everything there is to know about it and yet we know nothing because we really do not know everything there is to know about it.

What would compel a man to prove the proven? Gravity exists, and not only that but man has successfully grappled with the precise physical laws surrounding gravity. Is there something about its origins, if we only knew, that would change its physical laws? No, nothing. So what benefit is derived by comparing our lack of understanding about the origins of gravity to our lack of understanding about the origins of sexual orientation? Well, of course, the benefit of such a query has nothing to do with gravity. Gravity needs no help to support its claim of existence. It exists. Sexual orientation needs all the help it can get. It does not exist. Gravity *is* its physical laws; that is, gravity would cease to exist without its physical laws. As we are reminded *ad nauseam*, sexual orientation is *not* its behavior; orientation exists *independent* of its behavior. This is why an otherwise intelligent man feels compelled to prove the proven.

Burr and his colleagues also remind us that “science is a series of qualified assertions about findings on a subject ... All a study does is, first, give you results, and second, tell you statistically whether or not, if you repeated the experiment, how likely it would be that you’d arrive at those same results. Nothing more.”⁶

But there is more if we are to believe the *political* Mr. Burr as much as he asks us to be persuaded by the *scientific* Mr. Burr, and the “more” is not further corroborating scientific evidence. The “more” is the propensity of these proponents to marginalize opposing views as anachronisms. Opponents are portrayed as the 17th century Church to their Galileo, or worse, Flat Earth Society members to their NASA satellite photos. Burr even begins his book, *A Separate Creation*, with a quote of Charles Darwin’s from *The Descent of Man*, wherein Darwin forewarns the skeptics of their ignorance,

Many of the views which have been advanced here are highly speculative, and some no doubt will prove erroneous; but I have in every case given the reasons which have led me to one view rather than another.... The main conclusion arrived at in this work ... will, I regret to think, be highly distasteful to many persons.... But we

are not here concerned with hopes and fears, only with the truth as far as our reason allows to discover it.

Burr concludes his treatise with a chapter on “The Knowledge of Good and Evil.” Fancying himself and like minds as the new Copernicuses and Galileos, he writes, “The assault of science on religion defines the modern era. The current twentieth-century political and social battle over the question ‘What is sexual orientation?’ a battle that appears to us so desperately important, is merely the latest clash between received wisdom and contradictory new knowledge”⁷⁷ And he adds conclusively, “Science possesses a certain almost disquieting inertia. Answers have a habit of appearing, welcome or not, and amid the chaos of debate is the virtual certainty that the biological origins of sexual orientation will become known to us.”⁷⁸

Received wisdom versus contradictory new knowledge? A virtual certainty of proof regarding sexual orientation? Unfortunately, wishful thinking is not always reality.

THE SUBSTANCE OF THINGS HOPED FOR

To even begin talking about sexual orientation we must know what it is we are talking about, which, of course, is hard to do when something really does not exist. Proponents of the existence of sexual orientation do agree, however, on at least a few generalities.

One aspect of sexual orientation that most homosexuals will agree with is that it is a *mystery* and may always remain one. A second general agreement is that sexual *orientation* is different from sexual *behavior*. And third, sexual orientation is best summed up as a sexual *attraction*, acted on or not, toward someone of the same sex.

The combination of these opinions provides a pretty safe intellectual construct if you are defending something non-existent. It is a *mystery*, so no one really knows, may never know, nor, many feel, should even attempt to know its origins. Then again, those who profess not to know its origins somehow know enough certifiably to

characterize sexual orientation as an *attraction*, and because it is an attraction, sexual orientation can be conveniently defined so broadly as to assume any mutation of the idea and include any person by degree. Furthermore, they also seem to know enough to say what it is not, a *behavior*, thereby vacating any opportunity for a moralistic society to judge homosexuality based on the only evidence available — what homosexuals do sexually.

In answer to the question, “what is sexual orientation?” the American Psychological Association proffers an official edict that, “Sexual orientation is one of the four components of sexuality and is distinguished by an enduring emotional, romantic, sexual, or affectional *attraction* to individuals of a particular gender... Three sexual orientations are commonly recognized: homosexual *attraction* ... heterosexual *attraction* ... or bisexual *attraction*...”⁹

By this definition, if a son has an enduring “emotional” or “affectional” attraction to his father, the son is then presumably expressing his sexuality. How is an “attraction” innately sexual or even an innate orientation? A person may be attracted to rich food and a good game of basketball. They might even say that they have an “enduring emotional” attraction to both. Are these attractions innate orientations?

Is an attraction to *blonde* females an orientation or a preference? Is the attraction sexual or is it merely aesthetically preferential? And who is it that decides that an opposite-sex attraction for blonde *females* is a preference, but a same-sex attraction to blond *males* suddenly becomes an orientation? While, clearly for males, a romantic or sexual attraction to blonde females, any female, is definitively a heterosexual expression and that the same attractions toward men are definitively homosexual expressions, what remains to be figured out is why *any* display of romantic or sexual attraction is automatically a “biological orientation”?

Perhaps homosexuals have defined “attraction” so broadly that the whole human experience is one big orientation. For instance, take sex away from a relationship between two men or two women and you’re left with something very common: enduring emotional and

affectional attractions to family, friends, coworkers, etc. Are homosexuals really saying that even these relationships are based on innate orientations? And if they really are saying this — if this is what they ultimately rest their entire premise on — that *every human experience is explained biologically*, then they are making a case very familiar and sympathetic to some of those people who persistently and adamantly oppose that explanation.

Burr writes that, “Since the trait itself is internal and invisible, *the only way to identify an orientation* in someone else is by observing in them the behavior or reflex that expresses it.”¹⁰ But, by the same token, he adds, “behavior is *irrelevant* to the definition of biological sexual orientation. Behavior is not the trait sexual orientation; behavior is only its expression?”¹¹ How is it, then, that behavior can be both irrelevant to the definition of sexual orientation on the one hand and, on the other, be its sole identifier?

Of course, the answer is that it cannot be both. But Burr would reiterate, it’s the biology, stupid! He would say, yes, behavior is the only way we truly know about someone’s sexual orientation, but that is only because science has yet to reveal its true biological origins. After all, he might add, something is making these homosexuals do what they do and feel what they feel. And on this last point, everyone seems to be in agreement — *something* is motivating them to behave this way.

In fact, many religious opponents of homosexuality often make a similar case. Except, for them, the causation is not biological. For them, the causation is theological and found in the doctrine of original sin. The devil made them do it.

Many adherents of orthodox religions, primarily American evangelicals, routinely lump homosexuality together with other sins of the flesh such as adultery or masturbation, drawing few distinctions of the sins by degree. Jesus said sin is sin. So homosexuals might honestly inquire, why then is it so difficult at times for “original sinners” to recognize an innately sinful basis for homosexuality, when they so ably and readily see original sin as the innate basis for every

heterosexual sin? How can homosexuality be excluded from the innate nature of fallen man? And if it can't be excluded, why is it so far-fetched for homosexuals to suggest that they were "born that way"? Or born a liar, or a cheat, or a glutton, or prideful, or a heterosexual fornicator or adulterer?

This conundrum leads many of those adherents to accept a very legalistic argument against homosexuality. They say that, ultimately, it does not matter what makes us tick. Just because we are all sinners does not mean that we should fully succumb to sin and allow abuse and injustice to freely occur. So to describe sin in terms of biology for the purposes of justifying its innate existence is actually irrelevant to everyday living.

For instance, if we found a gene that causes pedophilia, would we then let pedophiles molest children? If we found a biological reason why men rape women, would we condone its occurrence? If there are such people as "natural born killers," would we excuse them for doing so? This particular argument says no. Hence, it does not really matter if homosexuals are born in sin, as it were. All that really matters is that we recognize sin, in all its forms, for what it is, try not to offend God, and repent and change our offensive behavior if we do.

On its face this argument has practical merit because as we deal with each other every day in our neighborhoods, communities, schools and workplaces, other people only know us by our actions and what we share openly with them. They can't read our minds. Laws, public policies, and workplace rules are based on human actions. There are no laws against what a man thinks or feels or dreams, and neither can there ever be. In the eyes of the law, thoughts do not rape or molest. Desires and attractions do not sexually exploit another person or spread disease. Only human actions can do those things. So while it is sometimes interesting to toy with the notion that "thoughts" and "intent" really are a matter for this debate, the truth is that, under the law, only our behavior matters. The laws and rules we create for society only deal with

what we do, not with what we think; they only deal with what we are, not who we think we are, and this is especially true when it comes to our sex lives.

On this point, many conservative and religious intellectuals are at their strongest. Even so, reason is often a weak opponent of emotion.

In their passion and torment of psyche, many homosexuals respond to this religious argument by saying that the question of whether or not we are born *this* way may not matter to those who are born *that* way, but it certainly matters to us. They might continue, you legalists may think it is irrelevant to the public debate, but we, homosexuals, must fight a very private debate going on inside each one of us — and if we resolve in favor of the biological origins of sexual orientation, then we are justified in, at the very least, feeling the way we do about our same-sex attractions. And if justified, then sanctified, to borrow an expression. On the other hand, if we, like you, also accept the doctrine of original sin as our causation for homosexuality, then why cannot we also accept its doctrinal solution: “unconditional love”? Does God love religious *opponents* of homosexuality any more than He loves religious *proponents* of homosexuality? And, if we are “saved by grace” alone, what does it matter, ultimately, how we express our “love”?

At this point, without significant or reasonable push-back, the leap from emotions to behaviors is not a very far jump for homosexuals.

THE EVIDENCE OF THINGS NOT SEEN

Modern apologists for homosexuality hold fast to the faith of sexual orientation. Even if they don't quite know why. When asked if homosexuality is a choice, the APA's official stand is “No.” Even so, its further elaboration is a firm “probably.” It states, “Sexual orientation emerges for *most people* in early adolescence without any prior sexual experience. And *some people* report trying very hard over many years to change their sexual orientation from homosexual to heterosexual with no success. For these reasons, psychologists do not consider

sexual orientation for *most people* to be a conscious choice that can be changed.”¹² Some people? Most people?

Popular homosexual author and intellectual Andrew Sullivan writes that, “The origins of homosexuality are *remarkably mysterious*, and probably are due to a mixture of some genetic factors and very early childhood development (before the ages of five or six).” But Sullivan is quick to add that, “these arguments are largely irrelevant ... the truth is that, for the overwhelming majority of adults, the condition of homosexuality is as involuntary as heterosexuality is for heterosexuals?”¹³

From their path breaking book, *After the Ball*, homosexual authors Marshall Kirk and Hunter Madsen write, “We argue that, for all practical purposes, gays should be considered to have been born gay,” and, like Mr. Sullivan, they do not hesitate to add, “...even though sexual orientation, for most humans, seems to be the product of a complex interaction between innate dispositions and environmental factors during childhood and early adolescence.”¹⁴

Even Dr. William Byne, an outspoken critic of many of the arguments favoring a biological cause of homosexuality, categorically believes that “sexual orientation is not a matter of choice,” though he admits as a scientist that “the most responsible message that we can relay to the public is that we do not know what causes sexual orientation.”¹⁵

Overall, the most common opinions among male homosexuals about the origins of their sexual behavior are expressed succinctly by another homosexual intellectual, Bruce Bawer. “To describe homosexuality as a matter of choice is not only wrong; it’s absurd and obscene...”¹⁶ Sexual orientation is an essential element of a person’s identity...”¹⁷ and “Homosexuality, at the deepest, truest level, is not a matter of doing something. It’s a matter of *being* something?”¹⁸

Even so, insistence is not proof. So just what is the support for these bold claims?

The primary and most influential advocates of the existence of *homosexual* sexual orientation (note that many prominent pro-fam-

ily advocates would argue that *heterosexuality* is the one true sexual orientation) are scientists and clinicians or “sci-sexuals” — such as Simon LeVay, Dean Hamer, Michael Bailey, Richard Pillard, Daryl Bern, William Byne, Laura Allen, and Roger Gorski.

Each of these sci-sexuals believes in the biological origins of sexual orientation, in some form. Some believe the causes are genetic. Some believe the causes are hormonal. Most believe the causes are a combination of both. Still others believe that biological factors do not necessarily cause, but simply inform, a person’s sexual identity. They are colleagues and many times personal friends. Theirs is a close knit group, like a family wherein they quarrel and discuss, often taking criticism very personally. But ultimately, they are all on the same page: they all believe, deep in their hearts, regardless of the absence of scientific “proof,” homosexuals are born that way.

Here is a brief summary of the research conducted by these sci-sexuals:

Drs. Laura Allen and Roger Gorski. Dr. Laura Allen is a neuroanatomist and Dr. Roger Gorski is a neurobiologist, both working at the University of California at Los Angeles. Dr. Gorski is the discoverer of the sexually dimorphic nucleus (SDN) in rats. What he found was a nucleus in the rat hypothalamus that was five times larger in male rats than in females. The cause for the dimorphism he determined as hormonal. This led Gorski to start playing with rat hormones where he discovered that “altered” rats can be made to switch sexual roles (i.e., castrated male rats can be made to play the role of submissive females). His conclusion: hormones determine sexual behavior.¹⁹

Laura Allen was a graduate student of Dr. Gorski’s when she took his research a step further by examining human brains for the same SDN. In the process she discovered what has become known as the interstitial nuclei of the anterior hypothalamus (INAH), four minute dots on the brain, each about the size of the period at the end of this sentence. Allen had found that the INAH 2 and 3 were sexually dimorphic, the men’s being larger than the women’s. Her conclusion:

the brains of men and women are different, and hormones probably cause the difference.²⁰

Dr. Simon LeVay. Dr. LeVay is a neuroscientist (he has a Ph.D. in neuroanatomy). He studies the brain. In 1991, he authored an article for *Science* magazine²¹ detailing his work in studying the brains extracted from 41 corpses. Six of the brains came from females, 19 came from known homosexual men, and 16 of the brains came from men whose sexuality was indeterminable, but assumed heterosexual. The homosexual men were identified as such largely because each had died an AIDS-related death. Seven of the heterosexuals also died from AIDS, one a woman.

Attempting to build upon Laura Allen's work, the focus of LeVay's attention was also the anterior hypothalamus, an area of the brain thought to serve several functions, including sexual expression. He, too, found the four groups of neuron clusters. The third cluster (INAH 3) was found to be smaller in a preponderance of the homosexual men. This size differential, LeVay feels, is an indication that homosexual brains are different from heterosexual brains.

Dr. Dean Hamer. Dr. Hamer is a molecular biologist working at the federal National Institutes of Health, specifically the National Cancer Institute (NCI). His research there into Kaposi's sarcoma, a skin cancer associated with homosexual males suffering from the AIDS-stages of HIV infection, led him on a quest to find a "gay gene," the genetic marker for homosexuality.

After several encouraging research attempts to justify a more focused study, Hamer and his small team of researchers at the NCI settled on a single technique to prove their test hypothesis. What they did was to look at the chromosome material from forty families (discovered through ads run in homosexual newspapers) that included at least two homosexual brothers (none twins). Their previous research prompted them to focus on the maternal X chromosome. What Hamer wanted to know was whether or not brothers received any region of one of mom's X chromosomes at rates higher than you would expect through random chance.

Content with his findings, Hamer announced to the world on July 16, 1993, that Xq28 is the genetic address for the newly discovered GAY-1 gene.²²

Drs. Michael Bailey and Richard Dillard. J. Michael Bailey is a clinical psychologist at Northwestern University and Richard C. Dillard is a psychiatrist at the Boston University School of Medicine. Together they sought to test the hypothesis that there exists a high correlation of homosexuality among twin brothers.²³ They identified 56 pairs of identical twins, 54 pairs of fraternal twins, and 57 pairs of adoptive brothers. Each pair of siblings studied grew up in the same household and no females were studied. In each case, and within each pair, one brother was openly homosexual. How many of the siblings were also homosexual?

Fifty-two percent (52%) of the identical twin brothers were homosexual. Twenty-two percent (22%) of the fraternal twin brothers were homosexual. And eleven percent (11%) of the adoptive brothers were homosexual. As Dr. Bailey summarized his results, “the research strongly suggests a genetic contribution to sexual orientation.”²⁴

Upon these four collective works rests the entire case for believing in the existence of’ sexual orientation, or that people are “born that way.” This is the evidence of things not seen.

DECONSTRUCTING THE MYTH FROM WITHIN

There are many points on which the sci-sexuals could be challenged by orthodox religious opinions, but none of those opinions are as impressive, persuasive, or effective as the opinions expressed by the proponents themselves.

Behind every headline proclaiming a new discovery of the origins of sexual orientation are huge, but mostly hidden, disclaimers that it really is not so. The headlines reflect the researcher’s ultimate political goal, but they do not accurately reflect good science or honest methodology in pursuit of the science. There is a disturbing feel of disingenuousness in the words of those proponents who would at

once caution us about not jumping to premature conclusions, but who then continue to put their lives' efforts into perpetuating premature conclusions.

Deconstructing the myth from within begins with reviewing the four main studies just referred to. Each study presumes the existence of sexual orientation, and each study is attempting to show a biological origin of something the researchers already believe to exist, but cannot prove without pointing to homosexual behavior, which they say is not "orientation." Hypotheses based on a presumptive mystery are always kinder and gentler foes than are hypotheses based on pure falsehood. Even still, a thing with no roots has no branches whereon any presumption can rest.

Drs. Roger Gorski and Laura Allen. Remember that Dr. Gorski is the discoverer of the sexually dimorphic nucleus (SDN) in rats. What he found was a nucleus in the rat hypothalamus that was five times larger in male rats than in females. The cause for the dimorphism, he felt, was hormonal.

What Dr. Gorski actually found was, well, SDN in rats. He also found it in ferrets and monkeys. But he could not find it in mice, or hamsters, or gerbils. In other words, he could not find the SDN across the rat's own species. What else he did not find was a connection between the SDN in rats and their sexual response. Surgically burn out the SDN in rats and nothing changes about their sexual behavior. Male monkeys tested in like manner show a decrease in desire toward female monkeys, but they masturbate more. The presumption was that the SDN has something to do with sexuality. That was not proven.

Dr. Gorski also presumed that the SDN was caused by hormones. After castrating a few rat genitalia at birth, thereby depriving the males of male hormones, he found that, indeed, altered male rats will assume lordosis, or the female receptive position, and allow themselves to be mounted by non-altered male rats. But these altered rats will also assume lordosis if they, like any female rat, are rubbed in the right place with a cotton swab.

Dr. Gorski explains that his rat model does not demonstrate homosexuality. “The rat model is a model for transsexuality ... With our hormonal direction [surgical castration], we’ve effectively rewired the male rat’s sexual system to the point where most probably what he’s thinking is ‘Help! I’m a girl, get me out of this boy body!’”²⁵ Is all this a sign of “gay rats”? Dr. William Byne wants to know, if it is such a sign, which rat is the homosexual rat? The one in lordosis, or the unaltered one doing the mounting? “When a man, fully aroused, eagerly mounts another man who is fully aroused and proceeds to have sex with him, only one of them is gay?”²⁶

Do hormones affect rats? Yes. Do hormones affect humans? Yes. Except rat research has little, if anything, to do with human research; and neither has anything to do remotely with a discovery of sexual orientation.

Enter Dr. Laura Allen. Dr. Allen’s search was for an SDN in humans — again, working under the presumption that the SDN has something to do with sexuality. She did not find an SDN in humans. What she did find was what she called the INAH described earlier. And, as noted, she found that in the human brains she had examined the INAH 2 and 3 were larger in males than in females.

The only problem for Dr. Allen is that, like the SDN, no one knows what the INAH is. As she herself states, “Remember, nobody knows what these nuclei actually do.... We speculate that the INAHs have a function. Of course, we don’t know.”²⁷

Neither Dr. Gorski nor Dr. Allen has come close, not even remotely, to demonstrating that A) sexual orientation exists or B) sexual orientation has biological origins.

Dr. Simon LeVay. The work of Drs. Gorski and Allen are relevant to this whole debate because the much-publicized work of Simon LeVay used their findings as a springboard. The focus of Dr. LeVay’s attention was also the anterior hypothalamus. He, too, found the four groups of neuron clusters. The third cluster (INAR 3) was found to be smaller in a preponderance of the dead homosexual men he studied. This size differential, LeVay feels, is

an indication that homosexual brains are different from heterosexual brains.

This conclusion is, once again, based on the presumption that the function of the INAH, if any, is known. And it is not. Only by ignoring this fact can Dr. LeVay move forward to even suggest that any differential exists between the brains of homosexual men and heterosexual men.

Dr. Byne, a sympathetic opponent to date (he still believes that sexual orientation exists and that it is probably biological), levels three main criticisms at LeVay's study. First, Byne says, the "staining" methodology LeVay used on the brain cells can produce skewed results. Second, no one can apply animal neuroanatomy to humans. And third, the SDN in the human brain has not been demonstrated.

The only way LeVay knew that his "homosexual" cadavers were homosexual is through their AIDS-related deaths. What this means, Byne explains, is that

Some — perhaps one-half — of LeVay's presumed-homosexual subjects had testicular atrophy, degeneration of the testes, which of course supply testosterone.... Considering that the way he identified his gay subjects was by the fact that they had AIDS, this could be an effect of three things.

Point one: The AIDS virus has a direct impact on the hypothalamic function, which could cause the INAH-3 nucleus to shrink. So what Simon may have measured is nothing more than an AIDS effect. Two, this shrinkage of neurons is seen in most wasting illnesses like AIDS — so, same problem. And third, some drugs used to treat opportunistic infections in AIDS patients — ketoconazole, for instance — lower testosterone, and if you fool around with any hormone, you can get changes in the brain. Steroids are used, too, and they do the same thing.

Simon claims he's found a nucleus that's smaller in some human brains. But if you find such a nucleus, it might be varying with testosterone in circulation and have absolutely nothing to do with sexual orientation at all.²⁸

And that is if sexual orientation even exists. In a 1991 interview with the *Los Angeles Times*, LeVay stated that the significance of his study “is that it indicates that we can study this aspect of human nature — sexual orientation — at a biological level and with biological tools rather than leaving it to psychiatrists.”²⁹ By 1997, six years after his prediction that within five years a homosexual gene would be successfully isolated and that it is “going to blow society’s mind,”³⁰ LeVay admitted, “My study doesn’t actually even address whether one is ‘born that way.’ I didn’t look at these people’s brains before they were born.... The message of my study is, you would probably be better off looking at pre-natal events as being important in pre-disposing people to become gay or straight than post-natal events.”³¹

Fundamental questions remain about Dr. LeVay’s research. Not the least of which is, did he really find anything, and if he did, what does it have to do with sexual orientation?

Dr. Dean Hamer. The single “gay gene” theory soon became the focus of homosexual research because of the publicity and politics surrounding Simon LeVay’s study. Dr. Dean Hamer became the next new rising star in this field of research. As a review, what Hamer and his team did was to look at the chromosome material from forty families (discovered through ads run in homosexual newspapers) that included at least two homosexual brothers (none twins). Their previous research prompted them to focus on the maternal X chromosome. What Hamer wanted to know was whether or not brothers received any region of one of mom’s X chromosomes at rates higher than you would expect through random chance.

He explains his challenge this way:

How do you find something when you don’t know what you are looking for? How do I find ‘it,’ this gene, when I don’t even know what ‘it’ is? I don’t know where on the chromosome to look, I don’t know what protein it codes for, I don’t know what ACGT sequence to look for, I have no clue. I can’t look for it directly. But what I can do is look indirectly for it. I can wander along the X

chromosome and try to figure out where brothers have inherited the same sequences from Mom. And somewhere inside those sequences should be the gene.³²

He does not know what he is looking for. He does not know how to find it. He does not even know what “it” is. And so he relies on what every “good” scientist relies on to proclaim proof of something:

The study is actually incredibly simple. It’s just one big, fancy coin toss. Seriously, that’s the way to think of it. In fact the entire study can be reduced to a very simple question: Did both gay sons get any region of one of Mom’s X chromosomes at rates higher than you’d expect just by random chance? That’s the whole study. It’s just heads or tails, and if you toss the coin forty times and get thirty tails where by chance you should only get twenty, you know something is going on.³³

Dr. Hamer did find that the coin tosses show that the Xq28 region of the X chromosome revealed a more-than-chance presence of homosexuality. He also found that eighteen percent of the homosexuals he studied did not inherit that same portion of the Xq28 from their mothers. Nor could he identify any kind of sequencing in that region whatsoever.

Lastly, his study has never been replicated. Burr writes that, “Replication in science is everything, the primary quality-control mechanism on science’s intellectual assembly line. Researchers can do a study, find the answer to the question of life itself, but if no one can repeat the work and arrive at the same results, the effort is, for all practical purposes, worthless.”³⁴ Not one of the major studies ever cited to legitimize the notion that sexual orientation exists, or that it is biologically innate, has been replicated. Not one.

The real question remains even if you know something is going on, what is going on? No amount of coin flipping will ever answer *that* question.

Drs. Michael Bailey and Richard Pillard. The twin studies are perhaps the easiest to dispense with. In Bailey and Pillard's study, fifty-two percent (52%) of the identical twin brothers were homosexual; twenty-two percent (22%) of the fraternal twin brothers were homosexual; and eleven percent (11%) of the adoptive brothers were homosexual.

If sexual orientation is one hundred percent genetic, then each set of identical twins would be one hundred percent homosexual. Almost half were not. What the Bailey/Pillard study actually proves is that homosexuality is not purely genetic.

As if to punctuate the problems associated with these bold claims that people are born homosexual or, in some biological way, cannot help themselves, the public has been treated recently to the news that, while male homosexuals may be "hard-wired" for their homosexuality, female homosexuals, or lesbians, are not. Ironically, it is Dean Hamer in his book, *Living With Our Genes: Why They Matter More Than You Think*, who suggests that "women tend to be more sexually fluid."³⁵

A comprehensive and important new standard reference book on sexuality, *Sexuality in America: Understanding Our Sexual Values and Behaviors*, sums up the attempts to prove a biological origin [read: the existence] of sexual orientation. "Although there may be biological precursors to orientation, no well-designed, appropriately controlled study has been done to support that conclusion."³⁶

BORN TO JUSTIFY

For the adherents of most religions, active faith in God is the primary and central doctrine of their religious expression. It is the cornerstone of both whom and how most people worship God. For example, Christians have faith in the efficacy of the eternal and infinite Atonement and Resurrection of Jesus Christ. They exercise faith, which informs their daily activities, because they have hope in the promises of eternal life. Holy writ describes this faith as "the substance of things hoped for, the evidence of things not seen."

While not all people worship the same God, even the most improbable and divergent group of worshipers may share and accept the same biblical definition of faith. This is particularly true of those who worship the carnal god of sexual orientation.

The truth is, for many homosexuals, believing in the existence of sexual orientation *is* a similar exercise of faith as that expressed by other groups as divergent as orthodox conservative Christians. Both groups have faith in something hoped for, but not seen. Faith in sexual orientation is every bit as much a religious exercise for many homosexuals as is Christianity for Christians. Even for religious-minded homosexuals, faith in existence of sexual orientation goes hand in hand with their faith in God. After all, they will say, God made them that way. Other seeming parallels can be drawn from this association.

For instance, Christians who properly exercise their faith in Christ do so to justify Christian living. Likewise, many homosexuals who exercise their faith in sexual orientation do so to justify same-sex sexual attraction. Christians honest with themselves also feel confidently justified at the end of the day by the outward manifestations of their faith, expressed behaviorally, through following Christ's scriptural examples. Homosexuals honest with themselves, too, feel confidently justified at the end of the day by the outward manifestations of their faith, expressed behaviorally, through same-sex attractions or by committing actual or imagined acts of homosexual sodomy — thus simply conforming their sexual behavior with their “innate” faith in sexual orientation.

Furthermore, organized Christianity has its churches, its print and broadcast media, its politics, its entertainment, its schools, its finances, its legal arms, its societies, its researchers, its foundations, and even its medicine. And so, too, does organized homosexuality have its parallel structures. Certainly, we could come up with dozens of seemingly accurate parallels between the faith prompted by Jesus Christ and the faith prompted by sexual orientation.

Of course, drawing these parallels is actually a rather specious exercise. To compare Christianity seriously with homosexuality is a lot

like comparing parenting to pedophilia, a very poor substitute. But these parallels do raise some interesting ironies.

For instance, isn't it ironic that so many homosexuals castigate people of faith as "backward," who disagree with them about the nature of homosexuality, when they themselves are often guilty of a similar exercise of faith? While orthodox Christians are *not* often publicly ridiculed by homosexuals simply for exercising faith, they *are* often publicly ridiculed when they exercise their faith to its logical conclusion and, accordingly, try to shape the world around them. To do so with fervor, based on something only hoped for but not seen, is evidence to many people of a fanaticism which accompanies irrational and unscientific minds. But isn't trying to shape the world around *them*, based on something only hoped for but not seen, exactly what organized homosexuality does when it perpetuates the myth of sexual orientation?

It seems peculiarly uncharacteristic of a self-described "enlightened" and "progressive" group of people (i.e., gay activists) to castigate others as "fanatics" while failing to notice the obvious similarity between the justification Christians find in the existence and life of Jesus Christ and the justification that they themselves, more often than not, find in the existence of sexual orientation. For both groups, justification is their goal. The one group seeks to justify a righteous life, and the other group seeks to justify a life of homosexual sodomy. Homosexual author Bruce Bawer reveals this deep sense of the need to justify this behavior, "To be homosexual is not just to experience sexual attraction to another person of the same sex; it is to feel the same sense of comfort, rightness, and wholeness in a same-sex relationship that a straight person feels in an opposite-sex relationship."³⁷

And it is not even as if the existence of sexual orientation is a more compelling argument to accept. At least Christians have millennia of experiential evidence, nature, and science to fortify and substantiate their faith. Sexual orientation has none of these. No history, not nature, and certainly not science.

