



# ***The American Voice 2004: A Pocket Guide to Issues and Allegations***

## ***Issues and Allegations: Same-Sex Marriage***

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### ***Background***

Marriage was a social institution before it was a state or church-sanctioned and regulated association. It was the structure the human species used to raise and legitimate children and was the basis for the kinship