The “gay rights movement” was created to justify homosexual behavior. Its organized existence is for no other purpose. The growing strength of this movement is self-evident. Homosexuality touches every American community to one extent or another. Nearly every major profession has an organized and influential contingent of homosexuals. No other group of people have gone to such great lengths to promote a sex act.

It would be easy for us to look at this massive organization as some kind of “conspiracy” and a shameless ploy for power in politics and society. And, actually, the way organized homosexuality has been able to successfully intimidate and manipulate key social institutions to bend to their will adds to this insidious mystique, as does some of their own literature. The truth, however, is far from this projected and often accepted image.

Political power and social influence are simply by-products of organizing. Homosexuals organize for self-justification first; political power and social influence are added bonuses. All of organized homosexuality exists as a mechanism for self-justification. Homosexuals don’t create their own churches to “overthrow” traditional religion; they create their own churches to find the self-justification they don’t receive among religions which hold homosexuality as sin. Likewise, they don’t establish newspapers to propagandize their radical politics and lifestyles; they establish newspapers to provide “safe” public forums wherein they find self-justification (and sex) in community with each other. That traditional religion may be challenged or that propaganda may emanate from “gay pages” is a natural and coincidental result of the processes involved in establishing alternative public forums. But their primary motivation remains self-justification, not power and influence.

This is equally true regarding the many faces of homosexuality. We often hear of conflicts within organized homosexuality over how outwardly traditional-looking homosexuals object to their more flamboyant peers, or how the flamboyant ones find their more circumspect comrades “sell outs” to sexist stereotypes, or even how

“radical” homosexuals hold their politically conservative friends in contempt for not supporting the “sexual revolution,” “gay rights,” or uncensored freedom of expression in “gay pride” parades.

All of this gets pretty confusing after a while. But the reason for it is rather simple to understand. Each expression of homosexuality, whether it is the normal looking guy or the far-out, body-pierced type, is an expression of self-justification. The environment they each choose is an environment wherein they feel comfortable to have sexual relations with others of the same sex. The homosexual who looks “normal,” who has an everyday kind of job, and who shares a nice home decorated with a white picket fence with another homosexual has simply found his psychological comfort zone. It is how he can live with himself. For instance, he may have been brought up in an unnaturally strict religious home with mom, dad, brothers, sisters, and extended family. Although the family’s hidden dysfunctions ultimately “oriented” him to homosexuality, he may still crave the attachment he once had to a “normal” or natural family setting. For him, a desire for a homosexual relationship which most closely resembles his past is what makes him most comfortable. And as hard as it is to believe sometimes, other homosexuals find this same comfort in the many less traditional faces of homosexuality.

There really is only one true face of homosexuality, no matter how they dress themselves up for the public or how they prepare themselves to look in the mirror each morning: homosexuality is sexual behavior with persons of the same sex. All of their organizations and associations and activities exist to support their sexual choices and, perhaps more importantly, to justify those choices for their emotional well-being.

That is really how the myth of sexual orientation came to be, and self-justification remains the sole motivation for perpetuating this myth.

Dr. Hamer conveniently sums up the prosecutions case for us:

The fact that homosexuality is not chosen was one of the mandatory biological preconditions to our concluding there was a

gene for this trait. Can you imagine any sane, reputable biologist spending years of their life and their resources looking through chromosomes for a gene for something that's a chosen lifestyle? I suppose you could do it, but you'd have to be a complete idiot, because it would be the genetic equivalent of staking your entire scientific career and reputation on finding the gene for being a Presbyterian.³⁸

Well, Dr. Hamer, we never called you a “complete idiot.” A *complete* idiot would never be able to pull off what you and your colleagues have done so well in making a myth into reality for so many people.

END NOTES

1. *Greensboro News & Record*, editorial, September 9, 1998, A10.
2. Chandler Burr, *A Separate Creation: The Search for the Biological Origins of Sexual Orientation*, Hyperion, 1996.
3. Burr, 10.
4. *Ibid.*
5. Burr, 83.
6. Burr, 48.
7. Burr, 309.
8. Burr, 311.
9. *Answers to Your Questions About Sexual Orientation and Homosexuality*, American Psychological Association (no date).
10. Burr, 6.
11. Chandler Burr, e-mail from “The Gay Gene: Discussion Arena,” January 12, 1997.
12. *Ibid.*, *Answers*.
13. *Virtually Normal*, Andrew Sullivan, 17.
14. *After the Ball*, Marshall Kirk and Hunter Madsen, 184.
15. Burr, 81-82.
16. *A Place at the Table*, Bruce Bawer, 141.
17. Bawer, 141.
18. Bawer, 151 (his italics).
19. Roger Gorski, *et. al.*, “Evidence for a Morphological Sex Difference Within the Medical Preoptic Area of the Rat Brain,” *Brain Research*, 148 (1978): 333-346.

20. Laura Allen, Melissa Hines, James Shryne, and Roger Gorski, "Two Sexually Dimorphic Cell Groups in the Human Brain," *Journal of Neuroscience*, 9: 2 (1989); 497-506.
21. Simon LeVay, "A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men," *Science*, 253 (August 30, 1991): 1034-7.
22. Dean H. Hamer, Stella Hu, Victoria Magnuson, Nau Hu, Angela M.L. Puttatucci, "A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation," *Science*, 261 (July 16, 1993): 321-327.
23. J. Michael Bailey and Richard Pillard, "A Genetic Study of Male Sexual Orientation," *Archives of General Psychiatry*, 48 (December 1991): 1089-96.
24. *Los Angeles Times*, December 5, 1991.
25. Burr, 46.
26. Ibid.
27. Burr, 69-70.
28. Burr, 44.
29. *Los Angeles Times*, August 30, 1991.
30. *Newsweek*, February 24, 1992.
31. *Harvard Gay and Lesbian Review*, Winter 1997.
32. Burr, 185.
33. Burr, 188.
34. Burr, 42.
35. *The Vancouver Sun*, March 21, 1998: Dean H. Hamer and Angela Puttatucci, et. al., "Linkage Between Sexual Orientation and Chromosome Xq28 in Males But Not in Females," *Nature Genetics*, 11 (November 1995).
36. Robert T. Francoeur, Patricia Barthalow Koch, and David L. Weis, "Sexuality in America: Understanding Our Sexual Values and Behavior," *Continuum*, 1998, 150.
37. Bruce Bawer, *Stealing Jesus: How Fundamentalism Betrays Christianity*, Crown, 254.
38. *Harvard Gay and Lesbian Review*, Winter 1997, 28.

When Dysfunction Becomes the Norm

A. Dean Byrd, Ph.D., MBA, MPH



Traditional marriage has created the empirical and experiential gold-standard for the healthy development of men and women and provided an optimal environment for raising children. The same simply cannot be claimed of homosexual relationships — not even close.

HOMOSEXUALITY AND ADOPTION

The best interest of the child is both the standard in the law and the standard with agencies that provide adoption services. Historically, adoptive couples had to demonstrate that they were physically healthy and emotionally stable and had sufficient longevity to rear a child. The central question was: “Is this family the best fit for the child?” The basic understanding underlying the need for adoption was that some parents were not able to rear the children they conceived or that some children, because of abuse or neglect, needed a home. Such vulnerable children have a right to

Dr. A. Dean Byrd is president of the Thrasher Research Fund and a member of the University of Utah School of Medicine faculty with appointments in the Department of Family and Preventive Medicine and in the Department of Psychiatry. Additionally, he is adjunct professor in the Department of Family Studies, also at the University of Utah. A licensed clinical psychologist, Dr. Byrd is the author of four books and more than two hundred peer-reviewed journal articles (in mental-health journals as well as law journals) and many other publications on homosexuality, homosexual marriage, adoption by homosexual couples, and other family-related topics. Originally published as two separate chapters in *Setting the Record Straight: Mormons Homosexuality* (Millennial Press, 2008). Reprinted with permission. Copyright © 2008 Millennial Press.

the best possible parenting arrangement that society can provide, and the best possible arrangement for a child is with parents whose health and lifestyles provide optimal development for that child on his or her journey to adulthood.

Stellar research from the social sciences provides conclusive evidence about the family form that is most advantageous for children: all variables considered, children are best served when reared in a home with a married mother and father. David Popenoe summarized the research nicely by saying, “Social science research is almost never conclusive . . . yet in three decades of work as a social scientist, I know of few other bodies of data in which the weight of the evidence is so decisively on one side of the issue: on the whole, for children, two-parent families are preferable to single parent families or stepfamilies.”¹

Children reared in a family with a mother and a father navigate the developmental stages more easily, are more solid in their gender identity, perform better in academic tasks at school, have fewer emotional disorders, and become better functioning adults. This conclusion, supported by a plethora of research studies spanning decades, clearly demonstrates that gender-linked differences in child rearing is protective for children. That is, men and women contribute differently to the healthy development of children.

Diane Baumrind found that children of parents who are sex-typed are more competent. Research has repeatedly demonstrated that the most effective parenting is highly expressive (mothers) and highly instrumental or demanding (fathers).² Highly expressive, instrumental parenting provides children with a kind of communion characterized by inclusiveness and connectedness as well as the drive for independence and individuality. These essential contributions that emerge from dual-gender parenting are virtually impossible for a man or woman to combine effectively.³ Children learn about male-female relationships through the modeling of their parents. Such dual-gender relationships provide children with a model of marriage — the most meaningful relationship that the vast majority of individuals will have during their lifetimes.

This gender complementarity is readily observable in differing parenting styles of mothers and fathers. Not only are fathers' parenting styles highly complementary to the styles of mothers, but research also indicates that the father's involvement in the lives of children is essential for optimal child rearing. For example, maternal complementarity is provided by mothers who are flexible, warm, and sympathetic and paternal complementarity is provided by fathers who are more directive, predictable, and consistent.

Alice Rossi's research concluded that mothers are better able to read an infant's facial expressions, handle with tactile gentleness, and soothe with the use of voice.⁴ Fathers tend to emphasize overt play more than caretaking. This plays out in various forms among young children and appears critical for later healthy development.

A study authored by Marissa Diener demonstrated that babies (twelve months old) who have a close relationship with their fathers seem more stress resistant than those who did not. Babies who had secure relationships with their fathers used more coping strategies than those who did not.⁵ Diener's conclusion has fascinating implications: "there may be something unique to fathers that provides children with different opportunities to regulate their emotions."⁶

Male and female differences emerge in the ways in which infants are held and the different ways in which mothers and fathers use touch with their children. Mothers typically use touch to calm, soothe, or comfort infants. For example, when a mother lifts her child, she brings the child toward her breasts providing warmth, comfort, security, and protection. Fathers, on the other hand, more often use touch to stimulate or excite the child. Fathers tend to hold infants at arms length in front of them, make eye contact, toss the infant into the air, or embrace the child in such a way that the child is looking over the his shoulder. David Shapiro notes that each of these "daddy holds" underscores a sense of freedom.⁷

Researchers like K. Allison Clarke-Stewart reported differences in mothers' and fathers' play. Mothers tend to play more at the child's level. They provide opportunities for children to direct the play or

to be in charge, and they often proceed at the child's pace. On the other hand, fathers are more directive, and their relationships with their children look more like a teacher-student relationship, a kind of apprenticeship. Researchers have concluded that the play observed between fathers and children, particularly fathers and their sons, is characterized by a kind of roughhousing. In fact, researchers have so consistently demonstrated this rough-and-tumble play that the acronym RTP appears frequently in the literature to describe this father-child play style.⁸

Clarke-Stewart further noted the benefits from this rough-and-tumble play. This form of fathers' play appeared as an asset to the child's development, extending from the management of emotions to intellectual and academic achievement. A result even more interesting in this form of father's play is related to the development of socially acceptable forms of behavior and does not correlate with aggression and violence but rather correlates with self-control. Children who roughhouse with their fathers quickly learn that biting, kicking, and other forms of physical violence is not acceptable. They learn how to recognize and manage highly charged emotions in the context of playing with their fathers, and such play provides them with opportunities to recognize and respond appropriately to their emotions.⁹

Maternal and paternal approaches to discipline also reflect gender differences. Fathers tend toward firmness, relying more on principles and rules. Mothers tend more toward responsiveness, are more apt to bargain or negotiate, adjust more toward the child's mood and circumstances or context, and seem to more often rely on an intuitive understanding of the child's needs as well as the emotions of the moment. The differences between paternal and maternal approaches to discipline are rooted in the fundamental differences between men and women in their moral senses. Men stress justice, fairness, and duty based on rules while women stress understanding, sympathy, care, and assistance based on relationships.

Researchers have long recognized the critical contributions of mothers to the healthy development of children. No reputable the-

ory or empirical study that denies the critical importance of mothers to the healthy development of children can be found in the professional literature. Recent researchers have concluded that fathers are critical to the healthy development of children as well. Researchers such as Kyle Pruett concluded that infants whose fathers were involved in their early lives (as young as six months) had higher scores on the Bailey Test of Mental and Motor Development.¹⁰ Ross Parke noted that infants whose fathers spent time with them were more socially responsive and better able to withstand stressful situations than infants deprived of substantial interaction with their fathers.¹¹

Henry Biller concluded that men who were father-deprived in life were more likely to engage in rigid, over compensatory, masculine, aggressive behavior later. His research, based on more than 1,000 separate sources, demonstrated repeatedly the positive effects of fathers on their children.¹²

A second caretaking female cannot provide this essential fathering. In fact, Sara McLanahan and Gary Sandefeur found that children living with a mother and a grandmother fared worse as teenagers than did those adolescents living with just a single parent.¹³

The negative consequences of father absence either physically or emotionally has been so center-stage to children's difficulties that a new term has appeared in the research literature within the past decade: father hunger. This phenomenon seems prevalent in psychiatric clinics where children, especially teenage boys, come for care. Others have noted that this father hunger seems to be the primary cause of the declining well-being of children in our society and is associated with social problems such as teenage pregnancy, child abuse, and domestic violence.¹⁴

There is emerging evidence that mother hunger also exists. The Eisold report provides evidence that mother hunger may indeed develop when a child is deprived of a mother or mother figure. In the article titled, "Recreating Mother," a male child was conceived by a surrogate mother for two homosexual men. They had arranged an artificial insemination with a woman who agreed to relinquish her

parental rights in return for medical care and financial compensation. The child, Nick, was cared for by a hired nanny and began attending school when he was two years old. When Nick was two and a half years old, the nanny's employment was abruptly terminated, another nanny was hired and subsequently fired, and a third nanny was hired. The homosexual couple adopted a second child. At four and a half years old, Nick's behavioral problems resulted in a referral to a female child psychologist, a fourth mother substitute. Because Nick lived in a world where mothers were hired and fired, he fantasized about buying a new mother. Barbara Eisold questioned, "How do we explain why this child, the son of a male couple, seemed to need to construct a woman — 'mother' — with whom he could play the role of a loving boy/man? How did such an idea enter his mind? What inspired his intensity on the subject? Eisold sees some normal, innate developmental forces at work in a boy who has no mother. If he has none, he will need to make one."¹⁵

In spite of the overwhelming evidence supporting the importance of mothers and fathers to the healthy development of children, attempts have been made in the "scientific" literature to blur the lines between the genders and claim that neither mothers nor fathers are essential to the healthy development of children. Such "research" reports have become increasingly bold with their activist agendas.

Perhaps the boldest of such articles appeared in the *American Psychologist*, the flagship journal of the APA, in 1999. In this theoretical article titled "Deconstructing the Essential Father," the authors argue that neither mothers nor fathers are essential to child development and that responsible fathering can occur within a variety of family structures.¹⁶ As advocates of parenting by homosexual couples, Louise Silverstein and Carl Auerbach supported their homosexual parenting theory through their observations of animal behavior. To support their view that parenting by homosexual couples leads to positive child outcomes, the authors cited observations from studies on South American monkeys called marmosets. They noted that "marmosets illustrate how, within a particular bioecological context, optimal child

outcomes can be achieved with fathers as primary caregivers and limited involvement by mothers. Human examples of this proposition include single fathers . . . and families headed by gay fathers.”¹⁷

Silverstein and Auerbach concluded from their theoretical view that children, like animals, do not need mothers and fathers, just caregivers. They make no acknowledgement of the unbridgeable differences between humans and animals. They seem to forget that ducks don’t date, pigs don’t fall in love, and fruit flies don’t go to church!

To their credit, Silverstein and Auerbach offer the following explanation for their views:

We acknowledge that our reading of the scientific literature supports our political agenda. Our goal is to generate public policy initiatives that support men in their fathering role, without discriminating against women and same-sex couples. We are also interested in encouraging public policy that supports the legitimacy of diverse family structures, rather than privileging the two-parent, heterosexual, married family.¹⁸

Further the authors stated, “We realize that some of the research we cite to support our perspective will turn out to be incorrect.”¹⁹

In other words, the authors have little concern about what is best for children (the best interest of the child was never mentioned in the article). Neither are the authors concerned about whether their views are supported by science. In fact, they boldly declare their activist agenda. What’s even more disturbing is that it appears the APA supports this bold activist agenda since the article was given a prominent place in its premier “scientific” journal.

One might ask, “What do researchers conclude about children raised in families headed by homosexual couples?”

HOMOSEXUALS AND PARENTING

First of all, it is important to recognize that there is a dearth of research in the area of homosexual couples and parenting. Most of the

research that has been conducted has involved children who were born into heterosexual relationships and who were reared by mothers who later openly declared their lesbianism. A smaller group of studies focuses on children of lesbians who became parents through artificial insemination. An even smaller group of studies focuses on children raised by gay fathers. This latter group is so small that it is virtually impossible to even offer commentary.

A closer scrutiny of the available studies reveals an activist agenda not so different from Silverstein and Auerbach's article noted above. In fact, in some cases it appears that the authors' attempts to cover the flaws in the research was revealed upon re-analysis. Though research continues to be trusted to provide serious answers to questions even in controversial areas, it is quite remarkable how many authors note the limitations of their studies quite accurately and then ignore the weaknesses of their studies. They then proceed to provide the readers with firm conclusions for which there is little if any real scientific support.

The activism of the researchers in this area is perhaps best characterized by the efforts of Charlotte Patterson, whose studies have been used in court briefs and who authors publications for the American Psychological Association. Patterson, who is a self-identified lesbian, provided testimony in a Florida court regarding the adoption of children by homosexual couples. Her research was questioned and subsequently excluded. In the words of the Florida court:

Dr. Patterson's impartiality also came into question when prior to trial, she refused to turn over to her own attorneys copies of documentation utilized by her in her studies. This court ordered her to do so (both sides having stipulated to the Order), yet she unilaterally refused despite the continued efforts on the part of her attorneys to have her do so. Both sides stipulated that Dr. Patterson's conduct was a clear violation of this Court's order. Her attorneys requested that sanctions be limited to the exclusion of her personal studies at trial and this Court agreed to do so. Dr.

Patterson testified as to her own lesbian status and the Respondent maintained that her research was possibly tainted by her alleged use of friends as subjects for her research. This potential was given more credence than it should have been by virtue of her unwillingness to provide the Respondent as well as the Petitioner, with the documents ordered to be produced.²⁰

In reviewing the research on homosexual couples and adoption, Robert Lerner and Althea Nagai conducted a thorough evaluation of the studies available and offered the following conclusion:

The claim has been made that homosexual parents raise children as effectively as married biological parents. A detailed analysis of the methodologies of the 49 studies, which are put forward to support this claim, shows that they suffer from severe methodological flaws. In addition to their methodological flaws, none of the studies deals adequately with the problem of affirming the null hypothesis, of adequate sample size, and of spurious correlation.²¹

This critique of the research on homosexual parenting is essentially supported by Dr. Richard Williams²² of Brigham Young University, who independently arrived at the same conclusion. However, Williams went a step further. He reviewed the follow-up studies of several researchers who had declared that there were no significant differences between children raised in heterosexual versus homosexual families. Williams examined the follow-up studies of the Susan Golombok *et al.*²³ and the Susan Golombok and Fiona Tasker²⁴ research, which followed the children raised by lesbian parents into adulthood. He noted that the children raised by lesbian parents were more likely to have both considered and actually engaged in homosexual relationships, a point not mentioned by the researchers. This finding is important because many individuals who identify as gay or lesbian early engage in high-risk behaviors.

Richard Williams also re-analyzed the studies from other authors as well. For example, a re-analysis of the Huggins data²⁵ revealed a significant difference between self-esteem measures of

children raised in heterosexual versus homosexual families. The former scored higher on measures of self-esteem. Williams discovered that Charlotte Patterson²⁶ left unreported similar results. Also, Williams noted that Lewis²⁷ found but left unreported social and emotional difficulties in the lives of children raised by homosexual couples.²⁸

Perhaps the most significant study to be published within the past few years came from Judith Stacey and Timothy Biblarz.²⁹ They conducted a meta-analysis (a meta-analysis simply refers to the combining of several studies that allows the researchers more confidence in making observations or reaching conclusions) that contradicted nearly twenty years of research purporting that there were no differences between children reared by heterosexual and homosexual couples. The researchers found that the authors' interpretation of their own research was in direct opposition to their data.

Consider the data from their research:

- Based on sex-typed cultural norms, daughters of lesbian mothers when compared with daughters of heterosexual mothers more frequently dress, play, and behave in gender-nonconforming ways.
- Sons of lesbian mothers behave in less traditionally masculine ways in terms of aggression and play. They were apt to be more nurturing and affectionate than their counterparts in heterosexual families.
- A significantly greater proportion of young adult children reared by lesbians had engaged in homosexual behaviors (six of twenty-five) when compared to those raised by heterosexual mothers (none of twenty).
- Children raised by lesbian mothers were more likely to consider a homosexual relationship.
- Teenage and young adult girls raised by lesbian mothers were more sexually adventurous and less chaste than girls

reared by heterosexual mothers. Sons were less sexually adventurous and more chaste than boys reared by heterosexual mothers.³⁰

Stacey and Biblarz concluded that “the adolescent and young adult girls raised by lesbian mothers appear to have been more sexually adventurous and less chaste . . . in other words, once again, children (especially girls) raised by lesbians appear to depart from traditional gender-based norms while children raised by heterosexual mothers appear to conform to them.”³¹ Conclusions that there are “no differences” in children raised by lesbian mothers versus heterosexual mothers can only be taken to mean that there were no differences the authors considered important.

The research can be summarized as follows: lesbian mothers have a feminizing effect on their sons and a masculinizing effect on their daughters, suggesting a strong element of learned behavior and preferences. The larger, more important question to be asked is, “How healthy is the rejection of gender roles? What is the impact of such gender confusion on normal gender development?”

Gender nonconformity is the only factor in the literature that predicts future homosexuality. Indeed, the relationship of gender nonconformity to later homosexuality is probably the one of the few areas where George Rekers, an advocate for traditional families, and Dean Hamer, an advocate for non-traditional families, can agree. Rekers stated that “gender nonconformity in childhood may be the single common observable factor associated with homosexuality.”³² Dean Hamer agreed, “Most gay men were sissies as children. Despite the provocative and politically incorrect nature of that statement, it fits the evidence. In fact, it may be the most consistent, well-documented and significant finding in the entire field of sexual-orientation research and perhaps in all of human psychology.”³³

Though the evidence is far from complete, there are sufficient studies to warrant concern. While self-identified gay and lesbian

individuals do parent, it is most often after children are conceived in heterosexual relationships. The deliberate creation of motherless or fatherless families, as demonstrated by the research included in this book, poses significant and increased risks for children and society in general.

ENDNOTES

1. D. Popenoe, *Life Without Father*, New York, NY: Mark Kessler Books/The Free Press, 1996, 8.
2. D. Baumrind, "Are androgynous individuals more effective persons and parents?" *Child Development* (1982): 53, 44–75.
3. E. Greenberger, "Defining psychosocial maturity in adolescence," *Adolescent Behavior Disorders: Foundations and Temporary Concerns*, (P. Karoly & J.J. Steffans, eds.), Lexington, MA: Lexington Books, 1984.
4. A.S. Rossi, "Parenthood in transition: from lineage to child to self-orientation," *Parenting Across the Lifespan: Biosocial Dimensions*, 31-81 (J.B. Lancaster, J. Altman, A.S. Rossi & L.R. Sherrod, eds.), New York, NY: Aldene de Gruyter, 1987.
5. M. Diener, C. Mangelsdorf, J. McHale, and C. Frosch, "Infants behavioral for emotion regulation with fathers and mothers: association with emotional and attachment quality," *Infancy* 5 (2002): 151–172.
6. A. E. Broughton, "U study says dads are important, too," *Salt Lake Tribune*. April 5, 2002.
7. D. Shapiro, "Letting dads be parents," *Parents*, 165–168 (June 1994).
8. K.A. Clark-Stewart, "The father's contribution to children's cognitive and social development in early childhood," *The Father-Infant Relationship: Observational Studies in the Family Setting*, New York, NY: Praeger, 1980.
9. Ibid.
10. Pruett, *The Nurturing Father*, New York, NY: Warner Books, 1987.
11. R.D. Parke, *Fathers*, Cambridge, MA: Harvard University Press, 1981.
12. H.B. Biller, *Fathers and Families: Paternal Factors in Child Development*, Westport, CT: Auburn House, 1993.
13. S. McLanahan and G. Sandefur, *Growing Up With A Single Parent: What Hurts, What Helps*, Cambridge, MA: Harvard University Press, 1994.
14. D. Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem*, New York, NY: Basic, 1995.
15. B. Eisold, "Recreating mother: the consolidation of 'heterosexual' gender identification in the young son of homosexual men," *American Journal of Orthopsychiatry*, 68:3 (1998): 433–442.

16. L.B. Silverstein and C.F. Auerbach, "Deconstructing the essential father," *American Psychologist*, 54:6 (1999): 397–407.
17. Ibid, 400.
18. Ibid, 399.
19. Ibid.
20. *Petitioner v. Floyd P. Johnson*, District Administrator, District X, Florida Department of Health and Rehabilitative Services, Respondent, 17th Judicial Circuit in and for Broward County, Case No. 92-14370 (11) July 27. John A. Frusciante, Judge.
21. R. Lerner and A.K. Nagai, "Out of nothing comes nothing: homosexual and heterosexual marriage not shown to be equivalent for raising children," paper presented at the Revitalizing the Institution of Marriage for the 21st Century, BYU (Provo, Utah) March 2000.
22. R.G. Williams, "A critique of the research on same-sex parenting," *Strengthening Our Families*, 352-355 (David C. Dollahite, ed.), Salt Lake City, UT: Bookcraft, 2000.
23. S. Golombok, A. Spencer, and M. Rutter, "Children in lesbian and single parent households: Psychosexual and psychiatric appraisal," *Journal of Child Psychology and Psychiatry* 24 (1983): 551-572.
24. S. Golombok and F. Tasker, "Do parents influence the sexual orientation of their children. Findings from a longitudinal study of lesbian families," *Developmental Psychology* 32 (1996): 3-11.
25. S.L. Huggins, "A comparative study of self-esteem of adolescent children of divorced lesbian mothers and divorced heterosexual mothers," *Journal of Homosexuality* 16 (1989): 123-135.
26. C.J. Patterson, "Families of the lesbian baby boom: Parents' division of labor and children's adjustment," *Developmental Psychology* 31 (1995): 115-123.
27. K.G. Lewis, "Children of Lesbians: Their point of view," *Lesbians and child custody: A casebook*, 85-98 (D. J. Maggiore ed.), New York, NY: Garland, 1992.
28. Ibid.
29. J. Stacey and T.J. Biblarz, "Does sexual orientation of parents matter?" *American Sociological Review*, 66:2 (2001): 159–183.
30. Ibid.
31. Ibid, 171.
32. G.A. Rekers, *Handbook of Child and Adolescent Sexual Problems*, New York, NY: Lexington Books, 1995, 300.
33. D. Hamer and P. Copeland, *The Science of Desire*, New York, NY: Simon and Schuster, 1994.

The Real Danger of Same-Sex Marriage

Stephen K. Baskerville



“Gay marriage” is only one of many destructive ideas assaulting the natural family — this unreasonable concept is, in fact, a product of existing social policy miscues.

The American Political Science Association recently began promoting same-sex marriage in a series of articles that read more like polemic on behalf of the gay and women’s rights movements than dispassionate scholarly appraisals of a political phenomenon. ¹ With the academic world increasingly accused of losing touch with the concerns of ordinary citizens, it is ironic that political scientists should depart from the norms of disinterested scholarship in such a way as to further marginalize the academy rather than explore issues that will bring it closer to public concerns. The trend reaches its *reductio ad absurdum* in Jyl Josephson’s complaint that same-sex marriage will not likely do enough to erode heterosexual marriage. ²

Stephen K. Baskerville is assistant professor of Political Science at Patrick Henry College and past president of the American Coalition for Fathers and Children. He is an Earhart Fellow at the Howard Center for Family, Religion, & Society and a research fellow at the Independent Institute. He holds a Ph.D. from the London School of Economics and for many years taught political science at Howard University and Palacky University in the Czech Republic. He is the author of *Taken Into Custody: The War against Fathers, Marriage, and the Family* (Cumberland House, 2007). This essay is reprinted with permission. Copyright © 2006 The Howard Center for Family, Religion & Society.

This is doubly unfortunate, because political scientists have a unique perspective to offer on social issues, which are often debated without full understanding of the operations of government institutions. Social reforms often carry unintended consequences, nowhere more so than in family policy. A full appreciation for the implications of same-sex marriage is more likely if we examine it in the larger political context of marriage and the family.

When we do, we may discover why the polarization of American society represented in the 2004 election has centered around precisely these questions of marriage and family and that same-sex marriage may prove only a preliminary skirmish. While both sides focus on homosexuality, larger questions lurk behind this controversy.

Aside from feminist treatments that are largely theoretical and almost uniformly hostile, the larger politics of marriage has received little practical attention from scholars concerned with the role and boundaries of the state. Family and marriage are generally debated as economic or cultural questions that remain largely the province of psychology, sociology, social work, and law. One exception proves the rule. When James Q. Wilson weighed in recently on family non-formation in low-income communities, it was only to throw up his hands in despair: “If you believe, as I do, in the power of culture, you will realize that there is very little one can do.”³ Like many others (including the Clinton and Bush administrations), Wilson is reduced to advocating marriage “education.”

Basic political questions are conspicuously missing from current debates: What precisely is the legal status of marriage, and what is the appropriate role of the state in private families and households? How does government-recognized marriage affect the boundary between public and private? What legitimate role does the church play, and what are the relations of church and state insofar as each claims a role in marriage?

Josephson argues for a “connection between access to the institution of marriage and full citizenship,” insisting that “marriage is central to ideas of citizenship.” She also notes that this “monumental

public character” carries a paradoxical corollary: that “marriage establishes the right to a realm of privacy.”⁴ But there are dimensions to these principles she does not explore, and they are precisely the ones that are now transforming public policy. One scholar likens the family crisis to the Civil War, with constitutional implications that could prove equally profound.⁵ G.K. Chesterton once suggested that the family serves as the principal check on state power and predicted that someday the state and family would directly confront one another.⁶ Same-sex marriage is just one indication that that day has arrived.

Another is the Bush administration’s proposal for marriage education programs. These essentially continue the fatherhood programs promoted by the Clinton administration and other governments during the 1990s. They too are justified on the principle that marriage is a “public” institution, with public benefits extending beyond private individuals. “Marriage is a public social good,” writes Matt Daniels of the Alliance for Marriage. “The health of American families — built upon marriage — affects us all.”⁷

Conservatives insist that the family is the building block of civil society and that undermining marriage could therefore threaten the social basis of civilization itself. Though plausible, explaining precisely how this scenario will play out, both concerning the family generally and same-sex marriage in particular, has proved more elusive. While most Americans are instinctively uneasy about gay marriage, it is not obvious precisely how it will weaken conventional marriage. Even some traditionalists doubt the likely effectiveness of a constitutional amendment. Some oppose gay marriage as the “last straw” in a series of threats to the family. But simply preventing the last straw is not addressing the larger problem.

Likewise, some conservatives question the administration’s plans to promote marriage education and ask how government officials can enhance anyone’s marriage.⁸ But liberal opposition has been more vocal. The *American Prospect* argues that government should not be meddling in private households. The *Economist* has called the initiative “Orwellian.”⁹

Administration officials reply that marriage promotion will in fact reduce government intrusiveness. Assistant Secretary of Health and Human Services (HHS) Wade Horn argues that “rather than an expansion of government, the President’s Healthy Marriage Initiative is an exercise in *limited government*.” Horn points out that a huge volume of domestic spending is directly connected to family dissolution:

My agency spends \$46 billion per year operating 65 different social programs. If one goes down the list of these programs — from child welfare, to child-support enforcement, to anti-poverty assistance to runaway-youth initiatives — the need for each is either created or exacerbated by the breakup of families and marriages.... Controlling the growth of these programs depends on preventing problems from happening in the first place. One way ... is to help couples form and sustain healthy marriages.¹⁰

Significantly, Horn illustrates with Orwellian scenarios of his own: “Government is most intrusive into family life when marriages fail,” he adds. “Try getting married, having kids, and then getting a divorce.... Government will tell you when you can see your children, whether you can pick them up after school or not, and if so, on what days, whether you can authorize medical care for your children, and how much money you must spend on your kids. By preventing marital breakup in the first place ... one obviates the need for such intrusive government.”

Yet Horn does not distinguish the public’s interest from the state’s. Government is not necessarily a neutral player, and invoking the “public” nature of marriage to justify marshalling the state machinery to enhance citizens’ private lives and even to define (and potentially redefine) marriage is, at the least, a complex and somewhat ironic maneuver. Whether his plan can succeed — and the likely consequences of same-sex marriage, too — depends upon the larger political context of state structures that are already transforming marriage and family life.

A PUBLIC INSTITUTION

In different ways then, both sides are arguing for marriage as a “public” institution.¹¹ But this truism requires some qualification. The legal systems of the Common Law countries have long recognized the family as a private zone that is off-limits to government — what Supreme Court Justice Byron White called a “realm of family life which the state cannot enter.”¹³

Family inviolability was never absolute, but the basic principle has been established for centuries and most emphatically in connection with what traditionalists themselves point out is the unique and foremost purpose of marriage and family: raising children. The private family creates a legal bond between parent and child that allows parents, within reasonable limits, to raise their children according to their own principles, free from government interference. “Whatever else it may accomplish, marriage acknowledges and secures the relation between a child and a particular set of parents,” writes Susan Shell. “The right to one’s own children ... is perhaps the most basic individual right — so basic we hardly think of it.”¹³

This right has long been recognized by the Supreme Court and the Common Law. Numerous decisions have held that parenthood is an “essential” right, “far more precious than property rights,” that “undeniably warrants deference, and, absent a powerful countervailing interest, protection.”¹⁴ “The liberty interest and the integrity of the family encompass an interest in retaining custody of one’s children,” according to one decision.¹⁵ Parental rights have been characterized by the courts as “sacred” and “inherent, natural right[s], for the protection of which, just as much as for the protection of the rights of the individual to life, liberty, and the pursuit of happiness, our government is formed.”¹⁶

Today this principle has become largely a fiction, and not a fiction because of same-sex marriage. Shell summarizes commonplace notions that, until recently, have been virtually universal among free societies: “No known society treats the question of who may prop-

erly call a child his or her own as simply ... a matter to be decided entirely politically as one might distribute land or wealth,” she writes.

No known government, however brutal or tyrannical, has ever denied, in fact or principle, the fundamental claim of parents to their children.... A government that distributed children randomly ... could not be other than tyrannical.... A government that paid no regard to the claims of biological parenthood would be unacceptable to all but the most fanatical of egalitarian or communitarian zealots.¹⁷

Though unexceptionable as society’s moral consensus, Shell’s points also provide an unintended commentary on the ignorance that pervades today’s debates. For current marriage law in the Western democracies has rendered these statements both prescient and factually false. “No known government” ever crossed this line until about thirty years ago — well before same-sex marriage — when most of the Western democracies did so. It is having precisely the consequences she postulates.

While Shell uses the gender-neutral “parents,” this function of marriage to protect the parent-child bond is far more important for fathers than for mothers. Margaret Mead once pointed out that the weakest link in the family chain is always the father; motherhood is an indisputable biological fact, whereas fatherhood is a social construct.¹⁸ The social institution that creates fatherhood is marriage.

In fact, it is no exaggeration to say that, politically speaking, the most important function of marriage is to create paternity. Other benefits are rightly claimed for marriage by its advocates. But in the end, the central one is this, to establish fatherhood.¹⁹ Once this is understood, everything else about the current problems of marriage and the family falls into place. And once this is understood, the vitiating problem with same-sex marriage becomes clear.

Marriage turns a man from a sperm donor into a parent and thus creates paternal authority, allowing a man to exercise the authority over children that otherwise would be exercised by the mother alone. Feminists understand this when they renounce marriage as an institution of “patriarchy.”²⁰ Among some conserva-

tives, it has become almost a cliché that marriage exists foremost to civilize men and control their promiscuity.²¹ If so, it performs this role as part of a larger function: to protect the father-child bond and with it the intact family. This point, potentially the strongest in their case, is overlooked by some traditionalists who argue that marriage undergirds civilization. For it is the presence of the father that creates both the intact family and, by the same measure, the civil institution itself. Thomas Hobbes attributed to married fatherhood a central role in the process of moving from the state of nature into civic life. In nature, Hobbes argued, “the dominion is in the mother”:

For in the condition of mere nature, *where there are no matrimonial laws*, it cannot be known who is the father, unless it be declared by the mother. And therefore the right of dominion over the child dependeth on her will and is consequently hers.²²

Only in civil society, where “matrimonial laws” do operate, is authority over children shared with the father.

Our legal system has long insisted that marriage, not sperm, determines the father. This is the purpose behind Lord Mansfield’s Rule stipulating that a child born within marriage is presumed to be that of the husband: It enabled a marriage to survive the wife’s adultery.²³ (Earlier ages had perhaps a more balanced assessment of the female and male sex drives.)

The role of marriage in establishing paternity is also seen in its absence. Today, the weakening of marriage and the family produces fatherless, not usually motherless, homes (at least not initially). As out-of-wedlock births have exploded, governments have developed elaborate bureaucratic substitutes for marriage in their efforts to “establish paternity” for purposes of collecting child support and (it is claimed) connecting fathers with their children.²⁴ The different but interchangeable labels used for similar family promotion programs to address this problem by the last two administrations recognize that fatherhood (Clinton) and marriage (Bush) are inseparable.²⁵

Seen in this light, same-sex marriage serves no useful social purpose; indeed, it is an absurdity. It attempts to apply gender interchangeability at precisely the point where gender difference demands that biological reality (motherhood) be reconciled to social necessity (fatherhood), as the *Goodridge* decision acknowledges by replacing the presumption of paternity with a presumption of “parenthood.” But far from establishing fatherhood, and therefore a settled and stable family situation, this compounds the problem of who precisely are the parents of a given child. A presumption of “parenthood” confers parent status on any individual recognized as “married” to another individual who acquires a child by whatever means. Gallagher calls this the problem of “too many parents,”²⁶ and it is not the only complication.

Once marriage becomes detached from procreation, therefore, the entire system of domestic and social stability that marriage exists to foster unravels.²⁷ Marriage then is no longer an autonomous and self-renewing institution, mediating the generational interface between public and private, and therefore limiting government power. Instead, it becomes merely a prize in the competition for power and one to be passed out by the very state it once served to control, a form of government patronage handed out to favored groups based on their relative power, like jobs or contracts. This is precisely what has now happened. It is the meaning of Josephson’s claim and that of gay groups that access to marriage constitutes a badge of “citizenship” and mark of “equality.” (Ironically but tellingly, as Josephson points out, “Feminist political and legal theorists have critiqued the institution of heterosexual marriage,” with its inclusion of fatherhood, “as harmful to women’s status *as citizens*.”)²⁸ With this kind of marriage, the family no longer even renews itself naturally — its unique advantage over the state, according to Chesterton — since it cannot produce children of its own, but must take them from others.

Indeed, what is true of marriage is also true of those whom marriage exists to foster: children. As marriage has weakened, children have become pawns and weapons in the competition for political

power. This is true in several obvious policy areas — divorce, child abuse and child protection, foster care, adoption, domestic violence, schooling — though it is spreading beyond family policy to a vast array of other policies and programs, from seat-belt laws to tobacco and gun lawsuits to welfare and even international treaties, that are now justified “for the children.” Decisions previously left to parents are now taken by government officials, which not only transfers control over children from parents to the state, but also rationalizes policy innovations that limit adult freedom.

But while same-sex marriage may be the most stark example of how redefining marriage undermines the social function marriage serves, it is not the only one.

REDEFINING MARRIAGE

Governments have long claimed some control over marriage, whether solemnized through a religious or a civil ceremony. Some object to practices like marriage licenses, claiming the state has no business defining the terms of a private agreement or of an institution that predates civil government. Libertarians propose “privatizing” marriage as a purely civil contract, and some liberals have more provocatively argued for “abolishing” marriage as a state-sanctioned act.²⁹ Traditionalists object, since this would presumably permit forms of marriage other than a man and a woman. Yet so long as a private marriage contract is enforceable in law, marriage would actually enjoy more legal protection than it has today.

Whatever the state’s precise role in marriage formation, politically it is far less important than another question. The institutional strength of marriage — and its connection with larger issues of public policy — is determined not by the words through which a marriage is formed, but by the deeds through which a marriage is dissolved.

Here the central players, as both sides have acknowledged, are not homosexuals, but heterosexuals. “The weakening of marriage has been heterosexuals’ doing, not gays’, for it is their infidelity,

divorce rates, and single-parent families that have wrought social damage,” observes the *Economist*.³⁰ Marriage advocate Maggie Gallagher dismisses this argument as a “lawyer’s trick,”³¹ but proponents of gay marriage have used it to great effect. “The problem today is not gay couples wanting to get married,” writes Jonathan Rauch. “The threat to marriage is straight couples not wanting to get married or straight couples not staying married.”³² Traditionalists’ attempts to take the moral high ground have clearly been undermined, even among potential sympathizers, by their inability to answer this point effectively. “People who won’t censure divorce carry no special weight as defenders of marriage,” writes columnist Froma Harrop. “Moral authority doesn’t come cheap.”³³ Some marriage advocates, like Michael McManus of Marriage Savers, themselves point out that “divorce is a far more grievous blow to marriage than today’s challenge by gays.”³⁴

Though scholars defending gay marriage have picked up on this paradox,³⁵ its implications cut both ways. For the corollary is that the push for same-sex marriage is mostly a symptom of how altered marriage has already become for other reasons. Gay marriage would almost certainly not be an issue today if marriage had not already been transformed by heterosexuals. “Commentators miss the point when they oppose homosexual marriage on the grounds that it would undermine traditional understandings of marriage,” writes Bryce Christensen. “It is only because traditional understandings of marriage have already been severely undermined that homosexuals are now laying claim to it.”³⁶ Though gay activists cite their very desire to marry as evidence that their lifestyle is not inherently promiscuous, they also acknowledge that that desire arises only by the promiscuity permitted in modern marriage. “The world of no-strings heterosexual hookups and 50% divorce rates preceded gay marriage,” Andrew Sullivan points out, unexceptionably. “All homosexuals are saying ... is that, *under the current definition*, there’s no reason to exclude us. If you want to return straight marriage to the 1950s, go ahead. *But until you do*, the exclusion of gays is simply an

anomaly — and a denial of basic civil equality.” Historian Stephanie Coontz likewise notes, “Gays and lesbians simply looked at the revolution heterosexuals had wrought and noticed that, *with its new norms*, marriage could work for them, too.”³⁷ Josephson pushes the polemical envelope. Having accurately blamed marriage deterioration on heterosexual divorce, she uses that fact to rationalize undermining it further through same-sex marriage. “The state-created institution of marriage has historically been altered ... to serve new or newly recognized state interests,” she argues, invoking the same intrusive policy innovations cited by Horn: “no-fault divorce” and “heightened enforcement of child support.”³⁸

These arguments from both ends of the spectrum illustrate why it is futile to assess the strength of marriage as an institution or understand its significance for civic life without confronting its nemesis: divorce. Though traditionalists decry efforts to “redefine” marriage, the more basic redefinition of marriage has already been effected by the little-understood system of unilateral or “no-fault” divorce.

THE ABOLITION OF MARRIAGE

Some three decades ago, while few were paying attention, the Western world embarked on what may turn out to be the boldest social experiment in its history. With no public discussion of the possible consequences, laws were enacted in virtually every jurisdiction that effectively ended marriage as a legal contract. Today it is not possible to form a binding agreement to create a family.

The result was more than the removal of government from enforcement of the contract; it allowed the government to enforce the abrogation of the contract. Regardless of the terms by which a marriage is entered, government officials can, at the request of one spouse, simply dissolve it (and the household created by it) over the objection of the other with no penalty to the moving party. Gallagher aptly titled her 1996 book, *The Abolition of Marriage*. It is difficult to see how legalizing gay marriage can weaken an institution

that has already been legally “abolished,” nor how a constitutional amendment can protect a contract that is now unenforceable in law.

In contrast to same-sex marriage, no-fault divorce was never subject to a public debate. Gallagher once attributed this silence to “political cowardice”: “Opposing gay marriage or gays in the military is for Republicans an easy, juicy, risk-free issue,” she complained. “The message [is] that at all costs we should keep divorce off the political agenda.” No American politician of national stature has seriously challenged involuntary divorce. “Democrats did not want to anger their large constituency among women who saw easy divorce as a hard-won freedom and prerogative,” writes Barbara Dafoe Whitehead. “Republicans did not want to alienate their upscale constituents or their libertarian wing, both of whom tended to favor easy divorce, nor did they want to call attention to the divorces among their own leadership.”³⁹ In his famous denunciation of single parenthood, Vice President Dan Quayle was careful to make clear, “I am not talking about a situation where there is a divorce.”⁴⁰ The exception proves the rule. When the late Pope John Paul II spoke out against divorce in January 2002, he was roundly criticized from both the right and the left.⁴¹

Why this deafening silence, even among political figures who now claim to be defending marriage?

In the years since it was enacted, no-fault divorce has grown into a huge state and private machinery; in fact, few enterprises have forged so intimate and elaborate a public-private symbiosis. Thirty years of unrestrained divorce has created vast interests with a stake in encouraging it. David Schramm cautiously estimates that divorce costs the public \$33.3 billion annually.⁴²

But divorce is more than a lucrative industry; it is also a vast governmental regime. Divorce and custody are the cash cow of the judiciary, constituting some 35-50% of civil litigation,⁴³ and also bring employment and earnings to a host of executive and legislative officials, plus private hangers-on: lawyers, psychotherapists, mediators, counselors, social workers, child support agents, and more. Divorce

litigation fuels well-known lines of political and judicial patronage.⁴⁴ “The judge occupies a vital position ... because of his control over lucrative patronage positions,” according to Herbert Jacob, where appointments “are generally passed out to the judge’s political cronies or to persons who can help his private practice.”⁴⁵ Divorce also fills state and local government coffers with federal money for a host of divorce-related social problems. So entrenched has divorce become within our political economy and political culture that even its critics seem to have developed a stake in having something to bemoan. Hardly anyone has an incentive to bring it under control.

Indeed, divorce and unmarried childbearing may have political implications we are only beginning to understand, since they act as major engines for the overall expansion of government power at all levels. As Daniels and Horn point out, family dissolution breeds a host of societal ills for government to solve. Virtually every major social pathology, from violent crime to drug abuse to truancy, is directly attributable to family breakdown and fatherless homes more than any single factor, surpassing race and poverty.⁴⁶

While this has long been recognized within social policy, the political implications have never been thoroughly pursued. “If we want less government, we must have stronger families,” President Jimmy Carter once said, “for government steps in by necessity when families have failed.”⁴⁷ But Carter may have perceived the cause-and-effect backward, for it follows that the state has a self-interest in failed families and a motive to step in and declare failure when given the opportunity. This is precisely what divorce courts do: “No-fault divorce gave judges, at the request of one-half of the couple, the right to decide when a marriage had irretrievably broken down.”⁴⁸

In ironic contrast to marriage, divorce is often defended as a “private” matter and therefore immune from public scrutiny; some even describe it as a “civil liberty.”⁴⁹ In practice, divorce raises fundamental questions about the reach of the state into private life that have never been confronted. Far more than marriage, divorce by its nature requires active and almost incessant government intervention.

Marriage creates a private household, which may or may not necessitate signing some legal documents. Divorce dissolves not only a marriage, but also the private household formed by it, usually against the wishes of one spouse. It inevitably involves state functionaries — including police and prisons — to enforce the post-marriage order. Otherwise, one spouse might continue to claim the protections and prerogatives of private life: the right to live in the common home, to possess the common property, or — most vexing of all — to parent the common children.

Few stopped to consider the implications of laws that shifted the breakup of private households from a voluntary to an involuntary process. If marriage is not a wholly private affair, involuntary divorce by its nature requires constant supervision over private life by state officials. Divorce by mutual agreement carries few consequences. But mutual agreement governs only about 20% of divorces; in the remaining 80% the government assumes control over the private life of at least one individual without that individual's consent — and when he or she may be unimpeachable before the law.⁵⁰ In these circumstances, unilateral divorce involves state agents forcibly removing people from their homes, confiscating their property, and separating them from their children. It poses an inherent threat to the inviolability of not only marriage, but the very concept of private life.

The involvement of the judiciary, with its handmaid, the penal apparatus, indicates how marriage dissolution blurs distinctions the justice system once delineated carefully: private versus public, civil versus criminal, therapy versus justice, sin versus crime. No-fault divorce introduced novel legal concepts, such as the principle that one could be decreed guilty of violating an agreement that one had, in fact, not violated. “According to therapeutic precepts, the fault for marital breakup must be shared, even when one spouse unilaterally seeks a divorce,” observes Whitehead. “Many husbands and wives who did not seek or want divorce were stunned to learn ... that they were equally ‘at fault’ in the dissolution of their marriages.”⁵¹ The “fault” that was ostensibly thrown out the front door of divorce pro-

ceedings re-entered through the back, but now without precise definition. The judiciary was expanded from its traditional role of punishing crime or tort to punishing personal imperfections and private differences: suddenly, one could be summoned to court without having committed any legal infraction; the verdict was pre-determined before any evidence was examined; and one could be found “guilty” of things that were not illegal. “Lawmakers eliminated a useful inquiry process and replaced it with an automatic outcome,” writes Judy Parejko. “No other court process is so devoid of recourse for a defendant. When one spouse files for divorce, his/her spouse is automatically found ‘guilty’ of irreconcilable differences and is not allowed a defense.”⁵²

Though marriage ostensibly falls under civil law, the logic quickly extended into the criminal realm. The “automatic outcome” expanded into what effectively became a presumption of guilt against the involuntarily divorced spouse (“defendant”). Yet the due process protections of formal criminal proceedings did not apply, so involuntary litigants could be criminalized without any action on their part and in ways they were powerless to avoid. In some jurisdictions, the defendant in a divorce case is the only party in the courtroom without legal immunity.⁵³

Politically, no-fault divorce did much more than allow families to self-destruct. It permitted the state in the person of a single judge to assume jurisdiction over the private lives of citizens who were minding their own business and turn otherwise lawful private behavior into crimes. Previously, a citizen could be incarcerated only following conviction by a jury for willfully violating a specific statute, passed with citizen input and after deliberation by elected legislators, that applied equally to all. Suddenly, a citizen could be arrested and jailed without trial for failing to live in conformity with an order, formulated in a matter of minutes from limited information by an unelected judge, that applied to no one but himself (it is usually, for reasons we will see, the man) and whose provisions might well be beyond his ability to obey.⁵⁴ In effect, a personalized criminal code is

legislated *ad hoc* around each divorced spouse, subjecting him or her to arrest for doing what anyone else may lawfully do.

Unilateral divorce thus placed the family in a legal-political status precisely the opposite of the original purpose of marriage. Far from preserving a private sphere of life immune from state intervention, involuntary divorce opened private lives to unprecedented state control. Thus the irony of those who question why gay partners should wish to have the “benefits” of marriage and thus open their private lives to the increasingly conspicuous horrors of family law proceedings.⁵⁵ Indeed, a California bill legalizing same-sex marriage was nicknamed the “gay divorce law,” because it would force individuals wishing to part company into court proceedings and to spend money on lawyers.⁵⁶ Previously, in the eyes of the law, such a couple was simply two individuals in a household, whose sexual “intimacy” was a matter of official indifference. With marriage or civil unions, they become spouses or “intimate partners” into whose private lives the state may insert its coercive authority at the mere invitation of either, with any grievance or none.

The logic reached its conclusion in proposals recently published by the American Law Institute (ALI).⁵⁷ This influential practitioners’ group announced that the scope of family law would be extended to encompass jurisdiction over non-marital private arrangements such as cohabiting couples, both heterosexual and homosexual, and indeed all private homes.

Marriage defenders protested, but they seem to have misunderstood the implications. As they now argue with respect to same-sex marriage, traditionalists charged that ALI was undermining marriage by blurring the distinction between traditional marriage and cohabitation.⁵⁸

But ALI was doing much more than this. Family law practitioners were using the toehold they had established in married households through divorce law to extend state jurisdiction into every household entailing an “intimate relationship,” regardless of whether that household was created through marriage. Divorce operatives

were declaring that no home was too private to be beyond the reach of official scrutiny. With breathtaking irony, an “intimate relationship” (which officials reserved for themselves to define) became not a status which is off-limits to government supervision, but precisely the opposite, one that gives government an *entrée* to exert virtually unlimited power over personal life. The “abolition of marriage” brought in its wake the abolition of private life.

PARENS PATRIAE, OR THE STATE AS PARENT

To compound the irony, the factor that now overwhelmingly justifies state intervention into private life is the very one that had previously necessitated keeping the state out: children. As with same-sex marriage, by ignoring children, a case can be made that divorce affects no one beyond the couple. Once children are introduced, the dynamic changes fundamentally. Here too the politics of same-sex marriage and divorce become further intertwined in ways not addressed in the current debates.

Before the divorce revolution, legal authority over children had long been recognized to reside with their parents, absent some transgression. “For centuries it has been a canon of law that parents speak for their minor children,” wrote Supreme Court Justice Potter Stewart. “So deeply embedded in our traditions is this principle of the law that the Constitution itself may compel a state to respect it.”⁵⁹ This too has been not only abrogated, but directly inverted by divorce law, which proceeds from precisely the opposite principle: that “the child’s best interest is perceived as being independent of the parents, and a court review is held to be necessary to protect the child’s interests.”⁶⁰

As many have observed of marriage itself,⁶¹ introducing children into marriage politics brings pressures for gender differentiation. While differences in the treatment of men and women have theoretically been eliminated, those governing the allocation of children remain stubbornly resistant. They are now, however, subject to some ironic distortions.

Traditionally, as Allan Carlson points out, governments set the terms of marriage less to provide rights than to impose obligations. Even the protections of marriage were originally “burdens,” and (consistent with the state’s interest in supervising marital dissolution) the ones Carlson enumerates all pertain to divorce: “alimony, child custody, and the division of property.”⁶² Not only do these obligations only come into play with divorce; they originally served as disincentives to it. Significantly, these burdens were not symmetrical; they all involved removing something from the man. But they were accepted, because as long as he remained faithful, the man in return derived from marriage that vital protection we examined at the beginning: the right to have children recognized as his. This too has become a fiction.

Because it demonstrates irrefutable limits to gender interchangeability, the role of marriage in establishing paternity is a central feminist grievance and marriage itself a feminist target. “Kinship laws still establish married men’s paternity through marriage, not through their biological relationship with children,” observes Josephson, echoing Hobbes. “By this means, women are equated with nature and their relationship to children is biological, whereas men’s relationship to children is established politically through the law of marriage.” Josephson emphasizes that the “political” nature of paternity constitutes the central feminist objection to marriage: “While it is true that men who are not married are declared fathers through paternity procedures in child support laws, which may entail paternity tests, the marital relation is still retained in paternity law: the existence of a legal marriage contract trumps biological paternity. The marriage contract creates fathers as *political* beings; moreover, marriage still functions to control women’s sexuality for the purposes of ensuring a politically controlled genealogy.”⁶³

Josephson’s exception is significant. Whatever objections proceed from their theoretical purity, feminists have also been very skillful at maneuvering these paternity rules to their own political purposes. Using the new divorce laws, they have diametrically inverted

the effect of marriage and turned paternity into a crime. Under standard rules, the presumption of paternity served to preserve marriage, as we have seen. Today, by permitting what has come to be known as “paternity fraud,” no-fault divorce law has transformed paternity establishment into an incentive to dissolve rather than preserve families. Not only can an adulterous wife now end paternal authority simply by filing for divorce, she can also (perhaps in collusion with the biological father) collect child support from the cuckolded husband for the children produced by the adultery.⁶⁴

This is only one example of how the penal consequences of marital weakening are not symmetrical. Overwhelmingly, when children are involved, the spouse on whom the penal apparatus will be brought to bear, and who will experience the state’s growing capacity to seize children and criminalize the involuntarily divorced, is the father.

Some believe this is logical, and it may be inevitable. Certainly it would be appropriate if, as popularly believed, the father is the one abandoning the marriage. In fact, when children are involved, the divorcing parent is almost always the mother, usually without grounds.⁶⁵

The failure of policymakers to accept this fact, and instead to address its symptoms, has led to ever-more invasive measures into private life and a panoply of highly repressive law-enforcement actions against primarily (though not exclusively) fathers. These are invariably justified to protect and provide for women and children once the father is gone. Yet these policies create the very fatherless homes they ostensibly assist. They are presented as responses to alleged social problems that were not problems only a few years ago: domestic violence, child abuse, and child support. Significantly, no public outcry ever demanded a government response to these claimed ills; the initiative has come entirely from government officials and government-funded interest groups.

Foremost among these are feminists. For the criminalization of divorced fathers did not come about by accident, and neither did no-fault divorce. Growing out of the cultural climate of the sexual

revolution, it was really feminists who created the divorce revolution. The National Association of Women Lawyers (NAWL) claims credit for pioneering no-fault divorce, which it describes as “the greatest project NAWL has ever undertaken.” “By 1977,” NAWL proudly notes, “the ideal of no-fault divorce became the guiding principle for reform of divorce laws in the majority of states.”⁶⁶ Divorce has a long feminist pedigree,⁶⁷ and Germaine Greer argues that the high divorce rate should be celebrated as the major sign of feminist progress.⁶⁸ Today, divorce liberalization continues to be promoted by feminist activists worldwide, often unopposed as a “human rights” measure. When Spain’s socialist government came to power in 2004, their three domestic priorities were legalized abortion, same-sex marriage, and liberalized divorce. Turkey was forced to withdraw a proposal to criminalize adultery by the European Union, but liberal divorce counted in their favor.

Divorce has actualized the radical feminist dream of political warfare against men, and unlike other items on the feminist agenda, it has done so virtually unchallenged. By playing upon popular and conservative sympathy for women and children and the fear of all politicians and advocacy groups to be seen as defending wife-beaters, child molesters, and “deadbeat dads,” the feminist-driven divorce industry has launched, with hardly a voice of opposition, the greatest destruction of constitutional liberties in the Western world today. Dean Roscoe Pound has said that “the powers of the Star Chamber were a trifle in comparison with those of our juvenile court and courts of domestic relations.”⁶⁹

THE POLITICS OF DOMESTIC VIOLENCE

The most immediate problem created by involuntarily divorce, that was never addressed, is how to get the forcibly divorced spouse out of the home. When that spouse is the father, the solution is to accuse him of domestic abuse. “It’s an easy way to kick somebody out,” according to one family law specialist, who claims to see at least one

case a month where patently false charges are used to remove a spouse. “You spend a night in jail almost automatically. And your bail conditions restrict you from ever attending at the home again except to get your goods.” One mother relates that a lawyer told her, “There’s no reason for you to leave [your home]. Can you get him to hit you? ... If you do that, we can have him forcibly removed from the home.”⁷⁰

Like divorce, domestic violence has grown into a multi-billion dollar industry and “an area of law mired in intellectual dishonesty and injustice.”⁷¹ Feminists have depicted domestic violence as a political crime perpetrated to perpetuate male power. Yet the fact that women commit domestic violence equally often has been established in numerous studies.⁷² More important than achieving gender balance, however, is to understand how the huge growth in domestic violence accusations is connected almost entirely with family dissolution and disputes over child custody.⁷³

The very concept of “domestic violence” has never been clearly defined. Governments throughout the United States treat it not as a form of violent assault, but as a conflict, again, within an “intimate relationship.” It therefore blurs the distinction between crime and disagreement and need not be either violent or criminal. Official definitions include “extreme jealousy and possessiveness,” “name calling and constant criticizing,” and “ignoring, dismissing, or ridiculing the victim’s needs.”⁷⁴

Accusations are not constrained by due process of law. “With child abuse and spouse abuse you don’t have to prove anything,” the leader of a legal seminar tells divorcing mothers, according to one account. “You just have to accuse.”⁷⁵ Parents accused during divorce are not usually formally charged, tried, or convicted, because evidence against them usually does not exist. Yet the accusation alone will usually prohibit a father’s contact with his children.⁷⁶

Restraining orders are routinely issued during divorce proceedings, usually without any evidence of wrongdoing. “Restraining orders and orders to vacate are granted to virtually all who apply,” and “the facts have become irrelevant,” according to Elaine Epstein, for-

mer president of the Massachusetts Women’s Bar Association. “In virtually all cases, no notice, meaningful hearing, or impartial weighing of evidence is to be had.”⁷⁷ Bypassing due process protections is so routine that New Jersey judge Richard Russell told his colleagues during a training seminar, “Your job is not to become concerned about the constitutional rights of the man that you’re violating as you grant a restraining order. Throw him out on the street.... We don’t have to worry about the rights.”⁷⁸

The close link between domestic violence and marital-family dissolution is seen in the practice of arresting fathers for attending public events such as their children’s musical recitals, sports activities, or church services — events any stranger may attend and where abuse cannot occur without witnesses and intervention. Even accidental contact in public places is punished with arrest. Fathers are arrested for sending their children birthday and Christmas cards and for returning their telephone calls.⁷⁹

More than simply an excess of zeal, we see here the political logic of involuntary divorce working itself out. A forcibly divorced parent who runs into his children in public is threatening the very principle of unilateral divorce.

Some argue that judges must balance the rights of accused men with the need of women for protection.⁸⁰ Yet elsewhere the criminal justice system operates on the principle that people are punished for crimes they commit, not for what someone says they might commit. A defendant charged with the most heinous violent crime “has all his or her rights preserved and carefully guarded when before a court,” says Massachusetts attorney Gregory Hession. In domestic abuse cases, by contrast, “a defendant may lose all those things, with no due process at all. ... The abuse law throws out all of those protections.”⁸¹ According to the New Jersey family court, to allow accused abusers the due process protections afforded other criminal defendants “perpetuates the cycle of power and control whereby the [alleged] perpetrator remains the one with the power and the [alleged] victim remains powerless.” Omitting the word “alleged” is standard in fed-

eral and state statutes and media reports, and “the mere allegation of domestic abuse ... may shift the burden of proof to the defendant.”⁸² David Heleniak identifies six separate denials of due process in the New Jersey statute, which he terms “a due process fiasco.”⁸³

Some insist that protective orders are issued on the principle of “better safe than sorry.”⁸⁴ Yet it is not clear precisely how protective orders can prevent violence, since violent assault is already illegal. One father was “enjoined and restrained from committing any domestic violence” upon his wife.⁸⁵ But is he not already thus restrained, along with the rest of us? Clearly the orders are issued not to prevent violence, but to remove fathers and enforce divorce.

It is also likely that forcing parents to stay away from their children provokes precisely the violence it ostensibly aims to prevent. “Few lives, if any, have been saved, but much harm, and possibly loss of lives, has come from the issuance of restraining orders and the arrests and conflicts ensuing therefrom,” writes retired Judge Milton Raphaelson of Dudley, Massachusetts, District Court. “This is not only my opinion; it is the opinion of many who remain quiet due to the political climate. Innocent men and their children are deprived of each other.”⁸⁶

More totalitarian still are new “integrated domestic violence courts,” whose mandate is less to dispense impartial justice than, in the words of one feminist judge, to “make batterers and abusers take responsibility for their actions.”⁸⁷ Walter Fox, a Toronto lawyer, describes similar Canadian courts as “pre-fascist”: “Domestic violence courts ... are designed to get around the protections of the Criminal Code. The burden of proof is reduced or removed, and there’s no presumption of innocence.”⁸⁸ Special courts to try special crimes that can only be committed by certain people are a familiar totalitarian device to replace impartial justice with ideological justice. New courts created during Terror of the French Revolution were consciously imitated in the Soviet Union. In Hitler’s *Volksgerichte*, or people’s courts, “only expediency in terms of National Socialist standards served as a basis for judgment.” Forced confessions, made famous

by the Stalinist show trials, are extracted in jurisdictions like Warren County, Pennsylvania, where fathers are summarily incarcerated unless they sign confessions stating, “I have physically and emotionally battered my partner.” The documents require fathers to state, “I am responsible for the violence I used. My behavior was not provoked.”⁸⁹ The words of Friedrich and Brzezinski seem apposite: “Confessions are the key to this psychic coercion. The inmate is subjected to a constant barrage of propaganda and ever-repeated demands that he ‘confess his sins,’ that he ‘admit his shame.’”⁹⁰

THE POLITICS OF CHILD ABUSE

Closely connected is the child abuse machinery, which has similarly weakened not only parent-child bonds, but civil liberties through procedures for removing children from not only fathers, but also mothers and intact families without due process protections. This too, is connected with the apparatus administering divorce.

Like domestic violence programs, child protection procedures blur the distinction between therapy and law enforcement, allowing social workers to exercise police functions. “Although spoken of in terms of social services,” writes Susan Orr, “the child-protection function of child welfare is essentially a police action.” Orr calls child protection “the most intrusive arm of social services.”⁹¹ Indeed, social workers appear to act not only as police, but as judge and jury as well. In cases studied by Ralph Underwager and Holida Wakefield, “the decision as to whether the abuse was factual was made by custody evaluators and child protection workers rather than by the justice system.”⁹² A presumption of guilt similar to that characterizing domestic violence policy pervades the “child abuse industry,” as one social worker calls it. “When I started working, we tried to prove a family was innocent,” she recounts. “Now we assume they are guilty until they prove they are not.”⁹³ In Massachusetts, child abuse is “substantiated” not by a court, but by the Department of Social Services (DSS), which issues letters stating, “At least one person said you were

responsible for the incident and there was no available information to *definitively indicate otherwise*.⁹⁴

Outbreaks of child abuse hysteria during the 1980s and 1990s resulted in some forty instances of parents losing their children and being criminalized as a result of accusations that were never proven or have since been disproved.⁹⁵ Even today, it is not clear that the hysteria has subsided and may have simply become institutionalized. Of the three million reports of child abuse annually, about two million are never substantiated.⁹⁶ Critics allege that innocent parents are harassed because of anonymous tips and that children are unnecessarily taken from loving parents who have done nothing wrong.⁹⁷ “There is an antifamily bias that pervades the policies and practices of the child welfare system,” according to Jane Knitzer of the Children’s Defense Fund. “Children are inappropriately removed from their families.”⁹⁸ Other practitioners and scholars allege that children are removed unnecessarily from parents in “staggering proportions.” A California commission concluded that “the state’s foster care system runs contrary to the preservation of families by unnecessarily removing an increasing number of children from their homes each year.”⁹⁹ Some suggest that bureaucratic aggrandizement fueled by federal funding have created “a new class of professionals — social workers, therapists, foster care providers, family court lawyers — who have a vested interest in taking over parental function.”¹⁰⁰

Statistically, child abuse in intact two-parent families is rare; the vast majority takes place in single-parent homes.¹⁰¹ Accusations against intact families and removals effected without formal charges and evidentiary hearings are therefore especially questionable. But larger questions arise about instances even of confirmed abuse, questions once again about the father’s presence, which constitutes the single greatest disincentive to abuse.¹⁰² “The presence of the father ... placed the child at lesser risk for child sexual abuse,” concludes one of the few studies willing to state this undisputed fact explicitly.¹⁰³ Even allowing that many child removals may be justified, therefore, public policy is still creating the environment conducive to the abuse

used to justify the removals from the mostly single mothers by first removing fathers.¹⁰⁴ The heart of the child abuse and foster care crises, therefore, is marital dissolution or non-formation.

This also highlights another connection with divorce. Many unsubstantiated reports are made by one parent against the other, usually the father, during divorce proceedings. Some 75-80% of allegations made during divorce are “completely false.”¹⁰⁵ Yet these allegations are routinely used to remove fathers from their children’s homes, again creating the environment most likely to result in abuse. “The system appears to reward a parent who initiates such a complaint ... and the alleged perpetrator has been denied any contact with his children,” reports a San Diego Grand Jury investigation. “Some of these involve allegations which are so incredible that authorities should have been deeply concerned for the protection of the child from the contaminating parent.” Moreover, officials have a vested interest in encouraging these allegations. “The social workers and therapists played pivotal roles in condoning this contamination” through false accusations, charged the Grand Jury. “They were helped by judges and referees.”¹⁰⁶

Despite undisputed facts about the protective value of intact families with fathers, the habits of child protective officials seems to be to further marginalize them. Underwager and Wakefield conclude that “an anti-male attitude is often found in documents, statements, and in the writings of those claiming to be experts in cases of child sexual abuse.” They document techniques by social service agencies to systematically teach children to hate their fathers, including inculcating that the father has sexually molested them. “The professionals use techniques that teach children a negative and critical view of men in general and fathers in particular,” they write. “The child is repeatedly reinforced for fantasizing throwing Daddy in jail and is trained to hate and fear him.”¹⁰⁷

The political interconnection between child protection and marital weakening, divorce, and domestic violence programs is indicated by married mothers who report being not only encouraged

but pressured, on pain of losing their children, to separate from their husbands. One publicized case involved Heidi Howard, ordered by the Massachusetts DSS to take out a restraining order against her husband and divorce him. When she refused, the DSS seized her children, placed them in foster care, and began adoption proceedings. Neither parent was ever charged with abuse or any other legal infraction.¹⁰⁸

It appears the child abuse system has allowed a variety of government agencies to operate what amounts to a traffic in children. The San Diego Grand Jury reports “a widely held perception within the community and even within some areas of the Department [of Social Services] that the Department is in the ‘baby brokering’ business.”¹⁰⁹

These political dynamics also suggest one possible consequence of same-sex marriage that has been ignored. Most discussion has centered on questions of children’s welfare versus the rights of homosexuals.¹¹⁰ Few have questioned where gay parents obtain their children. Granting gay couples the right to raise children by definition means giving at least one of the partners the right to have someone else’s children, and the question arises whether the original parent or parents ever agreed to part with them or did something to warrant losing them. Current law governing divorce, domestic violence, and child abuse render this question open. The explosion of the foster care system and the assumed, but unexamined, need to find permanent homes for supposedly abused children has provided perhaps the strongest argument in favor of gay parenting.¹¹¹ Yet the politics of child abuse and divorce indicate that this assumption is not necessarily valid, even among heterosexual adoptions. Introducing same-sex marriage and adoption into the existing political structure governing family policy could dramatically increase the demand for children to adopt, thus intensifying pressure on social service agencies and biological parents to supply such children. While sperm donors and surrogate mothers supply some children for gay parents, in practice most are already taken from their natural parents for various reasons. Massachusetts Senator Therese Murray, claiming that 40%

of adoptions have gone to gay and lesbian couples, urges sympathy for “children who have been neglected, abandoned, abused by their own families.”¹¹² But it is not self-evident that these children are in fact victims of their own parents. What seems inescapable is that the very issue of gay parenting has arisen as the direct and perhaps inevitable consequence once government officials got into the business — which began largely with welfare and divorce — of distributing other people’s children.

FUELING THE MACHINERY: THE ROLE OF CHILD SUPPORT

The other dilemma raised by involuntary divorce — also now manifest in today’s marriage controversies — was how to finance the increased costs it inevitably brought. The solution was child support, which provides financial incentives to weaken marriage and sever the ties between children and parents, particularly fathers.

Like most of the government machinery now used to administer divorce, child support grew directly out of welfare. It was designed not for middle-class divorced families, but for welfare families that had never been formed through marriage in the first place. Its justification was to recover welfare costs and save public revenue. (In fact, it has consistently lost money, with a current annual deficit approaching \$3 billion.)¹¹³ In fact, the subsequent experience might well be seen as a vindication of prophecies that a quasi-socialistic welfare state would inevitably create a “road to serfdom.”

Though the social consequences of mass fatherlessness have been apparent for decades in welfare-dependent communities, thanks to the 1965 Moynihan Report, the political implications for freedom were not as apparent as they are now becoming with middle-class divorce. Because most low-income parents were not living together (which welfare discouraged), there was seldom a need to forcibly evict the father. Employing law-enforcement methods to coerce him to provide for the family was also readily justified, both because his

children were receiving welfare and because he was not residing in the home where he could provide for his children as he saw fit. The fact that often he had not made a formal lifetime commitment to the family through marriage no doubt also contributed to the moral case for coercive action against him. No distinction was recognized between fathers who shirked their responsibilities and those who accepted them. Similar to the status later afforded to involuntarily divorced spouses, the unmarried father was treated as “guilty” of paternity and subject to the penal system.

Having erected this machinery to coerce relatively small sums from low-income fathers, where marriage had not taken place, the welfare agencies then extended their jurisdiction to middle-class fathers, whose marriages had to be — and because of no-fault divorce, now could be — forcibly dissolved by court action and where much more substantial sums were available. As with no-fault divorce, no public debate preceded a massive expansion in the scope of state power over family finances and private family life.¹¹⁴

It was already known that welfare payments to low-income mothers result in increased divorce (before it led them to forego marriage altogether).¹¹⁵ Child support added a dimension of law enforcement and forced the middle-class father, as Jed Abraham puts it, “to finance the filching of his own children.”¹¹⁶ Child support thus became an “unintended economic incentive for middle-class women to seek divorce”: “Strong enforcement ... may, in fact, lead to ... the unintended consequence of increasing the likelihood of divorce.”¹¹⁷

“Deadbeat dads” are another of those public malefactors whose crimes are so repugnant that innocence is no excuse. Yet no government agency has ever produced any scientific evidence that there is, or ever has been, a problem of parents not supporting their children, other than that created by the government. Psychologist Sanford Braver, in the largest federally funded study ever undertaken on the subject, conclusively demonstrated that the “deadbeat dad” is largely a government creation. Described by *FrontPageMagazine* as “the most important work of conservative social science in a decade,”¹¹⁸ Braver’s

study showed that the child support “crisis” consists of little more than the government separating children from their fathers, imposing patently impossible debts on fathers who have done nothing to incur those debts, and then arresting those who, quite predictably, cannot pay. His research undermined every justification for the multi-billion dollar criminal enforcement machinery. Yet eight years after Braver’s book, no enforcement agency has responded to his findings.

Others have confirmed them. William Comanor and a team of scholars have documented the faulty economics. Ronald Henry calls the system and its rationalization “an obvious sham,” “the most onerous form of debt collection practiced in the United States,” and one “that is matched nowhere else in [the] legal system.”¹¹⁹

The consequences are corrosive of not only family stability, but constitutional protections. Bryce Christensen argues for a “linkage between aggressive child-support policies and the erosion of wedlock” and writes, “the advocates of ever-more-aggressive measures for collecting child support have trampled on the prerogatives of local government, have moved us a dangerous step closer to a police state, and have violated the rights of innocent and often impoverished fathers.”¹²⁰ Abraham writes that “the government commands an extensive enforcement apparatus, a veritable gulag, complete with sophisticated surveillance and compliance capabilities such as computer-based tracing, license revocation, asset confiscation, and incarceration. The face of this regime is decidedly Orwellian.”¹²¹

Like domestic violence and child abuse measures, child support enforcement is governed by an explicit presumption of guilt, wherein the accused must prove his innocence. “The burden of proof may be shifted to the defendant,” according to an approving legal analysis by the National Conference of State Legislatures (NCSL). Further, “not all child support contempt proceedings classified as criminal are entitled to a jury trial,” and “even indigent obligors are not necessarily entitled to a lawyer.”¹²² A father who has lost his children through literally “no fault” of his own must prove his innocence without a formal charge, without counsel, and without facing a jury of his peers.

Child support enforcement further blurs the distinction between guilt and innocence, since officials monitor parents with arrearages, those whose payments are current, and even citizens who are not under an order. The presumption of guilt against those obeying the law was revealed by one official who boasted that “we don’t give them an opportunity to become deadbeats” and by former Attorney General Janet Reno, who referred to current payments “collected from deadbeat parents,” branding as criminals parents who *do* pay.¹²³ The presumption that not only all parents under child support orders are already quasi-criminals, but all citizens are potential criminals against whom pre-emptive enforcement measures must be initiated now in anticipation of their future criminality, is revealed by NCSL, which justifies collecting names from the general population by saying, “At one point or another, many people will either be obligated to pay or eligible to receive child support.”¹²⁴

The role of child support in undermining marriage also explains why the fatherhood and marriage promotion measures of the last two administrations have achieved little and why they may be exacerbating the problem.

During the 1990s, the Clinton administration and other governments initiated programs to “promote fatherhood.” Despite the professed (and possibly quite sincere) aim of extolling the importance of fathers and the need to reconnect them with their children, in practice these programs themselves often ended up serving as justifications for collecting child support. The result, therefore, was somewhat opposite of what was advertised, since the federal government was promoting fatherhood with one hand while subsidizing divorce and fatherless homes financially with the other.

Under the Bush administration, the emphasis shifted from fatherhood to marriage. Yet the substance remained similar. While the initiative seems likewise to have proceeded from a genuine desire to redirect priorities toward programs that enhance marriage, with funds devoted to marriage counseling, in practice it has also been compromised by political pressure to continue the essentially puni-

tive approach to family dissolution dominated by the child support system. Since January 2003, some substantial grants announced by Health and Human Services under the Healthy Marriage initiative have gone to child support enforcement agencies and private groups involved in collection.¹²⁵

In short, the debate about the desirability of the government promoting marriage and fatherhood may be rendered irrelevant by the fact that the programs are not always what they appear. Whatever the merits of programs encouraging marriage formation, it is not clear that these disbursements even can achieve the desired goal. It is more likely that by expanding programs that are predicated on the removal of the father from the home, the federal funds are undermining marriage rather than encouraging it. Whatever one's sympathies, on both sides the public debate over government marriage programs has been somewhat beside the point.

UNINTENDED CONSEQUENCES

Similar uncertainty seems to operate with proposed federal action over same-sex marriage. It is not clear that a constitutional amendment defining marriage in terms of its gender component can, in itself, achieve the aims of its proponents, either by strengthening marriage or even preventing same-sex unions. Ignoring the larger legal status and political definition of marriage could result in a constitutional Maginot Line. As one sympathetic columnist predicts, "Even if Republicans were to succeed in constitutionally defining marriage as a relationship between a man and a woman, some judge somewhere would soon discover a novel meaning for 'man' or 'woman' or 'between' or 'relationship' or any of the other dozen words that might appear in the amendment."¹²⁶

This is already happening in custody cases involving transsexuals. "Some jurisdictions prefer to remain in the nineteenth-century understanding of binary sex that saw male and female as distinct, immutable, and opposite," states Florida Judge Gerald O'Brien, who

suggests that both marriage and gender are primarily conditions of mind.¹²⁷ Britain's Gender Recognition Bill now allows transsexuals to alter their birth certificates to indicate they were born the gender of their choice. "The practical effect of the bill will inevitably be same-sex marriage," writes Melanie Phillips of the *Daily Mail*. "'Man' and 'woman' will no longer mean anything other than whether someone feels like a man or a woman. As a result, priests may unwittingly marry people of the same sex."¹²⁸

THE LIMITS OF POLICY

A much broader debate on marriage is in order, one that includes the role of the state in defining and dissolving it. To be effective, this debate would have to include the state's roles with respect to fatherhood, divorce, child custody, and the very concept of private life itself. Rather than focusing on marriage as a status conferring economic privileges on adults, a thorough debate would come to terms with the role of marriage in guaranteeing the parent-child bond and the private sphere of life. This dilemma pervades every aspect of the growing family crisis and will continue to spawn a multitude of social ills and political controversies with attendant consequences to social order, political stability, and civil liberties.

Possibly we will conclude that unrestricted divorce, single-parenthood, same-sex unions, and other ways of redefining marriage and the family are valued enough as expressions of individual freedom that we are willing to break with past legal principle and accept that this bond is no longer sacrosanct. If so, it is only fair that this decision be made consciously and openly, so that prospective parents are aware in advance that any children they create may be taken from them through literally "no fault" of their own.

Yet it is far from clear that such a consensus exists. As recently as 2000, the Supreme Court reiterated the principle that "parental rights are absolute": "The interest of parents in the care, custody, and control of their children is perhaps the oldest of the funda-

mental liberty interests recognized by this Court,” the court stated. “The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”¹²⁹ If we still value this principle, then it must be applied consistently, for current family law has rendered it empty verbiage, leaving parents and children in limbo, the law vulnerable to contempt, and our social order in increasing disarray.

How might this be effected? Many argue that successful constitutional amendments serve to protect citizens’ rights, and even some opponents of same-sex marriage question whether they can effectively be used to enact public policy. Constitutions traditionally limit the state rather than the citizenry, whose actions are more appropriately controlled by statute.

Accepting this principle for the sake of argument, it could be employed to strengthen marriage and the family without intrusive social engineering. Granting that the Constitution does need an amendment protecting family integrity from pressures that could not have been anticipated two hundred years ago, a more direct and comprehensive approach may be an amendment that guarantees the privacy and civil inviolability of the family and codifies traditional rights of parents to the care and custody of their children and to direct their upbringing free from arbitrary state interference. From homeschoolers to victims of questionable child abuse accusations to parents whose children are put on psychotropic drugs without their consent to divorced fathers, it is parents — not gay parents, but parents generally — who are being besieged by an increasingly repressive state apparatus and denied basic due process protections. Such a provision would address a problem recognized by both the left and right,¹³⁰ it would carry no hint of excluding any group, and it would be relatively impervious to judicial casuistry.

If we are to shift the terms of debate from the needs of children to the rights of adults to marry one another and form unions for the purpose of bringing up what must inevitably be someone else’s chil-

dren, it seems only fair to ensure that this not be done at the expense of traditional protections for biological parents when it comes to raising their own. The politicization of children in many venues and the disproportionate attention to the conjugal and parental claims of politically vocal groups — with virtually none to millions of unorganized parents who have experienced the confiscation of their own flesh and blood — starkly demonstrates that family law and politics today by no means guarantees that natural parents will not have their children taken away to supply children for groups with political influence. This is precisely what is now happening. It is just one illustration of why a debate on parenthood — and on marriage as a status that protects it — would be a debate on the substance of marriage rather than the word.

If Chesterton was correct about the private family being the principal check on official power, then the very concept of “family policy” may inevitably carry the curse of Midas, wherein that which the state touches, almost by definition, it must destroy. It is not difficult to see why scholars like Wilson give up hope of ever finding a solution to the ills of the family. Yet the way to cut this Gordian Knot may be not to mobilize public policy at all, but instead to limit it. And that is precisely what the Constitution is for.

ENDNOTES

1. Gary M. Segura, “A Symposium on the Politics of Same-Sex Marriage — An Introduction and Commentary,” *PS: Political Science and Politics* 38:2, (2005). Jyl Josephson, “Citizenship, Same-Sex Marriage, and Feminist Critiques of Marriage,” *Perspectives on Politics* 3:2, (2005).
2. *Ibid.*
3. James Q. Wilson, “Why We Don’t Marry,” *City Journal*, Winter 2002.
4. Josephson, 270.
5. Bryce Christensen, “Divided We Fall: America’s Second Civil War,” *The Family in America* 17, No. 10, (2003).
6. G.K. Chesterton, *The Superstition of Divorce*, New York, NY: Cosimo Classics, 1920. G.K. Chesterton, *Divorce versus Democracy*, London, UK: Society of SS, 1916.

7. Matt Daniels, "Marriage, Society," *Washington Times*. April 15, 2004. <http://www.washingtontimes.com/op-ed/20040414-090033-8998r.htm>.
8. Jonah Goldberg, "No Angels," *National Review Online*. July 23, 2004. <http://www.nationalreview.com/goldberg/goldberg200407230847.asp>.
9. Robert Kuttner, "The Politics of Family," *American Prospect*, April 8 2002. Lexington, "Get Me to the Church on Time," *Economist*, 29. July 10, 2003.
10. Wade Horn, "Wedded to Marriage," *National Review Online*, August 9, 2005. <http://www.nationalreview.com/comment/horn200508090806.asp>.
11. Lynn Wardle, "Multiply and Replenish: Considering Same-Sex Marriage in Light of State Interests in Marital Procreation," *Harvard Journal of Law and Public Policy* 24 (2001): 777-778.
12. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).
13. Susan Shell, "The Liberal Case Against Gay Marriage," *The Public Interest* 156 (Summer 2004), 7.
14. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). *May v. Anderson*, 345 U.S. 528, 533 (1953). *Stanley v. Illinois*, 405 U.S. 645 (1971). *Troxel v. Granville*, 530 US 57 (2000). Donald C. Hubin, "Parental Rights and Due Process," *Journal of Law and Family Studies* 1:2 (1999).
15. *Langton v. Maloney*, 527 F. Supp. 538, D.C. Conn. (1981).
16. Bruce C. Hafen, "Children's Liberation and the New Egalitarianism: Some Reservations about Abandoning Youth to Their 'Rights,'" *Brigham Young University Law Review* 3 615 (1976).
17. Shell, 5-6.
18. Margaret Mead, *Male and Female: A Study of the Sexes in a Changing World*, New York, NY: Dell, 1969, 198.
19. Cf. Lynn Wardle, "The Potential Impact of Homosexual Parenting on Children," *University of Illinois Law Review*, part IV (1997).
20. Josephson, 275.
21. "The End of Courtship," *Public Interest*. <http://www.thepublicinterest.com>. (Accessed 26 March 2002)
22. Thomas Hobbes, *Leviathan*, Harmondsworth, UK: Penguin, 1982, 254. (emphasis added)
23. Frederick Pollack and Frederic William Maitland, *The History of English Law 2d Ed.*, Cambridge, UK: Cambridge University Press, 1968, 398-399.
24. Department of Health and Human Services, <http://ocse.acf.hhs.gov/necrs/pub/federal/dcl/topic.cfm?TOPIC=Establishment%20of%20Paternity>.
25. William J. Doherty, "The Best of Times and the Worst of Times: Fathering as a Contested Arena of Academic Discourse," *Generative Fathering: Beyond Deficit Perspectives*, (Alan J. Hawkins and David C. Dollahite, eds.), 1997, 217-218.
26. Maggie Gallagher, "(How) Will Gay Marriage Weaken Marriage as a Social Institution," 2 *University of St. Thomas Law Journal* 56 (2004).

27. Wardle, "Multiply and Replenish."
28. Josephson, 270 (emphasis added).
29. Wendy McElroy, "It's Time to Privatize Marriage," *Foxnews.com*. July 16, 2002. <http://www.foxnews.com/story/0,2933,57749,00.html>. Michael Kinsley, "Abolish Marriage," *Washington Post*. July 3, 2003.
30. Editorial, "The Case for Gay Marriage," *The Economist*. February 26, 2004.
31. Maggie Gallagher, "The Divorce Thing," *National Review Online*. August 13, 2003. <http://www.nationalreview.com/comment/comment-gallagher081303.asp>.
32. Jonathan Rauch, "What I Learned at AEI," *The Public Interest*, 156 (Summer 2004), 19.
33. Froma Harrop, "What God Has Joined, Let No Man...." *Providence Journal*, 26 (November 2003).
34. Michael McManus, "Is Gay Marriage Next?" *Marriage Savers, Inc.* July 12, 2003, <http://www.marriagesavers.org/Columns/C1141.htm>.
35. Frederick Liu and Stephen Macedo, "The Federal Marriage Amendment and the Strange Evolution of the Conservative Case Against Gay Marriage," *PS: Political Science and Politics* 38 (2005): 212-213.
36. Bryce Christensen, "Why Homosexuals Want What Marriage Has Now Become," *The Family in America* 18 (2004).
37. Andrew Sullivan, "Unveiled: The Case Against Same-Sex Marriage Crumbles," *New Republic*, August 13, 2001, <http://www.andrewsullivan.com/homosexuality.php?artnum=20010813>. (emphasis added) Stephenie Coontz, "The Heterosexual Revolution," *New York Times*. July 5, 2005. (emphasis added)
38. Josephson, 271.
39. Barbara Dafoe Whitehead, *The Divorce Culture*, New York, NY: Vintage, 1998, 7.
40. Maggie Gallagher, *The Abolition of Marriage*, Washington, DC: Regnery, 245.
41. Tunku Varadarajan, "Clash With the Titans," *Wall Street Journal Online*. January 30, 2002. <http://opinionjournal.com/columnists/tvaradarajan/?id=95001795>.
42. "The Costly Consequences of Divorce in Utah: The Impact on Couples, Communities, and Government," Utah State University Department of Family, Consumer, and Human Development. <http://www.utahmarriage.org/index.cfm?id=17htV59n28>. (Accessed October 10, 2004)
43. Helen Alvare, "Types and Styles of Family Proceedings," *Report of the United States to the XII World Congress*, International Association of Procedural Law, 2003, 1. Alvare cautiously cites the lower figure. Stephen Safranek of Ave Maria University Law School has informal evidence for the higher figure.

44. Stephen Baskerville, "The Politics of Fatherhood," *PS: Political Science and Politics* 35 (2002). Jerome R. Corsi, *Judicial Politics*, Englewood Cliffs, NJ: Prentice-Hall, 1984, 107-114. Richard A. Watson and Rondal G. Downing, *The Politics of the Bench and the Bar*, New York, NY: John Wiley and Sons, 1969, 98, 336.
45. Herbert Jacob, *Justice in America: Courts, Lawyers, and the Judicial Process 4th Ed.*, Boston, MA and Toronto, CA: Little Brown, 1984, 112.
46. David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem*, New York, NY: Basic Books, 1995. David Popenoe, *Life Without Father*, New York, NY: Free Press, 1996. Urie Bronfenbrenner, "Discovering What Families Do," *Rebuilding the Next: A New Commitment to the American Family*, (David Blankenhorn, Steven Bayme, and Jean Bethke Elshtain, eds.), Milwaukee, WI: Family Service America, 1990.
47. Quoted in Sean E. Brotherson and Jeffrey B. Teichert, "Value of the Law in Shaping Social Perspectives on Marriage," *Journal of Law and Family Studies* 3 (2001): 51.
48. Gallagher, *Abolition of Marriage*, 144.
49. Glenda Riley, *Divorce: An American Tradition*, New York, NY: Oxford University Press, 1991, 6.
50. Frank E. Furstenberg, Jr. and Andrew J. Cherlin, *Divided Families: What Happens to Children When Parents Part*, Cambridge, MA: Harvard University Press, 1991, 22.
51. Whitehead, 70-71.
52. Judy Parejko, "No Fair Process in Divorce Laws," *Middletown Journal*. January 27, 2004.
53. *McLarnon v. Jokisch*, 431 Mass. 343 (2000).
54. Hubin, 136.
55. Karen Selick, "The Spouse Trap," *National Post*. May 24, 1999.
56. Gallagher, "(How) Will Gay Marriage Weaken Marriage," 41-42.
57. American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations*, Philadelphia, PA: American Law Institute, 2002. Josephson's point ("Citizenship," 270) that the privacy of marriage is "not accorded to those who do not or may not marry" seems strange therefore. Co-habiting couples have enjoyed privacy denied by divorce law to the married, which is precisely what ALI seeks to curtail.
58. Institute for American Values, *The Future of Family Law: Law and the Marriage Crisis in North America*, New York, NY: Institute for American Values, 2005.
59. *Parham v. J.R. a Minor*, 422 US 584, 602 (1979).
60. Robert G. Williams, "An Overview of Child Support Guidelines in the United States," *Child Support Guidelines: The Next Generation*, 2 (Margaret Campbell Haynes, ed.), Washington, DC: Office of Child Support Enforcement, 1994.

61. Ann Crittenden, *The Price of Motherhood: Why the Most Important Job in the World is Still the Least Valued*, New York, NY: Metropolitan Books, 2001, 25.
62. Allan Carlson, "A Culture of Marriage: Two Tales," *The Family in America* 17 (2003): 2, 4.
63. Josephson, 275-276.
64. Ana Veciana-Suarez, "Not His Biological Child, But Still His Child to Support," *Knight Ridder News Service*. December 22, 2005. Douglas Richardson, "Man Forced to Pay Child Support to the Biological Father of His Wife's Child," Alliance for Noncustodial Parents' Rights Web site (www.ancpr.org), January 25, 2006.
65. Margaret F. Brinig and Douglas W. Allen, "These Boots Are Made for Walking: Why Most Divorce Filers are Women," *American Economics and Law Review* 2:1 (2000). Judith Wallerstein and Sandra Blakeslee, *Second Chances: Men, Women, and Children a Decade After Divorce*, New York, NY: Ticknor and Fields, 1989, 39.
66. National Association of Women Lawyers Internet site: <http://www.abanet.org/nawl/about/history.html>. (Accessed November 6, 2004.)
67. Whitehead, 15-16, 26.
68. Amanda Banks, "Greer Cheers Divorcing Women," *The Australian*. September 8, 2004.
69. David Heleniak, "The New Star Chamber," 57 *Rutgers Law Review* 1009 (2005).
70. Quoted in Donna Laframboise, "Oh Dad, Poor Dad," *Toronto Globe and Mail*. April 12, 1997.
71. Heleniak, 1009.
72. Philip W. Cook, *Abused Men: The Hidden Side of Domestic Violence*, Westport, CT: Praeger, 1997. John Archer, "Sex Differences in Aggression Between Heterosexual Partners: A Meta-Analytic Review," *Psychological Bulletin* 26 (2000): 651-680. Martin S. Fiebert, "References Examining Assaults by Women on Their Spouses or Male Partners: An Annotated Bibliography," *Sexuality and Culture* 8 (2004): 140-177.
73. Anne McMurray, "Violence Against Ex-Wives: Anger and Advocacy," *Health Care for Women International* 18:6 (1997). Callie Marie Rennison and Sarah Welchans, *Intimate Partner Violence*, Washington, DC: US Department of Justice, Bureau of Justice Statistics, 2000, 5.
74. Grace Coleman, et al., (eds.), *1999 National Victim Assistance Academy*, chap. 8, "Domestic Violence." (<http://www.ojp.usdoj.gov/ovc/assist/nvaa99/chap8.htm>, January 16, 2000).
75. Eric Zorn, "A Seminar In Divorce, Down-And-Dirty Style," *Chicago Tribune*. November 4, 1988.
76. Ross D. Parke and Armin A. Brott, *Throwaway Dads: The Myths and Barriers That Keep Men from Being the Fathers They Want to Be*, Boston, MA and New York, NY: Houghton Mifflin, 1999, 49-50.

77. Elaine Epstein, "Speaking the Unspeakable," *Massachusetts Bar Association Newsletter* 33 (1993): 1.
78. Russ Bleemer, "N.J. Judges Told to Ignore Rights in Abuse TROs," *New Jersey Law Journal* 140, April 24, 1995.
79. Cathy Young, *Ceasefire: Why Women and Men Must Join Forces to Achieve True Equality*, New York, NY: Free Press, 1999, 127.
80. Kathleen Parker, "Fathers' Group Seeks to Right Inequities," *Orlando Sentinel*. September 12, 1999.
81. Press release from Law Office of Attorney Gregory A. Hession, JD, July 30, 2001, <http://www.massoutrage.com/rodirtytricks.htm>. (Accessed October 18, 2002).
82. Miriam Altman, "Litigating Domestic Abuse Cases under Ch. 209A," *Massachusetts Lawyers Weekly*. October 23, 1995.
83. Heleniak, 1036-1037, 1042.
84. Cathy Young, "Hitting Below the Belt," *Salon*. October 25, 1999. http://www.salon.com/mwt/feature/1999/10/25/restraining_orders/index.html.
85. Stephen C. Schroeder, and David A. Sharp, "Fathers Also Deserve Legal Protection Against Abuse," *St. Petersburg Times*. February 28 and March 2, 1992.
86. Milton Raphaelson, "Time to Revisit Abuse Statute," *Western Massachusetts Law Tribune*. April 18, 2001.
87. Quoted in Frank Donnelly, "Domestic Violence Court to Debut," *Staten Island Advance*. December 14, 2003.
88. Quoted in Dave Brown, "Skirmish Fails to Scratch the Formidable Feminist War Machine," *Ottawa Citizen*. April 9, 2002.
89. Documents in the author's possession.
90. Carl Friedrich and Zbigniew Brzezinski, *Totalitarian Dictatorship and Autocracy*, Cambridge, MA: Harvard, 1965, 216, 195.
91. Susan Orr, *Child Protection at the Crossroads: Child Abuse, Child Protection, and Recommendations for Reform*, Los Angeles, CA: Reason Public Policy Institute, October 1999, 10-12.
92. Ralph Underwager and Hoida Wakefield, "Personality Characteristics of Parents Making False Accusations of Sexual Abuse in Custody Cases," *Issues in Child Abuse Accusations* 2 (1990): 121-136.
93. "Testimony of Christopher J. Klicka, Senior Counsel of the Home School Legal Defense Association... House Committee on Education and the Workforce," Home School Legal Defense Association. <http://nche.hslda.org/docs/link.asp?URL=http%3A%2F%2Fedworkforce%2Ehouse%2Egov%2Fhearings%2F107th%2Fsed%2Fcapta101701%2Fklicka%2Ehtm>.
94. Richard Wexler, *Wounded Innocents: The Real Victims of the War Against Child Abuse*, Buffalo, NY: Prometheus Books, 1990, 15. (emphasis added)
95. *When Child Protection Investigations Harm Children: The Wenatchee Sexual Abuse Cases*, American Civil Liberties Union of Washington (October 1997).

96. *Child Maltreatment 1996: Reports from the States to the National Child Abuse and Neglect Data System* (Washington, DC: U.S. Government Printing Office, 1998), xi.
97. Sylvia Ann Hewlett and Cornel West, *The War Against Parents: What We Can Do for America's Beleaguered Moms and Dads*, Boston, MA and New York, NY: Houghton Mifflin, 1998. Dana Mack, *The Assault on Parenthood*, New York, NY: Simon and Schuster, 1997.
98. "Testimony of Jane Knitzer, Children's Defense Fund ... Committee on Ways and Means, U.S. House of Representatives," 22 and 27 March 1979.
99. "For the Sake of the Children: Restructuring Foster Care in California," Little Hoover Commission. <http://www.lhc.ca.gov/lhcdir/115rp.html>.
100. Hewlett and West, 109.
101. Andrea J. Sedlak and Diane D. Broadhurst, *Executive Summary of the Third National Incidence Study of Child Abuse and Neglect*, Washington, DC: U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, 1996, 8. *Child Maltreatment 1996: Reports from the States to the National Child Abuse and Neglect Data System* (Washington, DC: U.S. Government Printing Office, 1998), xi-xii.
102. Robert Whelan, *Broken Homes and Battered Children: A Study of the Relationship Between Child Abuse and Family Type*, London, UK: Family Education Trust, 1993, 29.
103. David Rowland, *et al.*, "Household Risk and Child Sexual Abuse in a Low Income, Urban Sample of Women," *Adolescent and Family Health* 1 (2000), 29-39.
104. "CAPTA Successes and Failures at Preventing Child Abuse and Neglect," Heritage Foundation. <http://www.heritage.org/Research/Family/Test080201.cfm21>. (Accessed August 2001).
105. Parke and Brott, 39. Holida Wakefield and Ralph Underwager, "Sexual Abuse Allegations in Divorce and Custody Disputes," *Behavioral Sciences and the Law* 9 (1991), 451-468. Holida Wakefield and Ralph Underwager, "Personality Characteristics of Parents Making False Accusations of Sexual Abuse in Custody Cases," *Issues in Child Abuse Accusations* 2 (1990), 121-136.
106. "Families in Crisis," report by the 1991-92 San Diego County Grand Jury, 8, 10.
107. Ralph Underwager and Hollida Wakefield, *The Real World of Child Interrogations*, Springfield, IL: Charles C. Thomas, 1990, 127.
108. Ed Oliver, "Why Was Mother Shackled for Not Giving Baby to Strangers?" *Massachusetts News*. February 20, 2001.
109. "Families in Crisis," 9.
110. Eric Zorn and Allan Carlson, "A Primer on the 'Gay Marriage' Debate," *The Family in America* 17:8 (2003).
111. *Lethimstay.com*, ACLU Lesbian & Gay Rights Project (http://www.lethimstay.com/bigpicture_numbers.html, (Accessed October 27, 2005).

112. “The Debate on Gay Marriage, Pro and Con,” *Boston Globe* online edition, 12 March 2004 (http://www.boston.com/news/specials/gay_marriage/articles/2004/03/12/the_debate_on_gay_marriage_pro_and_con/).
113. *Child Support Enforcement (CSE) FY 2002 Preliminary Data Report*, 29 April 2003, figures 1 and 2 (http://www.acf.hhs.gov/programs/cse/pubs/2003/reports/prelim_datareport/).
114. See “Statement of Leslie L. Frye, Chief, Office of Child Support California Department of Social Services Testimony ... on the Administration’s Child Support Enforcement Incentive Payment Proposal, March 20, 1997” (<http://waysandmeans.house.gov/legacy/humres/105cong/3-20-97/3-20frye.htm>), 1-2.
115. Saul Hoffman and Greg Duncan, “The Effects of Incomes, Wages, and AFDC Benefits on Marital Disruption,” *Journal of Human Resources* 30 (1995): 19-41.
116. Jed Abraham, *From Courtship to Courtroom: What Divorce Law Is Doing to Marriage*, New York, NY: Bloch, 1999, 151.
117. Kimberly Folse and Hugo Varela-Alvarez, “Long-Run Economic Consequences of Child Support Enforcement,” *Journal of Socio-Economics* 31 (2002): 274, 283-284.
118. Sanford L. Braver, *Divorced Dads: Shattering the Myths*, New York, NY: Tarcher/Putnam, 1998. Robert Locke, “Deadbeat Social Scientists,” *Front-PageMagazine.com*. July 2, 2001. <http://frontpagemag.com/columnists/locke/2001/locke06-29-01.htm>.
119. Ronald Henry, “Child Support Policy and the Unintended Consequences of Good Intentions,” *The Law and Economics of Child Support Payments*, 130 (W.S. Comanor, ed.), Northampton, MA: Edward Elgar Publishing, 2004.
120. Bryce Christensen, “The Strange Politics of Child Support,” *Society* 39 (2001): 63.
121. Jed Abraham, *From Courtship to Courtroom: What Divorce Law Is Doing to Marriage*, New York, NY: Bloch, 1999, 154-155.
122. “Case in Brief: Courts Uphold Criminal Penalties for the Failure to Pay Child Support,” National Conference of State Legislatures. <http://www.ncsl.org/programs/cyf/Criminalnon.htm>. (Accessed August 28, 2001)
123. Robert O’Harrow, “Uncle Sam Has All Your Numbers,” *Washington Post*. June 27, 1999. “Attorney General Reno Announces Plan to Crack Down on Dead-Beat Parents Who Fail to Pay Child Support,” Department of Justice press release, 22 December 1994.
124. “Issue Brief: State Child Support Pass-through Programs,” National Conference of State Legislatures. <http://www.ncsl.org/programs/cyf/csissue.htm>. (Accessed January 24, 2000)
125. “ACF Approves Child Support Demonstrations in Four States,” Administration for Children and Families press release, 29 April 2004.
126. Robert Seidenberg, “Redefine Debate, Not Marriage,” *Washington Times*. March 14, 2004.

127. "Florida Court Says No Right to Transsexual Marriage," *Catholic World News*. July 26, 2004. <http://www.cwnews.com/news/viewstory.cfm?recnum=31082>.
128. Melanie Phillips, "The Sexual Identity Free-for-All," *Daily Mail*. March 8, 2004.
129. *Troxel v. Granville*, 530 US 57 (2000). *Fields v. Palmdale School District*, No. 03-00457 (9th Cir., 2 Nov. 2005).
130. Hewlett and West, *War Against Parents*; Mack, *Assault on Parenthood*.

Does the Family Have a Future?

William C. Duncan



For the family, past is prologue — unless anti-family and anti-freedom ideologies change the course of history.

“Look homeward Angel now, and melt with ruth.”¹

Competing policy prescriptions for the family (regarding the definition of marriage, the ease of obtaining divorce, the responsibilities of parenthood, etc.) in the law are premised on competing views of the nature of the family. On the one hand, a view of marriage and family inherited from centuries of human experience, and on the other, a recent but powerful shift in the legal posture of the family brought on by adoption of a number of new policy initiatives in the past few decades. The future of the family in family law may well depend on the degree to which the inherited understanding can hold out against ideological challenges reflected in these new family policies.

William C. Duncan, J.D., is director of the Marriage Law Foundation and is the director of Sutherland Institute's Center for Family and Society. He formerly served as acting director of the Marriage Law Project at the Catholic University of America's Columbus School of Law and as executive director of the Marriage and Family Law Research Grant at J. Reuben Clark Law School, Brigham Young University, where he was also a visiting professor. This article was first published in the *North Dakota Law Review*, Vol. 83:4 (2007). Reprinted with permission. Copyright © 2007 William C. Duncan and North Dakota Law Review.

FAMILY HERITAGE

SOCIAL ECOLOGY

At the outset, it is important to note that the family is more than a mere legal construct although the understanding of family we have inherited from centuries of human experience is reflected in some ways in our state laws.² Family is not a government program; it is a social institution. It is a key element in our “social ecology.”³ The authority of the family is independent of, not derived from, the state. As one state supreme court has noted: “The rights inherent in family relationships — husband-wife, parent-child, and sibling — are the most obvious example of rights retained by the people. They are ‘natural,’ ‘intrinsic,’ or ‘prior’ in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property.”⁴

The family is an excellent example of an intermediate institution that stands between the individual and the state, to form values and upbringing independent of state control.⁵ The family is an integral part of the vision “that our American forebears were committed to and to which they dedicated their lives and new federal political structure,” a vision of “social constraint and the shaping of individual moral character through local intermediate institutions.”⁶ The family protects “individual rights, while recognizing that these have to be secured within the social context.”⁷

The law, of course, has a role to play in regards to the social institutions of marriage and family. For instance, the state can and ought to provide a legal structure for marriage and the family to be recognized and it ought to protect the integrity of that structure. Professor Bruce C. Hafen notes: “the contribution of family life to the conditions that develop and sustain long-term personal fulfillment and autonomy depends ... upon maintaining the family as a legally defined and structurally significant entity.”⁸ This structure can assist third parties in their interactions with the family and create lines of

demarcation beyond which the state itself should not pass except in the direst emergency.

The importance of this reality of marriage and family as social institutions is underscored by a concurring opinion in an Alaska Supreme Court case:

The family is one of the oldest institutions known to mankind and forms the basic unit of our society. The family should enjoy considerable autonomy and independence from state interference. If the rule were otherwise, we would be taking a step toward a totalitarian government. Children could be removed from their parents' custody at the will of the state, depending upon what some governmental petty tyrant decides is meant by the term 'welfare' or 'best interests' of the children. Such a state of affairs would be entirely contrary to the form of government envisioned by the founding fathers of our nation.⁹

Marriage and family are social, not just in that they develop apart from the state, but in that their purposes are not state (i.e. purposes that advance the interests of the state in aggrandizing its power or promoting an official government ideology), nor merely individual, purposes. Wendell Berry describes how community involves “a set of arrangements between men and women” including marriage and family structure that

exist, in part, to reduce the volatility and the danger of sex — to preserve its energy, its beauty, and its pleasure; to preserve and clarify its power to join not just husband and wife to one another but parents to children, families to the community, the community to nature; to ensure, so far as possible, that the inheritors of sexuality, as they come of age, will be worthy of it.¹⁰

Professor Robert Nagel notes that “marriage is the primary institution that has been used all over the world to tame the turbulent power of human sexuality, to raise psychologically healthy children, to instill moral values, and to provide for some degree of mutual pro-

tection and support.”¹¹ As I have noted elsewhere: “The social understandings and practices that have contributed to our current marriage laws, particularly the continued acceptance of marriage as the union of a man and a woman are, in turn, rooted in realistic understandings of human nature and the consequences of sex difference.”¹² These include “the reality that only opposite-sex sexual relations can result in procreation without intention and without the participation of a third party.”¹³

A Washington supreme court judge notes: “The unique and binary biological nature of marriage and its exclusive link with procreation and responsible child rearing has defined the institution at common law and in statutory codes and express constitutional provisions of many states.”¹⁴ This and similar decisions recognize “that a premier value of marriage is its ability to protect the parties most vulnerable to the consequences of opposite-sex sexual relations, the woman who may become pregnant and the child that will result.”¹⁵

There are, as well, functions that marriage and family are not meant to fulfill. There is a notion current among some litigators and law professors that redefining marriage to include same-sex couples is important because it “represents an important human rights advance for gays and lesbians . . . in terms of the values of respect and dignity.”¹⁶ It is well to remember, however, that: “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.”¹⁷

Marriage and family are also much more than mere individual choices although marriage begins with choices made by individuals. Roger Scruton observes: “Marriage is chosen, but its obligations are largely indeterminate, being generated by the institution itself, and discovered by the participants as they become involved in it.”¹⁸ Also, as F.H. Bradley notes: “Marriage is a contract, a contract to pass out of the sphere of contract; and that is possible only because the contracting parties are already beyond and above the sphere of mere contract.”¹⁹

The institutional nature of marriage includes its connection to creation of a family, contrary to “those who see nothing in marriage but the pleasure married people derive from one another, that is, only the first beginnings of marriage and not its whole significance, which lies in the family.”²⁰ Another implication of this reality is that marriage and family, as we have understood them until quite recently, cannot be discarded on an individual whim. “Almost nothing about the family union rests in contract or consent, and none of the values which spring from it can be understood except in terms of the peculiar lastingness with which it is endowed.”²¹

What is true in this regard is also true as it relates to the ties created by parenthood. Being a parent creates social and moral obligations (as well as legal responsibilities) that cannot accurately be characterized as freely chosen in the same way one would think of a dickered bargain.²² The importance of being a parent transcends the purely personal benefit it may bring to the parent in terms of personal fulfillment: “Though the bond often fulfills us, it does not exist for the sake of our fulfillment.”²³

LAW

Our laws have traditionally respected these realities, recognizing but not creating marriage and family ties. Indeed, a number of state statutes do not even include formal definitions of marriage.²⁴ As another example, we might consider the fact that state laws require a formal process for divorce, in other words, a marriage does not end merely because one spouse decides it is over — the institution requires something more than that.²⁵ Legal obligations imposed on parents to support and protect their children similarly reflect traditional understandings of what is meant by being a parent.

The importance and value of these understandings should not be slighted just because they are not always explicitly spelled out in a statute or other legal source. Professor Robert Nagel explains: “The quiet flow of human conduct is not necessarily less eloquent than the

excited noise of public debate.”²⁶ Thus, Professor Nagel warns that: “If, in enforcing our Constitution, judges are to establish our values by interpreting our political history, then judges should interpret our whole history, not only what has been desired and said but also what has been accepted and left unspoken.”²⁷

In fact, understanding that marriage and family are organic institutions that have developed over time in response to human experience, should caution us not to dramatically disturb traditional understandings without a compelling justification. Edmund Burke’s warning is apposite: “It is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society.”²⁸ Or, in Russell Kirk’s paraphrase: “The continuity of a nation’s establishments and institutions, the true consensus of many generations, must not be imperiled by the rash innovations of a talented reformer; for though the individual is foolish, the species is wise.”²⁹

The social institutional nature of marriage and family also counsel attention to social realities in lawmaking. As Dr. Steven L. Nock notes:

Whenever a law is viewed as illegitimate, it is unlikely to influence social norms, at least in the short term. A norm is more than average behavior. The fact that most married people are sexually faithful most of the time is not what makes fidelity a norm. Fidelity is a norm because it is widely regarded as right. A norm is an “ought” or “ought not” that is widely shared and deemed to be legitimate. A norm is an average bolstered by a sense that this is how things ought to be. The key to understanding the relationship between laws and norms, therefore, is the legitimacy of law. Laws may influence or bolster social norms, but they do so mainly when they are viewed as legitimate.³⁰

Governments, however, can and do overstep their bounds in relation to the family and can, especially in the long term, change the way family life is experienced by individuals and modify societal norms.

LEGAL DISTORTIONS

Standing in contradistinction to an older tradition, still reflected in some areas of law but more in the lived experience of many people, is a legal formulation increasingly at odds with settled understandings; a formulation, in fact, that threatens to distort the nature of the institution.

Professor Robert Nagel notes the possibility that “the legal class” will have “disproportionate influence on current debates about marriage” and that this influence is likely to distort and impoverish public understanding.”³¹ He argues “that the judiciary ought not be in constant confrontation with society.”³² There are, however, “more and more judges, more and more lawyers, and more and more law students and professors who have entered easily into a state of mind that sees in the Supreme Court precisely what Rousseau saw in his archetypical legislator and Bentham in his omnipotent magistrate: sovereign forces for permanent revolution.”³³ This threat is made more real because the “creed” to which many courts subscribe “is of [their] own making, originating in sources independent of society and tradition. It bears a close affinity to the standards and morality that attach to the progressive vision of a national ‘community’ marked by ‘enlightened’ norms and principles whose inherent worth should be evident to all.”³⁴

LEGAL REASONING

As increasing aspects of family life have become matters of legislation and court decision (particularly with the increase of individual rights claims in constitutional cases), one inevitable result is the application of current patterns of legal decisionmaking to family matters.

For instance, Professor Nagel notes that some of “the reasons that argue against expanding individual rights are abstract reasons” that “are important, but their importance is based in large measure on theoretical considerations. These considerations do have real world consequences but often only in the long run and only in a diffuse or

systemic way.”³⁵ In a lawsuit, however, these kinds of considerations “come into conflict with highly individualized claims of right, and at each such juncture, it is likely that the structure will seem basically secure and (in any event) rather an abstract matter, while the individual’s interest is likely to seem concrete, immediate, and in jeopardy.”³⁶ Similarly, any particular aspect of the law “can be made to seem unnecessary or unimportant or even senseless if it is detached from the institutional and social web that gives it meaning.”³⁷ Thus, despite lawyers’ or judges’ insistence that their objectives in a particular matter are limited, “in fact they are quite ambitious”³⁸ in effect.

An illustration of the potentially distorting effect of some current patterns of legal reasoning can be seen in the ongoing debate over whether marriage ought to be redefined to include same-sex couples. Plaintiffs in these cases have stressed the claim that current marriage laws create a tangible hardship for same-sex couples who are denied the benefits of being married such as hospital visitation or testimonial privilege.³⁹ Judges who accept these claims can explain their decision with the relatively straightforward reasoning that some are getting privileges not given to others and this is, *ipso facto*, a constitutional problem.⁴⁰ Supporters of marriage laws, on the other hand, must explain marriage laws by reference to social context and references to more “abstract” concepts such as the channeling function of the law. Thankfully, many courts have understood and accepted these rationales but often only by narrow margins.⁴¹

Court decisions can also upset settled understandings by examining current family policies using artificial policy interests and creative manipulations of comparison groups in their legal analysis. In the definition of marriage example, the courts may frame the comparison as adults who have chosen to be in a same-sex relationship versus adults who have chosen to be in an opposite-sex relationship. Since these two groups are extremely similar, the court can express disdain for the different treatment they believe is created by marriage laws. On the other hand, the court might frame the comparison as involving a group of adults whose relationships might result in children

without any intention to do so versus a group whose relationships can only acquire children with the involvement of third parties. If this latter comparison is used, the state's policy of encouraging marriage for those in the second group can more easily be linked to marriage's social purpose of encouraging those who may create children to commit to one another and to the children they create. The first comparison masks a real difference in order to justify a policy (by emphasizing adult choice) significantly at odds with the logic of marriage as it has long been recognized (which would require recognition of marriage's link to children).

An example of the effect of a court's identification of relevant policy interests has arisen in cases involving parenting such as where a non-parent asserts a right to custody or visitation of the child based on the non-parent's relationship with the child's biological or adoptive parent. In a recent case, for example, the Minnesota Supreme Court overrode the wishes of an adoptive mother in regards to visitation with her child by the mother's former partner. In doing so, the court said the longstanding constitutional policy of deference to a parent's decisions regarding the care and custody of her children should bow to the state's "compelling interest in promoting relationships among those in recognized family units ... in order to protect the general welfare of children."⁴² In this kind of case, the policy articulated by the court is crucial. If the interest is characterized as protecting a parent's fundamental right to the custody and control of her children, one result seems obvious. If the interest is "promoting relationships among those in recognized family relationships," the result will be entirely different. Ironically, the second standard is particularly tautological because it is the government that makes a relationship "recognized." Thus, the Minnesota court's standard is that the government can override a parent's wishes in pursuance of the government's interest in promoting relationships the government has designated as worthy of recognition. By manipulating the terms of its analysis, the court can give the appearance of applying a test that is in reality entirely discretionary.

Something similar is happening when a court says a longstanding marriage definition cannot be justified by a state's interest in children's well being because unmarried couples are raising children who might be marginally benefited as second-hand beneficiaries of the marital status accorded to the heads of the household in which they live.⁴³ This result, however, is only possible if the state's interest in marriage is merely to give government benefits to as many children as possible through the widespread extension of marital status. Another court, describes the government's interest in marriage (more accurately):

the Legislature could rationally decide that, for the welfare of children, it is more important to promote stability, and to avoid instability, in opposite-sex than in same-sex relationships. Heterosexual intercourse has a natural tendency to lead to the birth of children; homosexual intercourse does not. Despite the advances of science, it remains true that the vast majority of children are born as a result of a sexual relationship between a man and a woman, and the Legislature could find that this will continue to be true. The Legislature could also find that such relationships are all too often casual or temporary. It could find that an important function of marriage is to create more stability and permanence in the relationships that cause children to be born. It thus could choose to offer an inducement — in the form of marriage and its attendant benefits — to opposite-sex couples who make a solemn, long-term commitment to each other.⁴⁴

This more careful statement of the government interest in marriage discloses the absence of any constitutional problems in the state's definition of marriage. It is clear that a particularly nebulous legal standard (such as the best interests of a child) will make it simple for courts and legislatures to identify interests in a way that promotes favored policies.

Court decisions and other legal actions create a particular threat to settled understandings of marriage and family when they are motivated by a view of the law "as requiring a continuing presumptive

hostility to the past.”⁴⁵ Professor Nagel notes that this “creates a serious danger that courts will prevent people from building a coherent knowledge and sense of morality” and even “carries the risk that certain groups will come to see the Constitution [or a statutory code] as an alien document, used by segments of the educated classes to belittle and undermine their ways of life.”⁴⁶ Examples include spouses who feel betrayed when their husband or wife ends a marriage with the collusion of a divorce law that favors the party who wants a divorce over the spouse who objects;⁴⁷ or spouses whose decisions to stay at home with their children or to closely direct their children’s educations have been lost in court battles.⁴⁸ The no-fault divorce revolution, as Maggie Gallagher notes, was not a reaction to “an anguished public, chained by marriage vows” but rather the work of “lawyers, judges, psychiatrists, marriage counselors, academics, and goo-goo eyed reformers who objected to, of all things, the amount of hypocrisy contained in the law.”⁴⁹

IDEOLOGY

One explanation for the distorting impact of legal trends on marriage and family life is the ideological commitments that these trends are meant to advance; commitments at odds with the traditional understanding of marriage and family as social institutions with a logic not driven by state values. These ideological goals become the rationale for a court or legislative decision to impose new understandings of marriage or family. This distortion is, thus, intentional.

Individualism

A primary element of the new ideological legal depiction of the family, for instance, is its emphasis on radically individualistic and contractual notions.

The most prominent example is the no-fault divorce revolution. As Maggie Gallagher says, “In a single generation, marriage has been

demoted from a covenant, to a contract, to a private wish in which *caveat emptor* is the prevailing legal rule.”⁵⁰ Neither is this merely a symbolic change: “Estimates vary, but the best evidence suggests no-fault divorce increases the divorce rate on the order of 10 percent.”⁵¹ In a no-fault divorce regime, the government sides with a party who seeks a divorce against the spouse who might be willing to save a marriage.⁵² The law privileges the “choice” of one spouse to leave over the obligation to the marriage (and family) implied in the original decision to marry.

Another example is the widespread acceptance of individual intent as the basis for gaining parent status in the absence of a biological tie to a child. A number of court decisions have concluded that a former partner of a child’s mother can seek custody and visitation or other parental status because the adults in the relationship intended that result.⁵³ In one decision, the California Supreme Court improbably ruled: “We perceive no reason why both parents of a child cannot be women” because the two women involved in the case “actively participated in causing the children to be conceived with the understanding that she would raise the children as her own together with the birth mother, she voluntarily accepted the rights and obligations of parenthood after the children were born, and there are no competing claims to her being the children’s second parent.”⁵⁴

In other cases, courts have decided that a child should have no relationship to their natural father, not in deference to a marital family or because of parental unfitness, but because that is the result intended by one of the adults.⁵⁵ It is common for states to allow individuals to create a child with only one legal parent if, again, that is the intention of an adult anxious to have a child whether that be a mother (in the case of artificial insemination)⁵⁶ or father (as in some surrogacy contracts or egg donation agreements).⁵⁷

In a recent New Jersey case, a court ruled that a same-sex partner of a child’s mother, who had conceived through artificial insemination, could be a co-parent.⁵⁸ In doing so, the court said the sperm

donor father was not a legal parent because he had not been a party to a legal agreement granting him “any birthrights to the child.”⁵⁹ This curious use of the word “birthright” (which we usually use to mean a child’s inheritance) to mean an adult’s bartered interest in a child, typifies the way that legal preferences for contractual and individualistic paradigms of family have turned traditional assumptions on their heads. As David Velleman has noted: “The experiment of creating these children is supported by a new ideology of the family, developed for people who want to have children but lack the biological means to ‘have’ them in the usual sense.”⁶⁰

At the fringes of this contractual view of the family, is one formulation that garnered the votes of three Supreme Court justices — that the obligations of marriage are irrelevant and an adulterous coupling can be a “family” entitled to constitutional recognition.⁶¹ The case involved a child conceived in an adulterous relationship. The presumed biological father of the child sought to establish paternity but a plurality of the Court concluded he could not do so.⁶² Justice Brennan dissented (joined by Justices Marshall and Blackmun) and took aim at the plurality’s assumptions about what a family is: “Even if we can agree, therefore, that “family” and “parenthood” are part of the good life, it is absurd to assume that we can agree on the content of those terms and destructive to pretend that we do.”⁶³ The dissent would have defined “family” solely by the facts of joint residence and adult intent⁶⁴ even if that meant in this case designating the relationship between a married woman, her adulterous companion and their child a family. To link the notion of family to marriage, to these justices was a “pinched conception.”⁶⁵

Equality

The program of radical personal autonomy is bolstered by the potent ideology of egalitarianism that aims to level all distinctions in order to prevent the unpleasant consequences of choices.⁶⁶ Some legal activists see family and marriage as “tools to be used, and when neces-

sary reshaped, to serve the cause of social justice” because to them “[e]galitarian political action is the essence of citizenship.”⁶⁷

Thus, for example, in the effort to redefine marriage, the “state is being asked not only to distribute benefits equally but to legitimate gay people’s love and affection for their partners” and “gay couples now marrying in Massachusetts want not only the same protections that straight people enjoy but the social status that goes along with the state’s recognition of a romantic relationship.”⁶⁸ The effort to secure equality of esteem is clearly a major, if not the most important, impetus for the redefinition effort. This is evident in the unwillingness of activists to accept a statutory scheme that would provide same-sex couples the benefits of marriage through creation of a separate status like civil unions.⁶⁹

The redefinition program also employs the extreme egalitarian argument that men and women are essentially fungible when it comes to marriage. Even some courts have ruled that marriage is a form of sex discrimination merely because marriage laws note the gender of the parties to the marriage.⁷⁰ This requires, of course, ignoring matters such as procreative capacity (i.e. the reality that it still takes a man and a woman to create a child). As Professor Nagel has observed regarding this fungibility argument used in another context: “The disadvantage is that it elevates the conceptual over the experiential and historical, and thereby achieves goofiness.”⁷¹

A less obvious illustration is provided by the effort to make alimony (spousal support) temporary so as to promote the practice of divorced spouses providing for themselves rather than continuing in the differentiated roles they had assumed during their marriage.⁷² This effort requires courts to treat parties to a divorce as uniform even if the lived circumstances of their marriage were based on the “inequality” of role differentiation.

In this matter of egalitarianism, it is well to remember Tocqueville’s warning that “men will never found an equality that is enough for them.”⁷³

WEAKENED FAMILIES/STRENGTHENED STATE

In attempting to change the family to promote boundless personal autonomy and egalitarianism, the law has contributed to weakening of the family as a social institution and, by extension, the strengthening of the state *vis a vis* the social realm.

FAMILY WEAKNESS

Legal changes can have a profound effect on families because although we may pursue change to benefit a small group (like same-sex couples or unhappy spouses or unwed parents), the default rules created to respond to these situations will apply to all marriages and families. As David Blankenhorn notes: “changing marriage, regardless of why we do it, changes marriage for *everyone*. In particular, it changes parenthood for everyone.”⁷⁴

In a recent lecture, Berkeley sociologist Ann Swidler noted the institutional weakness of the family in America, manifested by its small size, its instability, the smaller portion of individual lives spent in a family (both as a portion of the day and over a lifetime), its unclear definitions and an increasing tendency of family to be organized by a logic of choice rather than obligation.⁷⁵ As David Blankenhorn has written:

A rise in unwed childbearing and a decline in the belief that people who want to have children should get married. High divorce rates and less belief in marital permanence. The embrace of gay marriage and of the belief that marriage itself is a personal private relationship. The acceptance of collaborative reproduction and of the casual effacing of the child’s double origin. These things go together.⁷⁶

No-Fault Divorce

The no-fault divorce revolution may have been meant to help a small number of persistently unhappy or unhealthy marriages but the le-

gal changes it created have significantly weakened the institution not only for those who would have been inclined to divorce under the old fault regime but for everyone.⁷⁷ Wendell Berry notes: “If you depreciate the sanctity and solemnity of marriage, not just as a bond between two people but as a bond between those two people and their forbears, their children, and their neighbors, then you have prepared the way for an epidemic of divorce, child neglect, community ruin, and loneliness.”⁷⁸

The impact of divorce law on human lives can be very practical as reported in a recent economic study that found that the “adoption of unilateral divorce reduces investment in all types of marriage-specific capital considered except home ownership.”⁷⁹ Thus, “[u]nilateral divorce laws — regardless of the property division laws — leads to less support of a spouse’s education, fewer children, greater female labor force participation and an increase in households with both spouses engaged in full-time work.”⁸⁰ There is much additional evidence of the very real negative consequences for the parties⁸¹ to a divorce, and for the children who are involved.⁸²

There are also less tangible, but extremely significant, impacts of no-fault divorce regimes. For instance, the law’s aggressively non-judgmental approach to divorce (with its attendant feigned ignorance of the wrongs suffered by the parties) contributes to a sense that not only is there no legally cognizable harm in a divorce, but that divorced parties really suffer no kind of harm at all. In other words, the disappearance of legal costs for divorce has made it less likely that anyone will suffer social sanctions (such as stigma) for their decision to divorce. This is a welcome development for some but for many others it may contribute to feelings of anger and alienation as they believe their experiences of hurt and betrayal are ignored.⁸³

The increasing instability and impermanence of marriage may contribute to a distortion in expectations for marriage (resulting in a hesitance to marry out of fear that it will not work out) and, ironically, to behaviors that make marriage success less likely (like cohabitation).⁸⁴ A recent study convincingly portrays communities in

which marriage is less an aspirational norm than a recurring fantasy.⁸⁵ While it is positive that most Americans would like to, or even plan to, marry,⁸⁶ trends that devalue marriage and increase its instability could make marriage like the weather — everyone talks about it but no one does anything about it.

Redefining Marriage

Just as a marriage institution that is seen as increasingly impermanent is not likely to shape behavior neither is an institution that lacks any substantive meaning.

This is particularly true as it relates to the way marriage fills the need to encourage men and women who create children to provide for those children. David Velleman describes how this works:

Some truths are so homely as to embarrass the philosopher who ventures to speak them. First comes love, then comes marriage, and then the proverbial baby carriage. Well, it's not such a ridiculous way of doing things, is it? The baby in that carriage has an inborn nature that joins together the nature of two adults. If those two adults are joined by love into a stable relationship — call it marriage — then they will be naturally prepared to care for it with sympathetic understanding, and to show it how to recognize and reconcile some of the qualities within itself. A child naturally comes to feel at home with itself and at home in the world by growing up in its own family.⁸⁷

David Blankenhorn says: “Across history and cultures . . . marriage’s *single most fundamental idea* is that every child needs a mother and a father.”⁸⁸

Unfortunately, some legal changes would endorse a dramatic shift in the way the institution of marriage relates to the linkage between parents and children. Again from David Blankenhorn: “the biological and social dimensions of being a parent stand best when they stand together. Marriage as a social institution supports these

ideas. The logic of same-sex marriage requires us to reject them.”⁸⁹ The idea of marriage as having little or nothing to do with its traditional purpose of ensuring enduring ties between children and their parents is central to the effort to redefine marriage as the union of any two persons. This legal change would endorse radically fatherless or motherless homes, homes that are motherless or fatherless by design. Thus, “[i]nstead of regarding the family as the present generation’s way of sacrificing itself for the next, we are being asked to create families in which the next generation is sacrificed for the pleasure of the present one.”⁹⁰

Thus, state and national laws that have been enacted to redefine marriage or create an alternative status have almost invariably affected laws on parenthood. The most significant example comes from Canada where, when the Parliament redefined marriage, the legislation’s “consequential amendments” included the introduction of a new term, “legal parent” to various provisions of national law, replacing natural or adoptive parents.⁹¹ California’s domestic partnership law provides that the “rights and obligations of registered domestic partners with respect to the child of either of them shall be the same as those of spouses.”⁹² Similarly, New Jersey’s civil unions law provides: “The rights of civil union couples with respect to a child of whom either becomes the parent during the term of the civil union, shall be the same as those of a married couple with respect to a child of whom either spouse . . . becomes the parent during the marriage.”⁹³ The laws of Oregon and Vermont contain similar provisions.⁹⁴ Each of these illustrations makes clear that a redefinition of marriage or the creation of a substitute is likely to lead to a separation of the concepts of legal and biological parenthood.

Defining Parenthood Down

Another example of the law’s contribution to weakened families involves the dilution of the law’s recognition of natural parenthood. This article has already noted the law’s shift from an endorsement

of the duty of parents to provide for children to a regime that values children's ability to provide meaning and purpose to adults. This continued legal endorsement of alternative family forms that require instrumental means to allow adults to procure children (and requires the intentional exclusion of one or both of a child's natural parents from the "family" equation) marks an increasing instrumentalization of children.

As David Velleman notes, traditionally the desire to procreate "has been thought to ground a moral right to procreate only for those who are in a position to provide the resulting child with a family. According to the new ideology of the family, of course, virtually any adult is in a position to satisfy this requirement, since a family is whatever we choose to call by that name."⁹⁵ In this way, "our society has embarked on a vast social experiment in producing children designed to have no human relations with some of their biological relatives."⁹⁶

This instrumentalization has developed coincident with a longstanding devaluation of parental authority and family autonomy. Philosopher Michael Oakeshott describes the sequence of this weakening process: "First, we do our best to destroy parental authority (because of its alleged abuse), then we sentimentally deplore the scarcity of 'good homes,' and we end by creating substitutes which complete the work of destruction."⁹⁷

The degree to which the commitment of American law to recognizing parental status and authority has declined is illustrated by a comparison of U.S. Supreme Court precedents separated by seventy-five years. In the 1920's, the Court decided two cases related to parental authority in the education context. The first involved the prosecution of a parochial school teacher who had given instruction in German.⁹⁸ In that case, the Court recognized a constitutional right of parents to control the education of their children premised in part on "the natural duty of the parent" to educate their children.⁹⁹ The Court noted that although there have been societies which see the child as a creature of the state and disregard family obligations

and prerogatives, these “ideas touching the relation between the individual and the State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution.”¹⁰⁰

Shortly thereafter, the Court struck down a prohibition on non-public schools enacted by a popular referendum in Oregon.¹⁰¹ In invalidating the law, the Court again recognized “the liberty of parents and guardians to direct the upbringing and education of children under their control.”¹⁰² Interestingly, the Court once again repudiated state-centered approaches to the family: “[t]he child is not the mere creature of the State.”¹⁰³

These cases have been prominently featured in string citations produced to support some of the Court’s more expansive readings of Constitutional law. In 2000, however, a case reached the Court that directly raised the concerns addressed in these earlier decisions. The Court’s 5-4 decision in this case, *Troxel v. Granville*,¹⁰⁴ was that a Washington statute that allowed any person to seek visitation with children was unconstitutional because the statute should have given special weight to the wishes of a fit parent. This result does not seem particularly at variance with the earlier precedent but the reasoning of the Court makes clear that the plurality was replacing the earlier robust doctrine of parental liberty with a formulaic test that would only require the state to treat a parent’s wishes as an important factor in disputes with non-parents, even if the state ultimately disregarded those wishes.

Professor Robert Nagel has pointed out that the Supreme Court’s reliance on such formulae is inherently problematic:

Despite their superficial precision, neither the content nor the shape of modern formulae communicates clarity and constraint. The formulae are demands — multiple, repetitive, shifting, and sometimes inconsistent demands. The style reflects intellectual embarrassment about the existence of judicial discretion but is designed to assure plentiful opportunities for its exercise. In com-

ination with the mechanical tone of formulaic opinions, the palpable range of choice inherent in the formulae communicates, not objectivity, but power without responsibility. Rather than binding, the formulaic style frees the Court, like some lumbering bully, to disrupt social norms and practices at its pleasure.¹⁰⁵

In *Troxel*, the Court’s formula creates the appearance of protection of parental rights while leaving lower courts free to ignore an actual parent’s preference by saying “we’re treating the parent preference as a plus factor but after balancing all considerations, we feel free to disregard that preference.”

Indeed, this is what appears to be happening in some recent cases. For instance, the supreme courts of Ohio and Utah have recently issued decisions in cases where grandparents sought visitation over the objection of a fit parent (the same fact scenario as *Troxel*). In both instances, the courts allowed visitation.¹⁰⁶ The courts believed that as long as the parents’ wishes were consulted, the legal system’s sense of the “best interests of the child” should be determinative even if that standard were to result in disregard for the parental preference. Similarly in a recent Washington Supreme Court case, the court ruled that the former same-sex partner of a child’s biological mother was entitled to visitation over the objection of the mother because the partner was, essentially, a parent to the child.¹⁰⁷ An appeals court in Maryland reached the same result in a dispute between an adoptive parent and her former partner.¹⁰⁸ These examples are not exhaustive.

By employing a test that treats a parent’s wishes as only one consideration for the ultimate decisionmaker, the state, to consider, our courts are weakening their traditional deference to the principle of family autonomy in favor of a state centered approach. This new, ideological, approach is similar to that of a recent European Court of Human Rights decision entirely at odds with the U.S. precedent regarding parents and education. That decision upheld Germany’s investiture of educational decision making entirely in the hands of the state. It said, “respect is only due to convictions on the part of

the parents which do not conflict with the right of the child to education” so “parents may not refuse the right to education of a child on the basis of their convictions.”¹⁰⁹ This ideological approach is also inherent in a recent argument (by the Massachusetts chapter of the American Civil Liberties Union) in a federal court case involving parents’ objections to curriculum choices made by the school in which the parents’ children attend.¹¹⁰ The ACLU argues: “What individual parents may not do, however, is demand control over the ideas to which their children will be exposed.”¹¹¹

STATE STRENGTH

A family that is unstable and impermanent and that lacks any substantive meaning is less able to mediate between individuals and the state. As George Steven Swan notes: “Today’s family, continually threatened by dissolution, is less and less able to serve as the context in which millions of Americans pluralistically contract to organize their lives independently of central political authority.”¹¹²

Barry Alan Shain notes that the formative leaders of the United States rejected “a more aggressive, individualistic theory of the good political life” that “holds that human development is best pursued by freeing the individual from restrictive and intrusive familial, social, religious, and local political intervention.”¹¹³ According to this rejected view, the state would be the instrument of this “freeing” by weakening or destroying the traditional authority of these non-political institutions in order to foster individual choice.

To this end, the modern state has neglected the concept of rights as limitations on the power of the state in favor of a conception of rights as a protection by the state against the demands of social institutions like the family.¹¹⁴ This has led to a weakening of non-political authority over individuals and a strengthening of state authority over these individual’s lives.

This is no surprise since as Robert Nisbet notes: “It is the nature of both family and state to struggle for the exclusive loyalty of their

respective, and overlapping, members.”¹¹⁵ M.E. Bradford explains: “In a modern context the alternatives are either a society whose sphere is protected by and from the state *or* life under the absolute control of government, with no sacrosanct protective social buffer.”¹¹⁶ Jose Ortega y Gasset describes the latter alternative as “the absorption of all spontaneous social effort by the State.”¹¹⁷

Modern ideologues “seek to control local institutions” such as the family “so that those institutions will teach values (primarily toleration, equality, and authenticity) of which communitarians approve.”¹¹⁸ Alexis de Tocqueville had warned of this tendency:

Once the sovereign had the general right to authorize associations of every kind under certain conditions, it would not be slow to claim that of overseeing and regulating them, in order that they not be able to deviate from the rule that it had imposed on them. In this manner the state, after having put all those who have the wish to associate with each other in its dependence, would then put there all those who have associated, that is to say almost all men who live in our day.¹¹⁹

Perhaps he was thinking of the precedent in France where the Revolution “severely weakened the solidarity of the family in line with its general policy toward all intermediate groups. The family was considered no exception to the general principle that the individual is the true unit of the state and that all social authority *must pass over into the formal structure of the state.*”¹²⁰

The legal changes to marriage and family life, both those accomplished and others still pending, have had exactly this result. The legal norms that must be developed to make practical no-fault divorce or same-sex marriage or fatherless and motherless households (i.e. court-supervised visitation, default terminations of parental rights) are state-centered and often intrusive. When these new norms become, as they increasingly threaten to, the default patterns for all of family life, the family begins to look less like an autonomous social institution and more like a small administrative unit of govern-

ment designed to streamline government functions such as delivery of welfare services or care for children who are, ultimately, creatures of the state.

THE FAMILY'S FUTURE

I have argued here that recent trends in family law, motivated by ideological commitments to radical personal autonomy and extreme egalitarianism, have threatened to distort our understanding of family as a spontaneous social institution. These trends have weakened the family and made it more susceptible to state control. If this is true, then we may well ask whether the family has a future as a legal matter.

The answer to this question will depend on whether we recognize the predicament and return to a more humble view of the law's place as regards marriage and family. The first step is recognition that "change is not reform."¹²¹ Wendell Berry illustrates the risk to the social ecology of the family in an analogy to our natural environment:

By their common principles of extravagance and undisciplined freedom, our public economy and our public sexuality are exploiting and spending moral capital built up by centuries of community life — exactly as industrial agriculture has been exploiting and spending the natural capital built up over thousands of years in the soil.¹²²

Policymakers considering "reform" to marriage and family are faced with a temptation to seek an imaginary perfection of limitless personal freedom and total uniformity of esteem among personal relationships. They may be motivated by a desire to help those who feel ill served by a return to our family heritage or who have been harmed by very human failings in their own families or communities. As the narrator of Anthony Trollope's novel *Barchester Towers* says, however, "Till we can become divine we must be content to be human, lest in our hurry for a change we sink to something lower."¹²³

The long held ideals of marriage and family as institutions providing unique benefits to children and society free from the constraints of an overweening state ought to be preserved. Marriage and family have served as the basic and primary sources of personal meaning, provision, support and mediation between individuals and the demands of the outside world.¹²⁴ Family life, for both good and ill, provides crucial lessons and experiences that shape character and, at their best, nurture deep happiness and fulfillment.¹²⁵ Marriage, as the foundation of a family, gives the world a future. Abandoning these ideals for whatever noble or ignoble purpose will not come without costs.

In our impatience to pursue an ideological perfection will we repudiate our inheritance? The answer to this question, as it will be reflected in the laws we adopt and enforce, may well determine whether the family has a future.

ENDNOTES

1. "Lycidas" in *John Milton, English Minor Poems*, 31, Encyclopaedia Britannica, 1952.
2. See F.C. DeCoste, "Courting Leviathan: Limited Government and Social Freedom in Reference re Same-Sex Marriage," *42 Alberta Law Review* 1099 (2005). "The facts are these: a) prior to the thirteenth century, when the Church finally managed to take control of it, marriage was an entirely social practice; b) marriage only became a sacrament in 1439; and c) the Catholic Church only began requiring the attendance of a priest for a valid marriage in 1563, after the Reformation. The state came to marriage even later than did the Church. Indeed, it was not until 1753, with the passage of Lord Hardwicke's Marriage Act, that the British state became a significant player in the joining together of men and women as husbands and wives." Richard W. Garnett, "Taking *Pierce* Seriously: The Family, Religious Education, and Harm to Children," *76 Notre Dame Law Review* 109 (2000). "The law no more 'creates' the family than the Rule Against Perpetuities 'creates' dirt."
3. Roger Scruton, *A Political Philosophy*, London, UK: Continuum Books, 2006.
4. *In re J. P.*, 648 P.2d 1364, 1373 (Utah 1982).
5. Bruce C. Hafen, "Law, Custom and Mediating Structures: The Family as a Community of Memory," *Law and the Ordering of Our Life Together*, 100

(Richard John Neuhaus, ed.), 1989. "It is characteristic of totalitarian societies, by contrast, to centralize the transmission of values. Our system thus fully expects parents to interact with their children in ways we would not tolerate from the state – namely, through the explicit inculcation of intensely personal convictions about life and its meaning."

6. Barry Alan Shain, "American Community," *Community and Tradition*, 39 (George W. Carey and Bruce Frohnen, eds.), 1998.
7. Richard Weaver, "Two Types of American Individualism," *Modern Age* 7 (Spring 1963).
8. Bruce C. Hafen, "The Family as an Entity," 22 *U.C. Davis Law Review* 865 (1989).
9. *Turner v. Pannick*, 540 P.2d 1051, 1055-1056 (Alaska 1975).
10. Wendell Berry, *Sex, Economy, Freedom & Community*, New York, NY: Random House, 1993, 120-121.
11. Robert F. Nagel, "Diversity and the Practice of Interest Assessment," 53 *Duke Law Journal* 1515 (2004).
12. William C. Duncan, *Marriage and the Utopian Temptation* 59 *Rutgers Law Review* 265 (2007).
13. *Ibid.*, 268; see also *Andersen v. King County*, 138 P.3d 963, 1002 (Wash. 2006). "The binary character of marriage exists first because there are two sexes."
14. *Ibid.* "A society mindful of the biologically unique nature of the marital relationship and its special capacity for procreation has ample justification for safeguarding this institution to promote procreation and a stable environment for raising children." *Standhardt v. Superior Court*, 77 P.3d 451, 463-64 (Ariz. Ct. App. 2003). *Morrison v. Sadler*, 821 N.E.2d 15, 23 (Ind. Ct. App. 2005). *Citizens for Equal Prot. v. Bruning*, 455 F.3d 859 (8th Cir. 2006).
15. Duncan, "Marriage and the Utopian Temptation." William C. Duncan, "The State Interests in Marriage," 2 *Ave Maria Law Review* 153 (2004).
16. Grace Ganz Blumberg, "Legal Recognition of Same-Sex Conjugal Relationships: The 2003 California Domestic Partnership Rights and Responsibilities Act in Comparative Civil Rights and Family Law Perspective," 51 *UCLA Law Review* 1555 (2004).
17. David Blankenhorn, *The Future of Marriage*, New York, NY: Encounter Books, 2007, 199.
18. Roger Scruton, *The Meaning of Conservatism*, London, UK: Continuum Books, 2006, 132.
19. F.H. Bradley in *Conservative Texts: An Anthology* 58, note 1 (Roger Scruton, ed.) 1991.
20. Leo Tolstoy, *War and Peace* (1869, 1968).
21. Scruton, *The Meaning of Conservatism*, 132.
22. For instance, one may choose to bear a child but cannot choose the characteristics (some that will be extremely challenging) of that child. These will

- not only include health characteristics but also emotional, psychological and other traits. The same goes for financial costs of music lessons, tuition, etc.
23. Gilbert Meilander, "The Meaning of the Presence of Children," *The Nine Lives of Population Control*, 154 (Michael Cromartie, ed.), 1995.
 24. *Goodridge v. Department of Public Health*, 798 N.E.2d 941, 952 (Mass. 2003). "The definition of marriage, as both the department and the Superior Court judge point out, derives from the common law." *Hernandez v. Robles*, 7 N.Y.3d 338, 357 (N.Y. 2006). "Articles 2 and 3 of the Domestic Relations Law, which govern marriage, nowhere say in so many words that only people of different sexes may marry each other, but that was the universal understanding when articles 2 and 3 were adopted in 1909."
 25. Thus, despite some calls to privatize the process (see), a divorce still requires a legal proceeding. If one marries before a former marriage is dissolved, that person will be guilty of bigamy. Robert H. Mnookin & Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce" 88 *Yale Law Journal* 950 (1979). David B. Harrison 11 *Am. Jur. 2d Bigamy* §1 (2007).
 26. Robert F. Nagel, "Political Pressure and Judging in Constitutional Cases" 61 *University of Colorado Law Review* 685 (1990).
 27. *Ibid.*
 28. Jeffrey Hart, "Burke and Radical Freedom," *American Conservative Thought in the Twentieth Century*, 480 (William F. Buckley, ed.), 1970.
 29. Russell Kirk, *Edmund Burke: A Genius Reconsidered* 83 (1967).
 30. Steven L. Nock, "The Future of Public Laws for Private Marriages" 11 *The Good Society* 74 (2002).
 31. Robert F. Nagel, "A Response to Professor Bix" 42 *San Diego Law Review* 835 (2005).
 32. Robert F. Nagel, *Constitutional Cultures* 22-23 (1989).
 33. Robert Nisbet, *Prejudices: A Philosophical Dictionary* 210 (1982).
 34. George W. Carey, "The Constitution and Community," *Community and Tradition*, 63 (George W. Carey & Bruce Frohnen, eds.), 1998.
 35. Robert F. Nagel, "Liberals and Balancing" 63 *University of Colorado Law Review* 319 (1992).
 36. *Ibid.*
 37. *Ibid.*
 38. Nagel, "A Response...."
 39. *Lewis v. Harris*, 908 A.2d 196, 217-218 (N.J. 2006).
 40. *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999). *Goodridge v. Department. Lewis v. Harris*.
 41. *Hernandez v. Robles*, 7 N.Y.3d 338 (N.Y. 2006). *Andersen v. King County*, 138 P.3d 963 (Wash. 2006). *Standhardt v. Superior Court. Morrison v. Sadler. Citizens for Equal Prot. v. Bruning*.
 42. *In the Matter of SooHoo*, 731 N.W.2d 815, 822 (Minn. 2007).

43. *Goodridge v. Department*
44. *Hernandez v. Robles*, 855 N.E.2d 1, 6-7 (N.Y. 2006).
45. Robert F. Nagel, "American Constitutional Law" 127 *University of Pennsylvania Law Review* 1174 (1979).
46. *Ibid.*
47. *Waite v. Waite*, 150 S.W.3d 797 (Tex. App. 2004).
48. *Biliouris v. Biliouris*, 852 N.E.2d 687 (Mass App. 2006). "Although the parties agreed that the wife would leave her job in order to be a 'stay-at-home' mother, there is nothing in the record to suggest that the wife would be incapable of working and earning income to support herself in the event of a divorce in the future." *Stephen v. Stephen*, 937 P.2d 92 (Ok. 1997).
49. Maggie Gallagher, *The Abolition of Marriage* 147 (1996).
50. *Ibid.*
51. Douglas W. Allen and Maggie Gallagher, "Does Divorce Law Affect the Divorce Rate?" 1 *IMAPP Research Brief* at 7 (July 2007).
52. This is true because the when one party alleges irreconcilable differences (the no-fault ground for divorce), the other party cannot contest this as they would be able to do if the spouse initiating the divorce had alleged adultery or abuse. Thus, the existence of no-fault "grounds" allows one party an irrefutable reason for a court to grant the divorce but no opposite mechanism for a non-initiating spouse to challenge the effort to divorce.
53. *C.E.W. v. D.E.W.*, 845 A.2d 1146 (Maine 2004). *E.N.O. v. L.L.M.*, 711 N.E.2d 886 (Mass. 1999). *LaChapelle v. Mitten*, 607 N.W.2d 151 (Minn. App. 2000). *Matter of T.L.*, 1996 WL 393521 (Mo. Cir. 1996). *V.C. v. M.J.B.*, 748 A.2d 539 (N.J. 2000). *A.C. v. C.B.*, 829 P.2d 660 (N.M. App. 1992). *T.B. v. L.R.M.*, 786 A.2d 913 (Pa. 2001). *Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000). *In re L.B.*, 122 P.3d 161 (Wash. 2005). *In re Clifford K.*, 619 S.E.2d 138 (W. Va. 2005). *In re Custody of H.S.H.-K.*, 533 N.W.2d 419 (Wis. 1995).
54. *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005).
55. *In re K.M.H.*, 169 P.3d 1025 (Kansas 2007). *McIntyre v. Crouch*, 780 P.2d 239 (Or. App. 1989).
56. *Ala. Code* 26-17-21. *Cal. Fam. Code* 7613. *Conn. Gen. Stat.* 45a-775. *Del. Code Ann. tit. 13*, 8-702. *Lamaritata v. Lucas*, 823 So. 2d 316, (Fla. App. 2002). *Kan. Stat. Ann.* 38-1114. *Minn. Stat.* 257.56. *Mo. Rev. Stat.* 210.824. *Mont. Code Ann.* 40-6-106. *Nev. Rev. Stat.* 126.061. *N.D. Cent. Code* 14-20-60. *Ohio Rev. Code* 3111.95. *Or. Rev. Stat.* 109.239. *Utah Code* 78-45g-702. *Wis. Stat.* 891.40.
57. *Ill. Comp. Stat.* 750-47/15. *Iowa Code* 710.11. *Tex. Fam. Code* 160.754. *Tex. Fam. Code* 160.702. *Utah Code* 78-45g-801. *Utah Code* 78-45g-702.
58. *In re Robinson*, 890 A.2d 1036, (N.J. Super. 2005).
59. *Ibid.*

60. J. David Velleman, "Family History," *Philosophical Papers*, 34 (2005): 357-360.
61. *Michael H. v. Gerald D.*, 491 U.S. 110, (1989).
62. *Ibid.*
63. *Ibid.*
64. *Ibid.* "The evidence is undisputed that Michael, Victoria, and Carole did live together as a family; that is, they shared the same household, Victoria called Michael "Daddy," Michael contributed to Victoria's support, and he is eager to continue his relationship with her."
65. *Ibid.*
66. Robert Nisbet, "The Pursuit of Equality," *Public Interest*, 103 (Spring 1974).
67. Bruce Frohnen, *The New Communitarians and the Crisis of Modern Liberalism* 138 (1996).
68. Adam Haslett, "Love Supreme." *The New Yorker*. May 31, 2004.
69. David S. Buckel, "Government Affixes a Label of Inferiority on Same-Sex Couples When It Imposes Civil Unions & Denies Access to Marriage" 16 *Stanford Law & Policy Review* 73 (2005).
70. *Baehr v. Lewin*, 852 P.2d 44, 59 (Haw. 1993). *Deane v. Conaway*, 2006 WL 148145 (Md. Cir. Ct. 2006). *Overruled* 2007 WL 2702132 (Md. 2007).
71. Robert F. Nagel, "Meeting the Enemy," 57 *University of Chicago Law Review* 633 (1990).
72. *In the Matter of Harvey*, 899 A.2d 258 (N.H. 2006). *Overruled by In the Matter of Chamberlin*, 918 A.2d 1 (2007).
73. Alexis de Tocqueville, *Democracy in America* 513 (translated by Harvey C. Mansfield & Delba Winthrop 2000).
74. Blankenhorn, 198.
75. Ann Swidler, "Fighting for the American Family: Families in the Crosshairs of the Culture Wars," Lecture at Brigham Young University, October 18, 2007.
76. Blankenhorn, 233.
77. Carl E. Schneider & Lee E. Teitelbaum, "Life's Golden Tree: Empirical Scholarship and American Law" 2006 *Utah Law Review* 53, 81. "Changing divorce changed marriage." Alan J. Hawkins, "Will Legislation to Encourage Premarital Education Strengthen Marriage and Reduce Divorce?" *J. L. & Family Studies* 9 (2007):79, 82-83. "Recent research suggests that most divorces are initiated because of "softer" personal or relationship problems, such as falling out of love, changing personal needs, lack of satisfaction, feelings of greater entitlement, and so forth." Allen M. Parkman, "Reforming Divorce Reform" 41 *Santa Clara Law Review* 379 (2001).
78. Berry, 125.
79. Betsey Stevenson, "The Impact of Divorce Laws on Marriage-Specific Capital," 25 *Journal of Labor Economics* 25 (2007): 75.
80. *Ibid.*

81. Judith Wallerstein, et al., *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* (2000).
82. Elizabeth Marquardt, *Between Two Worlds: The Inner Lives of Children of Divorce* (2005).
83. Lynn D. Wardle, "Divorce Violence and the No-Fault Divorce Culture" 1994 *Utah Law Review* 741.
84. William C. Duncan, "The Social Good of Marriage and Legal Responses to Non-Marital Cohabitation" 82 *Oregon Law Review* 1001 (2003). Collecting studies indicating cohabitation leads to poor outcomes in later marriage.
85. Kathryn Edin & Maria Kefalas, *Promises I Can Keep: Why Poor Women Put Motherhood Ahead of Marriage* (2005).
86. Linda J. Waite & Maggie Gallagher, *The Case for Marriage* 2-3 (2000).
87. Velleman, 357, 370-371.
88. Blankenhorn, 178.
89. Ibid.
90. Roger Scruton, "This 'Right' for Gays is an Injustice to Children," *Sunday Telegraph*. January 28, 2007.
91. Canada Civil Marriage Act, S.C. 2005 chap. 33.
92. *Cal. Fam. Code* 297.
93. *N.J. Stat. Ann.* 26:8A-2.
94. 2007 Or. Laws Ch. 99(H.B. 2007); 15 Vt. Stat. Ann. §1201.
95. Velleman, 357, 364.
96. Ibid.
97. Michael Oakeshott, *Rationalism in Politics* 41 (1991).
98. *Meyer v. Nebraska*, 262 U.S. 390 (1923).
99. Ibid.
100. Ibid.
101. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).
102. Ibid.
103. Ibid.
104. 530 U.S. 57 (2000).
105. Robert F. Nagel, "The Formulaic Constitution," 84 *Michigan Law Review* 165 (1985).
106. *Harrold v. Collier*, 836 N.E.2d 1165 (Ohio 2005). *In re Estate of S.T.T.*, 144 P.3d 1083 (Utah 2006).
107. *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005).
108. *Janice M. v. Margaret K.*, 910 A.2d 1145 (Md. App. 2006).
109. *Konrad v. Germany*, Application no. 35504/03 (Eur. Ct. Hum. Rts. 2006).
110. *Parker v. Hurley*, 474 F. Supp. 2d 261 (D. Mass. 2007).
111. "Memorandum Amicus Curiae of the American Civil Liberties Union of Massachusetts et al., *Parker v. Town of Lexington*," Case 1:06-cv-10751-MLW at 2 (September 20, 2006).

112. George Steven Swan, “The Political Economy of American Family Policy,” *Population and Development Review* 12 (1986): 739-752.
113. Barry Alan Shain, *The Myth of American Individualism* 13 (1994).
114. Mark C. Henrie, “Rethinking American Conservatism in the 1990s: The Struggle Against Homogenization,” *Intercollegiate Review* 28 (1993): 8-10. Wendell Berry points out that, ironically, “as the emphasis on individual liberty has increased, the liberty and power of most individuals has declined. Most people are now finding that they are free to make very few significant choices. It is becoming steadily harder for ordinary people . . . even to choose to raise their own children.” Berry, 151.
115. Nisbet, *Prejudices: ...*, 110.
116. M.E. Bradford, “On Remembering Who We Are: A Political Credo,” *Modern Age* 26 (1982): 144-149.
117. Jose Ortega y Gasset, *The Revolt of the Masses* 120 (1993).
118. Frohnen, 139.
119. Alexis de Tocqueville, 658.
120. Robert A. Nisbet, “The French Revolution and the Rise of Sociology in France,” *American Journal of Sociology* 49 (1943): 156-160. (emphasis added)
121. Russell Kirk, *John Randolph of Roanoke* 77 (1997) (quoting John Randolph).
122. Berry, 143.
123. Anthony Trollope, *Barchester Towers* 175 (1857, 1998).
124. Hafen, “Law, Custom and Mediating Structures: The Family as a Community of Memory.”
125. Bruce C. Hafen, “The Constitutional Status of Marriage, Kinship and Sexual Privacy” 81 *Michigan Law Review* 463 (1983).

PRESERVING SACRED GROUND



In the Right Ways

*All Talk, No Walk:
Dissonance in Utah's Family Politics*

Paul T. Mero



*Needless apologies, irrational excuses, and self-justifications
often serve to separate public policy from personal and
cultural identity.*

The conservative, heavily Mormon community of the City of North Salt Lake recently considered a resolution, a “vision” statement of sorts, in support of the natural family. It was discussed and rejected soundly. Perhaps there was disagreement over the exact text, but in such councils legislative language is always malleable. There is simply no shading it — a community that would otherwise and unhesitatingly consider itself “pro-family” aggressively chose not to identify with the ideals of the natural family.

What is it about the reality of imperfect families that seems to paralyze our abilities as responsible citizens to uphold ideal family structures — family structures clearly shown through eons of experience and mountains of empirical research to be the safest, healthiest, happiest, most prosperous life, not to mention the most beneficial social experience for the common good of society?

Clearly, there is a dissonance in most of our lives between what we believe and how we live. No need to call it hypocrisy, just call it

Paul T. Mero is president of Sutherland Institute. This essay was first published in 2005. Copyright © 2005 Sutherland Institute.

being human. Even still, amidst our conflicted psyches, we manage to persevere on a course set for our better selves. For instance, just because we sometimes lie does not mean that we endorse or even encourage lying. Or just because we may be alcoholic or drug-addicted doesn't mean we want others to be. We want to be our better selves and we want the same for others.

So what is it about a serious public discussion regarding families that turns these better sentiments on their heads? All of a sudden this same mindful patience and tolerance that we afford our own shortcomings, and our dutiful expectations for ourselves and others, seems to vanish into thin air. All of a sudden the less-than-ideal becomes our standard.

Define the family? You must be joking. What an insult! How judgmental! But what if defining the family, like defining traffic lanes, made our community a safer, more ordered, and inevitably freer, place to live? In fact, a driving analogy is a great one to punctuate what should be obvious. Reasonable people can discern that placing both hands on the steering wheel and paying attention to the road is the safest and, indeed, the best way to drive. The reality is that most people don't do that. We drive with one hand on the wheel, talking on the cell phone, listening to the radio, reading billboards, etc. We have reckless driving laws. We get it — these sorts of good-driving expectations are universally accepted and appreciated.

But such careful attention to the family in public policy is not. The benefits to accepting and appreciating the best kinds of family structures are the same as recognizing good driving environments. Yes, there are all sorts of family structures these days. But to say that one is better than the other is no more judgmental in public policy terms than it is to say that there is a best way to be an attentive and safe driver.

It is, however, inappropriately judgmental to call a family a “bad one” just as it would be to call even a reckless driver a bad driver. Maybe that driver just had a bad day; maybe that family is just going through some hard times. By definition, public policy debates

are public matters, not private ones, and these conversations require discernment, not judgment, in serving the public interest.

To recognize that married couples get divorced is no justification, in and of itself, for them to defend “no-fault” divorce laws. To recognize that two men or two women live as if in marriage is no justification for legalizing homosexual marriages. To say that single parents exist is no justification to ignore the private and public benefits of two-parent families.

What is it about family issues that brings out the selfish worst in people? The answer seems to be that we cannot separate our less-than-perfect family experiences from our societal obligations to recognize healthy experiences and to appropriately acknowledge and encourage them when we see them. When it comes to public policy there are measurements and standards that create safer and better societies. To point them out is not judgmental. It is a public service. That goes for family policy as much as it does for the rules of safe driving.

Perhaps the City of North Salt Lake simply did not understand how a local government could support the natural family. To start, we have to reflect on what it is that city and county governments do. What do they oversee and fund? Obviously, local governments oversee forms of business licensing and zoning regulations. So let's begin there. The easiest example of what a city council could do to protect the family is not to allow sexually-oriented businesses in its jurisdiction. Do you remember how some local citizens were ridiculed because they dared to complain about racy Victoria's Secret window ads at a local mall? Regardless of what is an appropriate response or not, such ridicule seemed knee-jerk when such concerns are valid for public debate.

Local governments also might be more considerate and accommodating of home-based businesses. Do local regulations prohibit or discourage a variety of home-based businesses? Zoning regulations, as well, might more appropriately allow a broad category of home-based businesses. For instance, my wife makes some very mean desserts but she could not create, if she were inclined to do so, a des-

sert business out of our home for both licensing and zoning reasons, not to mention restrictive local health codes that could be changed. The self-reliance and productivity of the home economy remains a key part of promoting the natural family. Especially in this day and age of regressive “smart growth” planning, something like allowing food-producing animals on properties is drastically coming to an end through local edicts. That could be looked at.

City and county budgets could be reviewed line-item-by-item to see what we are funding and see if we are doing anything that families should be doing for themselves. And then that funding should cease for those purposes. Keeping our cities safe for families is another area where local governments could protect the peace and stability of the natural family. Are child molesters really accounted for in our cities? Are the streets safe for children — are they safe to play in their own yards, to walk to school?

Beyond these obvious things, we should not underestimate the power of a local city or county council to make a “statement” about the natural family, or underestimate their opportunity to influence the thoughts of other locally-elected bodies, like a school board. Admittedly, but for wrong-headed reasons, we acknowledge that there is great reluctance for one local body to inject itself into the business of another. But wouldn't it be nice if a city council took more of an interest in, say, a school board's decision to do this or that that might be offensive to family values? A “statement” can simply set the tone for a community and could be used to promote residential and economic development. Families spend lots of money locally. A city could actually advertise itself as family-friendly and compete for economic development with other Utah cities for the title.

The problem with passing a resolution favoring the natural family has little to do with its practicality. Although it makes perfect sense in a number of ways. The problem remains that, when it comes to family issues, many Utahns who know better still prefer to talk the talk, but not walk the walk. And this dissonance occurs primarily because of one of the great ironies of the modern era — while critics

of family policy initiatives claim that we should mind our own business, *they* delight in the offensive and selfish intrusion of projecting the bad experiences of their own lives onto others. You can almost hear the terse reprimand of a divorced parent counseling a young adult, "Now sweetie, you really should wait to get married. You don't want to do it so young. Look what happened to me!" Misery loves company. Meanwhile, communities suffer from this prejudiced and selfish attitude.

Now That They've Made It Your Business

Paul T. Mero



It's time for every responsible citizen to stand up and be counted — to do the right thing, for the right reasons, in the right ways.

INTRODUCTION

We can hardly go through a full day anymore without being bombarded by sex jokes, sexual situations on television or in the movies, the crudities of youthful ignorance around the neighborhood, or even the innocent immodesty of popular fashions. Still, we remain generally private about our own sex lives. Frankly, it is nobody's business.

Even so, problems occur when, uninvited, someone wants to make his sex life your business. Few subjects fit this category more precisely than homosexuality. Someone wants to make his sex life your business, or worse, even the business of your children and others whose attention to such things is wholly inappropriate at this point in their lives.

Okay, so now it *is* your business, whether you like it or not. Someone or some event has forced your consideration. Perhaps your children face this subject at school. Maybe you're confronted with

Paul T. Mero is president of Sutherland Institute. This essay was first published in 2004. Copyright © 2004 Sutherland Institute.

homosexuality at work. It may even appear at the ballot box. Or maybe it is the “gay marriage” debate.

Actually, these things matter for some very good reasons that transcend circumstance. First, the mere subject of homosexuality begs the question of what it means to be male and female. Second, the subject forces us to define “sexual pathology,” in other words, what’s *normal*, *natural*, or *healthy*. And third, this issue compels us to face the purposes of human sexuality. Of course, even more broadly, homosexuality challenges the moral and emotional basis for how society deals with sexuality in general.

Like it or not, each of us will have to draw our own conclusions and make our own decisions about how we approach this sensitive but vital issue.

WHAT ARE WE TALKING ABOUT HERE?

Just what do we mean when we speak of homosexuality? Unfortunately, there are more answers to this question than there are birthday gift ideas dreamed up by a four-year-old. There are “preferences,” “orientations,” “feelings,” “attitudes,” “erotica,” clinical terms, street slang, or any adjective with the prefix “homo.” There are all sorts of ways to describe homosexuality.

As usual, common sense descriptions are always the best: *Homosexuality is sex between people of the same gender. Two men together or two women together. It is a sex act.*

The simplicity of this definition underscores its accuracy — take the sex act out of homosexuality and what’s left? Take sex away from a relationship between two men or two women and you are left with something very common: family, friends, co-workers, etc. — anything but something sexual. We all know of two women or two men who are dear friends, who actually love each other very much, but who do not share sex. In fact, aren’t most of us in that situation? When Little Leaguers embrace after a victory they are no more ho-

mosexual than when two girlfriends share a hug and a tear after a disappointment or a joy.

Even “intent” cannot be seriously considered part of an accurate definition. So what that a man day dreams or fantasizes about sex with another man? As peculiar and potentially destructive as those private thoughts might seem to most people, thoughts and feelings do not make someone a homosexual any more than thinking that you are skinny will make you lose fifty pounds. Human activity, like diet and exercise, will make you thin. Likewise, only sexual activity between persons of the same gender determines homosexuality. Nobody can *homo* without the *sexual*.

This is an important point. As we deal with each other every day in our neighborhoods, communities, schools and workplaces, other people only know us by our actions and what we share openly with them. They cannot read our minds. Laws, public policies, and workplace rules are based on human actions. There are no laws against what a man thinks or feels or dreams, neither can there ever be. In the eyes of the law, thoughts do not rape or molest. Desires do not sexually exploit another person or spread disease. Only human actions can do those things. So while it is sometimes interesting to toy with the notion that “thoughts” and “intent” really are a matter for public debate, the truth is that only our behavior matters, and really only then as it adversely affects the business of others. Although it seems like it sometimes, we do not have “thought police.” The laws and rules we create for society only deal with what we do, not with what we think, and this is especially true when it comes to our sex lives.

BORN THAT WAY?

It’s fair to ask at this point, then what is all the fuss about “orientation”? Good question. Unfortunately, a concise answer is elusive. In fact, there might be several answers depending on who you talk to. Again, the common sense answer is that this thing called “sexual orientation” just does not exist in the way some people choose to be-

lieve. People are just not “born that way.” People are not born homosexual, transsexual, bisexual, cat-sexual, dog-sexual, or any particular kind of sexual. We are born male and female and we are “reproductive” creatures. The way humans reproduce is through opposite-sex sexual relations. There is certainly, within each of us, a heterosexual bias — that’s the way we are built. But with whom and how we go about having sex is a choice we make.

Another way to look at “orientation” is to view the word the way you would under other everyday circumstances. For instance, when you begin a new job or start high school or college you are usually asked to go through an “orientation” process. That’s where you discover how things work on the job or where you go to get your meals or room assignments at school. It’s a time when you discover how you fit into an ongoing process or environment. Of course, by this definition everyone is sexually oriented. Under normal circumstances, most children are nurtured in a home where a man and a woman are dad and mom. Children see them hold hands or kiss, or at least share the same bedroom. We can say with little hesitation that most children are “oriented” in clearly heterosexual households.

The same is not true for other children. Despite the outward appearance of good and happy heterosexual homes, too many children are the objects of sexual abuse and other forms of dysfunction which may alter a child’s early orientation. If mom or dad sexually abuses their child, or does not protect their child from the sexual abuse of “Uncle Billy” or the neighbor boy, the child’s orientation becomes confused. His whole frame of reference is short-circuited. The traditional qualities of family life that we all count on in childhood — trust, loyalty, and security — disappear. Too many male and female homosexuals are the product of this kind of “orientation.”

You will undoubtedly hear or read other explanations, especially from spokespersons of organized homosexuality, whose job it is to put on their best face. Yes, you may hear or read of “scientific” studies that prove “people are born gay.” After all, the business of organized

homosexuality is to justify their behavior and to convince you that it is true and unalterable. But nearly every one of these studies is conducted by those with a bias toward homosexual behavior and all are neither scientifically accurate or contain major flaws.

We all know of some very effeminate boys and some very “tomboyish” girls and sometimes that leads us to think that maybe, just maybe, a few people really are “born that way.” Even so, an effeminate boy or a tomboy girl are no more an indication of homosexuality than an uncoordinated child is an indication that the child is disabled. Is facial hair on a woman an indication that she has sex with other women? Is a boy who prefers art class to football an indication that he has sex with other boys? Of course not.

If you really want to test out in your mind whether or not a person is “born that way,” then just imagine an infant cradled in your arms. The baby is soft, cuddly, innocent. To believe that this infant was “born that way,” or sexually determined in any way, you would have to accept that the infant was born with a sexual “gleam in its eye;” and, in the case of homosexuality, that the infant was born with the seeds of predisposition for anal or oral sex. Child molesters and a few sex researchers might think it’s so, but reasonable minds recognize nonsense when they hear it.

As most of us go about our everyday lives, the only true definition of homosexuality, the only definition that matters, is that homosexuality is actual sex with a person of the same gender.

MINDING OUR OWN BUSINESS

The previous example of the infant raises another important point — all of us started out the same way. Any differences between us are a result of upbringing, environment, motivations, circumstance, mostly outside influences we had little say over as children. We also are often separated by the willful choices we make as we mature. But beneath it all we are the same — fragile, prone to make mistakes, easily distracted and led astray — in essence, very human.

Because of this humanity we share, we often receive public and private lectures about how tolerant we ought to be for those different than us. And rightly so. In fact, one definition of being an American is how tolerant we are in applying certain truths and principles to others.

Of course, there are some things we do not and should not tolerate as a people. We do not tolerate murder, for instance. To a lesser degree we usually do not tolerate a child who talks back to mom or a boisterous blowhard that interrupts the movie at the local theater or a litter bug who dumps trash in all the wrong places. If we put our minds to it we can think of a lot of behaviors we simply do not tolerate.

Leaders of organized homosexuality are constantly asking us to tolerate their sexual behavior. Some of them also press for our acceptance, but most settle for toleration. And from their perspective, why shouldn't they ask us to be tolerant of what they do? All of us cherish our privacy. With one general exception that we will get to in a minute, what business is it of ours what other consenting adults legally do in the privacy of their own homes? The better question is, who would know what two consenting adults do in the privacy of their own home unless they made it their business to tell others?

And that is how Americans, by and large, have chosen to deal with such sensitive issues throughout our history. Though living in community often requires otherwise, we typically go out of our way to mind our own business. All of us know of two lady friends that have shared a home for years, just as we know of plenty of men that share a place to stay. Being roommates does not mean they are having sex, or it may. The point is, who would know unless they made their private lives our business?

Minding our own business is not tolerance. Tolerance has to do with public judgments about perceived social injustices like racial or religious bigotry. "Minding our own business" has to do with the deferential respect we give others to work out their lives as they see fit. It has to do with the patience we have with others. It has to do with kind-

ness (not niceness). It is all about our humanity for one another. And minding our own business works both ways — if you want others to mind their own business, then do not give others any reason to mind your business.

So, if you are minding your own business and others are minding their own business, then why do we have such unsettling discord and public discontent over homosexuality? If no one else knew of their private sexual activities unless they told others, then why are they complaining?

Well, of course, that is a golden question. It gets right down to the nitty-gritty of this whole debate. And answers are equally gritty. They strike right at the heart of our human psyche. While not easily digestible for any of us because of their universal application, the following answers represent common sense truths.

THE NEED FOR APPROVAL

Humans are purposeful. We all have an innate need to feel justified in our actions. Everything we do has a purpose, even if that purpose is simply to have fun. Purpose and justification are so innate to our human existence that we have organized it all around us: religion, government, business, associations, etc.

We like to wake up each morning and have something to do. Most people like to do things that are productive, even though productivity is in the eye of the beholder and is not always a prerequisite for us to feel self-fulfilled. For example, a couch-potato can be just as content with himself as can a marathon runner or bank president.

None of us like to be told we lack purpose. Furthermore, none of us want to be told that what we are doing is wrong, misguided, detrimental, or otherwise lacking significance. So, if purpose and justification are innate to the human spirit, then getting upset with others who say we lack purpose, or who will not justify our actions, is probably very natural for us as well. History is littered with the corpses of people who were killed, persecuted, ridiculed, and condemned because they

simply suggested that others were not doing what they were supposed to do. Hence the popular saying, "Shoot the messenger." That is how powerful *purpose* is to our human psyche — some people would rather have you dead than have you tell them something they do not want to hear or that they do not want to be reminded of.

Homosexuals are not exempt from these feelings. They don't want to hear that what they do sexually is unjustified any more than, say, the tobacco industry wants to be told that they are in the business of killing people. So, quite naturally, homosexuals very aggressively defend their sexual behavior. They say they are wholly justified because either they are "born that way," or because of an abusive childhood, or simply because they have the "civil right" to do as they please. Whatever the justification, their individual drive to do so is so strong that they do not just want your tolerance, *they crave your approval*.

This craving for support is what makes an otherwise private matter become a public issue. Most of us know how powerful sexual urges can be and how all-consuming they can become if left to their own devices. Even so, there is something additionally compelling about homosexuality to the human psyche that sustains an individual to continue with that behavior even in the face of terrible personal anguish and emotional torment.

You may have heard a homosexual say, "I must have been born this way. Why else would I put up with such persecution and misery?" The answer to such a desperate plea is complex, but the feeling of absolute and total submission to a sex act — not life or death issues, but to a sex act — in the face of serious social disapproval from family, friends and neighbors has to be deeply rooted. The most common explanation is childhood abuse, sexual or through parental neglect. Such heinous abuse serves as a life-long curse to many of the abused. Our hearts only can be filled with sorrow, mercy, and compassion for such children and adults.

When such early childhood traumas and other complexities pass unaccounted for later in life, these deep-seeded emotions still remain and serve to fuel those powerful desires for the approval of others.

The social result as it pertains to homosexuality is what we popularly term the “gay rights movement,” or organized homosexuality.

ORGANIZED TO JUSTIFY

The “gay rights movement” was created to justify homosexual behavior. Its organized existence is for no other purpose. The growing strength of this movement is self-evident. Homosexuality touches every American community to one extent or another. Nearly every major profession has an organized and influential contingent of homosexuals. Organized homosexuality has its churches, its print and broadcast media, its politics, its entertainment, its finances, its legal arms, its societies, its researchers, its foundations, and, unavoidably, its medicine. No other group of people have gone to such great lengths to justify a sex act.

It would be easy for us to look at this massive organization as some kind of “conspiracy” and a shameless ploy for power in politics and society. And, actually, the way organized homosexuality has been able to successfully intimidate and manipulate key social institutions to bend to their will adds to this insidious mystique as does some of their own literature. The truth, however, is far from this projected and often accepted image.

Political power and social influence are simply by-products of organizing. Homosexuals organize for self-justification first; political power and social influence are added bonuses. All of organized homosexuality exists as a mechanism for self-justification. Homosexuals do not create their own churches to “overthrow” traditional religion; they create their own churches to find the self-justification they don’t receive among religions which hold homosexuality as sin. Likewise, they do not establish newspapers to propagandize their radical politics and lifestyles; they establish newspapers to provide “safe” public forums wherein they find self-justification (and sex) in community with each other. That traditional religion may be challenged or that propaganda may emanate from “gay pages” is a natural and coincidental result of the processes involved

in establishing alternative public forums. But their primary motivation remains self-justification, not power and influence.

This is equally true regarding the many faces of homosexuality. They have cross-dressers, transsexuals, effeminate men, “dykes on bikes,” lipstick lesbians, leather men, bears (hairy men), dominants, submissives, cruisers, homebodies, “radical faeries,” boy lovers, leftists, conservatives, flaky Quentin Crisps, hunky Rock Hudsons, and some very average looking and normal acting people. We often hear of conflicts within organized homosexuality over how outwardly traditional-looking homosexuals object to their more flamboyant peers, or how the flamboyant ones find their more circumspect comrades “sell outs” to sexist stereotypes, or even how “radical” homosexuals hold their politically conservative friends in contempt for not supporting the “sexual revolution,” “gay rights,” or uncensored freedom of expression in “gay pride” parades.

All of this gets pretty confusing after a while. But the reason for it is rather simple to understand. Each expression of homosexuality, whether it is the normal looking guy or the far-out body-pierced type, is an expression of self-justification. The environment they each choose is an environment wherein they feel comfortable to have sexual relations with others of the same gender. The homosexual who looks “normal,” who has an everyday kind of job, and who shares a nice home decorated with a white picket fence with another homosexual has simply found his “comfort zone.” It is how he can live with himself. For instance, he may have been brought up in an unnaturally strict religious home with mom, dad, brothers, sisters, and extended family. Although the family’s hidden dysfunctions ultimately “oriented” him to homosexuality, he may still crave the attachment he once had to a “normal” or traditional family setting. For him, a desire for a homosexual relationship which most closely resembles his past is what makes him comfortable. And as hard as it is to believe sometimes, other homosexuals find this same comfort in the many less traditional faces of homosexuality.

There really is only one true face of homosexuality, no matter how they dress themselves up for the public or how they prepare

themselves to look in the mirror each morning: homosexuality is sex with persons of the same gender. All of their organizations and associations and activities exist to support their sexual choices and, perhaps more importantly, to justify those choices for their emotional well-being.

HOW DO THE REST OF US COPE WITH THEM?

By focusing on what is real about organized homosexuality, the rest of us can avoid unnecessary and extreme reactions to its existence. The rest of us do not have to get so “political” about it all the time, even if they do. We can see them as they are — real live humans struggling to cope with their lives and gathering together in their own way for comfort and strength. And without taking any of this personally or compromising principles, we can comfortably cut them some slack, with patience (just as we do ourselves and others we care about), all while maintaining our integrity and vision and without feeling as if the world we know is coming to an end.

Even so, patience can wear thin.

How *should* society deal with organized homosexuality’s seeming compulsion to make their private sex lives our business? How should we respond when organizations created to justify homosexual behavior affect or influence our traditional institutions — the workplace, school, church, or especially government where your tax dollars are often used to pay for their subculture? What are the acceptable limits or bounds of their public expression? Are there any? When they force you to make a choice between their view of things or your more traditional perspective, what do you decide?

Even harder to face, what if your own son or daughter, brother or sister, mom or dad came to you and said, “I’m gay.” What is a proper response? *Is* there a proper response? Just where do we start to sort all of these things out?

While this essay cannot possibly answer all of these hard and complex questions, especially given the millions of individual cir-

cumstances involved, a common sense approach tempered with equal portions of firmness and kindness can help to at least reduce the long list of potential solutions.

COPING: PART I — THE CO-WORKER

There is nothing quite as startling as having someone you know and love, not to mention having an acquaintance or a stranger, come to you and tell you that he or she is a homosexual. Undoubtedly, your brain shoots into warp speed looking for just the right thing to say. Too often our irrational side carries the moment and we end up saying something stupid, unnecessary, or wrong in response.

One way to cope with these personal, one-on-one situations is to always keep the moment in context. In other words, do not let your common sense fly away as you try to digest what has been said. For instance, how would you react if a co-worker came up to you and said, "I'm a heterosexual"? You would probably say, "Interesting," and walk away wondering why that was any business of yours. Why should your reaction be any different to a co-worker espousing their homosexuality? "Interesting, but what does that have to do with me?" If your co-worker goes back to minding his or her own business, then the case, though peculiar, is closed. On the other hand, if your co-worker continues to make his or her sex life your business, then your situation becomes a bit more challenging.

Remind yourself what you have learned here and always follow your common sense. All this person is wanting is your approval for his or her sexual behavior. This is the central point. Remember, homosexuality is nothing without sex; a person cannot "homo" without the sexual. So immediately you might say politely, "I could have gone the rest of my life without knowing that piece of information. Now all you have done is make me question your judgment about how you view me and other people. You know, friend, I mind my own business. Why don't you mind yours?"

Unless you care to, there is no need to get into any discussions with this co-worker about things like “orientation” or his or her feelings from birth. All of that is irrelevant to the workplace. All you care about is that he or she is an effective and pleasant worker while you are around them. There is no need to be offended even if you find homosexuality offensive. Don’t take it personally. A person consumed with his or her homosexuality does not really care about *you* or *your* feelings anyway, other than that you are a means to an end — you are just one more person, any person, who can help them gain self-justification for their behavior.

COPING: PART II — A LOVED ONE

Of course, the table turns a bit when this person happens to be a loved one. The principles involved do not change, but the emotions surely do. Now you are not just dealing with the homosexual psyche, you are having to deal with your own as well, especially if you are the parent of a homosexual child. A whole “industry” of coping parents has been created within organized homosexuality. Remember, it is human nature to feel uncomfortable when you are accused, in person or by circumstance, of being a “failure” in some respect. So when a child tells you that he or she is homosexual (i.e., has sex with persons of the same gender) you not only have them to wonder about, you also have yourself to deal with.

If there is one single force that can make or break organized homosexuality it is the strength of family. The “heterosexual” world has known it all along. The family is the fundamental unit of society. As our families go, so goes the nation. The power of the family is so obvious. So take note, all of you concerned about our culture and America’s future — organized homosexuality certainly has. The true measure of progress for organized homosexuality is the degree to which they can capture the hearts of families.

Let’s say a loved one comes to you and says, “I’m gay.” What do you do? Whatever you do first may very well depend on your rela-

tionship to the loved one. For instance, a wife may react differently when her husband makes that announcement than when her son does the same. A husband, if he really is a practicing homosexual, will obviously be admitting to adultery. A son's relationship is different. So your first move is determined by the relationship you have with the person.

Say it is a son. What do you do? One suggestion, before you do or say anything, is to reach out and hug that boy and tell him you love him. Just hold him, *especially* if that has not been your style over the years. He has come to you for that hug and to hear those words, "I love you." Do not disappoint him now. It is crucial to realize that even though you are the most important person to him emotionally, and always will be, self-justification for his sexual behavior does not depend on you. You, the parent, are the exception to "the rule of self-justification." That is not the primary reason he is talking to you right now. He can receive self-justification elsewhere among the many faces of homosexuality. In fact, he has already done so. His confidence is up; that is the only reason he can come to you now. He is there with you now because you make him whole as a *person* and not as a *homosexual* per se. *You* are what he is missing; and if not you personally, then what you represent to him. The unspoken truth is that the probable reason he has oriented himself to homosexuality is because someone, usually the father, *actually was* missing emotionally most of his life.

There is another crucial reason why you should hold him in your arms and express your love for him. You are about to sit down with him and face some harsh realities. Your son must know that you are approaching this topic from a point of reason, compassion, and objectivity. He must know that you are perfectly willing to hold yourself accountable for your parenting and that you hold him accountable for his decisions. In this you cannot cut him any slack. The discussion you are about to have should be painful if you're doing it right. It is a moment of reckoning. He may storm out of the room when it's over, but you never should. He may scream and yell, but

you never should. Cry with him, laugh with him, and love with him, but be prepared for a tantrum on his part. It may not come, but be prepared. For while he may not be altogether looking for justification from you, he certainly is not looking for your disapproval even if anticipated. And again, if you are doing your job right, disapproval is what you must ultimately give him.

Meanwhile, you have your own ghosts to deal with.

“Where did I go wrong,” may be your first thought. If it’s not, it should be. Mature people always look to themselves first for solutions to problems. Even in a modern world that is so quick to find permanent solutions in “unalterable” problems — a world in which “science” is an excuse, not a reason — parents must be honest with themselves. Fight that human tendency we all have to give up on ourselves. Fight that tendency to blame others such as organized homosexuality for “seducing” your son, the schools for not teaching him right and wrong, society for its corrupting evils, or even God for having made him this way (or for not changing him back). Brutal honesty with yourself is your only hope for true peace and happiness as a parent, especially a parent of a homosexual. It’s also your only hope for helping a child who is struggling passively or actively with homosexuality.

As you sit with your loved one, in this case your son, go through a two-part mental checklist. First, remind yourself that all your son has actually told you is that he is or enjoys having sex with men. Startling as that is, he has not said he is an ax murderer or that he makes a living stealing from the poor box at church. Forget about yourself for a minute. Forget about the question of grandchildren or what the neighbors are going to say. Forget, as hard as it might be, that he has just broken your heart. Focus unselfishly on what is real and what counts at this particular moment. Your son has just told you that he is or enjoys having sex with men.

The second part of this mental checklist is to remind yourself that he was not “born that way.” If you do not face this truth now you will eventually succumb to its seductive influence later. Look into his eyes. He was not born with an oral or anal sex gene. He is your son.

While there may have been some trauma or neglect in his childhood that “oriented” him to choose homosexuality, he certainly was not born that way. Neither can you lazily dismiss the possibility that he simply chose a hedonistic path in life. Just as with an ever-increasing number of promiscuous heterosexuals, it could all be as simple as a lack of self-control on his part.

In any case, he will have a myriad of excuses, and you must avoid the temptation to play along. How the rest of your conversation goes is up to you and him. If he is still there at its fulsome conclusion, give him another hug, tell him again that you love him, set down any new “ground rules” of your relationship (after all, he just revealed to you that the defining characteristic in his life is sex with other men!), and stay as close as possible to him.

THERE IS HELP

There is the possibility that by discussion’s end your son may want to quit this behavior. Tell him that is done all of the time. Tell him help exists. And you should remember that because he was not “born that way” his homosexuality was preventable, and if preventable then treatable and correctable after the fact. His consuming focus on sex has three components he must overcome: the physical, the spiritual, and the emotional. It is not unlike other addictive influences. Helpful resources, both for prevention and treatment, are widely available in most every community.

COPING: PART III — LAWS AND SOCIETY

So far we have dealt with some of the more intimate problems in coping with homosexuality. Now we turn to its public aspects. What balance, if any, can be struck between the demands of organized homosexuality and the rest of society? In what context, if any, is homosexuality compatible with the social and civil privileges we Americans enjoy?

As promised earlier, the single exception to the “mind our own business” rule are the many standards and values we collectively construct to create our communities and society. People who come together in a relationship, any relationship — marriage, friendships, family, businesses, governments, both large and small — have a duty to prescribe the bounds of that relationship. This duty stems from the desire of each person to preserve the relationship.

All relationships have standards. In larger forums, such as government, a majority of the people lay down the rules. As we would fully expect, this process grows more imperfect the further our relationships move away from personal settings such as a family and toward larger settings such as governments. That is just the nature of getting everyone to agree on something.

Without trying to be too philosophical here, America (one of these big relationships) was established on a single premise with two distinct and inseparable parts. The single premise is that to be a free people we must be a good people. The two distinct and inseparable parts of that premise are then liberty and virtue.

The plain fact is that people who cannot control themselves and their own appetites and behaviors cannot safely control the power wielded by governments (or even in smaller relationships such as a marriage or a family). The people who crafted our *Declaration of Independence* and *U.S. Constitution*, though imperfect, understood this principle. We all know, as they did over two hundred years ago, that abiding this principle is an ideal. It is a lofty goal. Even so, we also know, as they did, that the further we move away from this ideal, the greater the risk for the disintegration of our union.

In the process of working toward this ideal, our forefathers and ancestors sustained millennia-old social traditions and rules. Many, if not most, were formed from their Christian-based testimony and understanding. A few were not. Because of man’s moral agency, all of these traditions and rules were, and remain, unapologetically arbitrary choices. In other words, other choices could have been made, but they were not.

The most long-standing of these traditions, passed down through millennia and from culture to culture, is the family — mom, dad, the kids, grandma and grandpa, and all its extensions. The family is the chosen basis for our American culture. The American tradition of every single formative law has been to strengthen, preserve, and give deference to the autonomy of the family.

Under the circumstances, it is not surprising then that laws would naturally arise focusing on our sexuality. Pro-creation, having sex to have children, is certainly one of the finer points of being a family and laws giving deference to pro-creation should be reasonably expected. This is why some of our nation's most divisive issues over the years have centered on sex-related issues: contraception, abortion, adultery, incest, polygamy, bigamy, and, of course, homosexuality.

Because our traditional legal and social deference to the family has been a series of wholly arbitrary choices, even if formed by blood, sweat, faith, sound reason and principle, it is subject to change. What was once illegal may not be so now. That is how America works. In fact, that is how we work in our private lives. If we don't like something, we change it. If it is a change for the worse, we end up paying the price for a wrong decision. This is exactly what the founders of this nation meant when they prophetically forecast that for us to remain free, we must remain good.

DO WE REALLY WANT TO LIVE IN AN "ANTISEPTIC" WORLD?

While it is never possible to be "too good," we certainly can carry a virtue to an extreme, especially as it applies to law. Sometimes in our zeal to promote the general welfare of society we violate long-standing principles of what makes effective law. Often with good intentions, but with force of law, we try to create an antiseptic world, a world where no one gets hurt, or offended, or disappointed. At the other end of its utopian perspective, is a world where everyone gets what they want and lives in perpetual bliss. We are all guilty at one time or another

of saying, after some huge personal disappointment or insult, “There ought to be a law.” However, all of us know that to follow through every time those words are uttered would be disastrous for society.

Organized homosexuality has used this rhetorical point incessantly to justify changing laws to favor their views. While cleverly and deceptively manipulating the principle of carrying virtue to an extreme, they do however use it to rightly point out a caveat, or “red flag,” within our current democratic process. The caveat is the increasingly unnecessary delegation of our civic duties to institutions of our own creation. Democracy is weakened to the extent that citizens rely on their institutional creations, and not themselves personally, to influence politics. Such a reliance may be a natural outgrowth of the times, but it is not healthy in maintaining our long-term liberty, even our religious liberty.

This is a “twofer” for organized homosexuality. By using this rhetoric they can kill two birds with one stone. They can neutralize much of their political opposition which comes from religious communities and simultaneously weaken society’s general resolve to maintain traditional values. While being a political gamble that can come back to bite them, this strategy can have an exponential effect in their favor — the more organized homosexuality successfully breaks down the general resolve of the rest of us to maintain traditional values, the more successful they are in neutralizing their religious opposition.

A positive aspect of this rhetorical strategy, if there is a positive aspect, is that it is one more reminder for the rest of us to be both diligent and balanced in our duties of citizenship. We must be diligent that our citizenship is not delegated to institutions, even if they are of our own creation. We must be balanced in our approach to maintain both liberty and virtue.

In our well-intentioned efforts to create a better world, we must realize that we cannot possibly come close to creating an “antiseptic” world, nor should we try. Life is too complex and rich in experiences, both good and bad, to attempt to control its every aspect. This is a

needed reminder as we now move forward to specifically discuss homosexuality and public policy.

WHAT DO THEY ASK FOR, AND WHAT CAN WE GIVE?

Organized homosexuality (i.e., the gay rights movement) has very specific demands it makes of society. Among other things, these include the right to:

- garner mutual respect
- be free from violence
- have the state recognize their relationships
- have sex without fear of prosecution
- employment anti-discrimination protections
- adopt children
- gain custody of children
- tax dollars to find a cure for AIDS
- “spousal” benefits
- inclusion in all public events
- legal marriage

How do we intelligently sift through these many requests? Actually, the first two demands are easy enough. Everyone deserves respect as a person and everyone deserves to be protected from violence. Those are “human rights.” By the mere fact that we are citizens of the United States of America, we are all protected in our inalienable rights of “life, liberty, and the pursuit of happiness.” And because of how ultimately patient society is with how each of us works out our own lives, we also enjoy a modicum of privacy. These general protections cover all of us, even the non-sexual lives of persons who call themselves “gay.”

The rest of their political demands are “civil privileges,” privileges granted by state and society. They are not really “rights.” For instance, nobody has a “right” to marry, or at least nothing compels the state — not nature, not law — to officially recognize all or any

marriages. The privilege to do so is based on a standard set by society. Just as we do not allow a person to marry more than one person, we do not allow a son to marry his mother or a man to marry his dog. These standards can and have changed over time; at the very least, society doles out these privileges in very liberal amounts. In fact, to be denied a privilege enjoyed by others deemed critical and fundamental, our governments must show either a “rational basis” or a “compelling state interest” in not extending a privilege.

That’s how to view homosexuality in public policy. In this case, we each have to decide whether or not a rational basis exists to keep homosexuals from social privileges enjoyed by the rest of us.

THE REPEAL OF ALL SODOMY LAWS?

Question: *Should states do away with current laws which make oral and anal sodomy illegal between persons of the same gender?*

These laws were established and are maintained to emphasize our justifiable commitment to pro-creation. They used to apply to everybody. In the few remaining states that have them, some still apply to everybody, heterosexual and homosexual, married and single. Other states only apply these laws to homosexuals. There are no federal sodomy laws.

For a variety of justifiable reasons, sodomy laws are rarely enforced, and when they are enforced they are seldom used as a condemnation of anal or oral sex. More likely these statutes are used to run a cold shower on neighborhood prostitution or as a “hook” to convict someone for a different crime.

Up until the summer of 2003, the best example of this latter situation was the 1986 U.S. Supreme Court case where Georgia police went to a man’s home to arrest him for a non-sexual crime and found the man engaged in anal sodomy with another man. The police charged the man with the non-sexual crime and, with great tolerance and discretion, dropped the charge of illicit sodomy. Organized homosexuals who wanted to challenge Georgia’s sodomy law took the

state to court anyway. The case worked its way up to the U.S. Supreme Court wherein the majority ruled that Georgia's sodomy law is indeed constitutional and that, conversely, "*there exists no fundamental constitutional right to homosexual sodomy.*"¹

With the subsequent *Lawrence* decision in 2003, the Court has shifted its tone dramatically. While still maintaining that there exists no fundamental constitutional right to homosexual sodomy, the Court has pronounced that there exists little if no rational basis in proscribing homosexual behavior. Even further, the Court referred to such attempts as "irrational" and motivated by animus toward homosexuals.²

In an era when many heterosexuals talk more and more throughout the popular media about the finer points of oral and anal sex, such laws seem old-fashioned, and when seen in this light, these laws also may seem unfair to homosexuals. The usefulness of sodomy laws has to be seen in their original light as a moral support and encouragement for pro-creative marital relations. As a commentary on today's popular sexual practices, sodomy laws are not very contemporary. As a reinforcement for the importance we place on marriage and marital relations, they make a strong statement. Likewise, as "sex laws," they are largely ineffectual; as moral reminders, they continue to strike a nerve.

Notwithstanding that the current *Lawrence* decision will sway many courts on this broad subject for the future, maintaining sodomy laws with regard to homosexuality displays a community's reverence for pro-creative marital relations.

HOMOSEXUAL "MARRIAGE"

Question: *Should the state officially recognize homosexual relationships?*

Despite all of the current hoopla over the civil disobedience by homosexuals seeking a municipal marriage certificate, largely ignored is the fact that homosexuals can already get "married" and do so with ever increasing frequency. These ceremonies are often held

in mainstream churches as well as in “gay churches” such as Metropolitan Community Churches. Rings are exchanged and vows are made. Commitments to fidelity are shared just as with traditional marriage ceremonies.

All that’s missing is approval from the rest of us in the form of a state marriage license. So why not? It seems like such a small thing to give them. What is our hang-up?

The hang-up for many people can be as simple as the definition of homosexuality: sex with a person of the same gender. The thought of granting an important civil privilege like marriage based on that notion is absurd to many people. Others view marriage as the starting point for a family and wonder how two men or two women will naturally conceive children. Still others question the logical evolution of same sex marriage. What’s next? A boy and his dog?

As usual, a strong dose of common sense helps to clarify the issue.

Everyone is born either male or female. Even persons born with birth defects, somewhat confusing their gender, are still either male or female. There is no third gender. Common sense also tells us that the traditional male/female relationship is what works best to perpetuate the human race. That is why we are built male and female. One fits the other physically and (surprise!) that is how babies are made. Even further, a male and female complete each other emotionally and complement each other in everyday life as they prepare to rear children. Men left to themselves cannot honestly say the same thing, and neither can women left to themselves.

The world has not come easily to this conclusion. A lack of scientific studies regarding this phenomenon belies the millennia of hard work and effort society has put into disproving what has always come naturally. Homosexuality, bisexuality, and all other non-traditional attempts at sexual expression (with humans or otherwise) have existed from the beginning of time. Do we honestly think we are the first people to seriously face the possibility of homosexual marriage, or even question the fundamental relationship between men and women?

Male/female sex and male/female marriage are longstanding norms, passed from civilization to civilization, because every other expression of these activities has been tried and ultimately failed in perpetuating the race and maintaining human progress. Thousands of years have taught us this lesson the hard way through trial and error. Only narrow minds can think that our generation is the first to come up with a better way.

But even if male/female relations are the best way to perpetuate the race and maintain human progress, are they the only way? After all, not all heterosexual couples have children, whether by choice or circumstance. And equally as obvious, single women and single men are increasingly faced with raising children alone. So while homosexual marriage may not be the optimal situation, isn't it at least on par with many heterosexual situations?

“WE’RE AT LEAST AS GOOD AS THE WORST OF THEM”

That was the point organized homosexuality successfully argued before the Hawaiian Supreme Court a few years ago.³ Proponents of homosexual marriage argued that, on all counts, homosexual relationships are at least as good as many dysfunctional heterosexual relationships.

When it comes to raising, adopting, or gaining custody of children, plaintiff lawyers maintained in this case that there are many “burdened systems of child rearing” such as adoptive parents, single parents, foster parents, and yes, same-sex couples. They emphatically claimed that the quality of the parenting provided by homosexual couples would completely outweigh any burden imposed on children because of their homosexuality. These lawyers went on to claim that “sexual orientation” does not disqualify homosexuals from being good parents and that they are fit and loving parents as regular moms and dads.

Experience and reason tell us that children are extremely resilient, nearly god-like in their patience, and long-suffering in their for-

givenness when parents make wrong choices for them. And children are also extremely adaptable. Can adoptive parents, single parents, foster parents, and even two men living together or two women living together successfully raise well-balanced, healthy children? Of course! Who would deny that it *can* be done?

However, it is not done often, especially the further away these “burdened systems” of parenting get from the traditional model of mom and dad. The fact is that the success of these structurally dysfunctional situations depends greatly on how closely they resemble traditional homes with traditional marriages. After all, traditional marriage created the standards for parental success. There is no other way to measure success. The insistence of plaintiff lawyers to prove their homosexual clients’ competency as parents by equating them with heterosexual parents is an obvious and additional proof. Clearly, the traditional way of parenting is the standard by which all other attempts are measured.

Can a homosexual love a child just as much as a heterosexual expresses parental love? Again, of course. But families and parenting are not only about loving another person or caring for a child. All of us have the capability to love someone but that criterion alone does not make a family. Most of us have the capability to take care of someone else but that does not make any of us successful parents. Parenting is not babysitting or day care. Parenting, if done properly, is the task of molding independent, mature, and selfless adults who can then safely raise the next generation and thereby perpetuate civilization.

Not everyone can successfully do that. It is hard enough for traditional moms and dads to do it, and they planned on having children! It is harder still for single parents who did not plan on it or their circumstances. And these folks at least have the advantage of being the biological parents. Imagine the difficulty a caretaker faces when he or she is not the biological parent. For adoptive and foster parents the only remaining bonds distinguishing a non-biological parent from a day-care center are the legal obligations imposed by the

state, hardly the ties that bind! Add the complexities of homosexuality to the situation and you have a nearly insurmountable challenge on your hands.

When we are not in a selfish mood we might fairly ask under the circumstances: What can a child expect from a life without the care of biological parents, missing either a mom or a dad, and straining to develop an understanding of human relations from “parents” whose primary bond is sex with a person of the same gender?

All of this is common sense. Even so, in a crumbling world of dysfunction, do we take what little help is offered children — even at the risk of causing more serious problems? Or do we look for other solutions? Organized homosexuality would have us take the little help they offer with a roll of the dice.

AREN'T THEY REALLY BEING SELFISH?

It is hard not to think that such people are being selfish when they demand parental privileges no matter the current state of their adult relationships. This goes for heterosexuals as well as homosexuals. All of us have heard in the news of wealthy, prestigious, and single *heterosexual* men and women who basically “go shopping” for a child because their social position allows them to do so. Either their biological clock is ticking or having a child is the “in” thing to do.

Obviously, it is hard to judge the motives of these people. But you just know in your heart of hearts that many of these individuals hold the child's interests secondary to their own personal lifestyles. It is often the best love money can buy.

Successful parenting, the kind of parenting that best serves both the child and society, is not based on selfishness. It takes sacrifice. It is its own “lifestyle.”

Homosexuality is contrary to principles of successful parenting because homosexual sodomy is obsessively selfish by nature. Its motivating impulse is exclusively to feed a sexual appetite. It cannot be used to give life. Again, at this point, it is crucial for the reader to

realize that without a sex act between persons of the same gender there is no homosexuality. But even more important, even with a sex act there is no conception of children. By definition then, homosexual behavior is based on selfishness. *This should not be interpreted to mean that homosexuals are incapable of expressing real love for another human. They do. The point is that a sex act defines the homosexual existence, not the non-sexual love for another person, and the latter is the unwaveringly selfless essence of successful parenthood.*

Even before two homosexual men or two homosexual women begin to think about the problems of parenting, such as not being the biological parents or not maintaining the traditional male/female roles of mom and dad, or even without dealing with the reality of their sexual lives, homosexual couples who want to be parents must first deal with the underlying selfish nature of their identity. The prospect of their parental success is based largely on their dilemma to reject the selfish nature of their identity, all the while obsessively working to maintain it!

Frankly, it is an impossible task without drawing children into their “world,” even for the most wealthy, capable, and loving of homosexual couples. And how does that kind of “orientation” of children serve either the children or society? It certainly does not create unselfish children. *Neither* is this “orientation” conducive to mature and selfless behavior. The apple does not fall far from the tree.

HOMOSEXUALITY IN THE WORKPLACE

Question: *Should homosexuality be recognized in the workplace? And, should it be protected in the workplace?*

Perhaps. Homosexual behavior may have much to do with a “gay bar” or a “gay bathhouse” or even a “gay bookstore.” In these cases, to limit employees to “homosexuals only” would not be asking too much. Neither would limiting employees to “heterosexuals only” at a standard house of prostitution in Nevada.

Along these same lines, neither heterosexuality nor homosexuality has anything to do with employment at a high school,

grocery store, or bank. To bring it up formally sounds ridiculous. The fact is that sexuality *of any kind* has a very limited relevance to the workplace.

Organized homosexuality thinks differently. They want their sexuality protected in the workplace; they want laws to prohibit them from being fired because of their sexuality. They also want their “lovers” to be treated just like a spouse when it comes to job benefits.

And they might have a point, if we believe that homosexuality is innate and they are “born that way.” But they are not “born that way.” So when homosexuals ask for the privilege of discrimination protection, just what are they asking for? When they ask for benefits for their friends which are usually reserved for spouses, what is the basis for their claim?

Homosexuals are people who have sex with the same gender. Unless a person is in the “homosexual business,” whatever that is, a person’s homosexuality is irrelevant to the workplace. Because no one would know about a person’s private sexual behavior unless that person made it known, where is the opportunity for discrimination even if we wanted to protect it? Likewise, the only difference between two men who are friends and two men who are “lovers” is sexual activity. Are we ready to say as a society that a sex act alone qualifies those people for mandatory employment benefits whereas the rest of us who are simply best friends, but who share every other aspect of life *except sex*, are disqualified from the same benefits?

While our nation has many laws regarding sexual behavior, not one of those laws was created singularly to empower a sex act, any sex act. This modern demand by organized homosexuality is wholly unprecedented, not only in America, but in all of western civilization.

COPING: PART IV — SUMMARY

Clearly, you can see that by using common sense, not only can many personally uncomfortable moments be diffused when confronted with the subject of homosexuality but there are many positive solu-

tions to this complex problem. Beyond the application of common sense, the key to workable solutions on our part — those of us who “hetero,” not “homo,” and who also do not think of the two behaviors in the same way — is kindness, not tolerance.

We must realize that all of us have problems or personal trials in life. Homosexuality is one of those trials for a few people. The rest of us need not take their trials personally. When they and others make it our business, we should respond intelligently but continue to be truthful. If you really care about someone you will tell them the truth when you must, even if it is painful.

Hopefully, you also can see that the political agenda of organized homosexuality does not have to be *yours*. You are under no moral or legal obligation to acquiesce to their political appeals. What you have thought about homosexuality over the years and in your heart is correct. There is no need to capitulate. Thousands of years of well-earned tradition and lifetimes of experience are on your side.

Those emotions of compassion and mercy that you feel when confronted by very personal appeals from organized homosexuality are good. They are the cement of civilization. Use them positively. Do not waste them on indulging others to do what you know is wrong behavior. Use those emotions to teach truths and to heal those around you who are hurting. Again, kindness not tolerance.

As it has been since the beginning of time, the issue of homosexuality will always be around. You are not the first person who has been forced to confront it, nor is this generation of Americans the first people who have had to deal with it. Someone, somewhere, will always be coping with homosexuality in a very personal way and, by its very nature, that person will be looking for the approval of others. One way or the other, someone will always be coping.

ENDNOTES

1. *Bowers v. Hardwick*, 478 U.S. 186 (1986)
2. *Lawrence v. Texas*, 539 U.S. 558 (2003)
3. *Baehr v. Lewin*, 74 Haw. 645, 852 P.2d 44

“The Sutherland stable of scholars is impressive. I have had the pleasure of working closely with Bryce Christensen and Paul Mero through The Howard Center. Both are capable and expert on matters pertaining to family and society. Bill Duncan’s legal work in behalf of family policy has influenced judicial standards in many crucial cases. Add to these the quality insights of the rest of the Sutherland team represented in this book and you have at your disposal an effective bulwark in defense of the natural family. Their combined talents uniquely position them to facilitate reasoned dialogue and right-thinking for responsible citizens looking to make their communities a better place to live, work, and raise a family.” –*Allan Carlson*



Responsible *Citizenship*™

ISBN 978-0-692-00156-1



Sutherland Institute

Crane Building

307 West 200 South, Suite 5005

Salt Lake City, UT 84101

USA \$20.00 Canada \$25.00

www.sutherlandinstitute.org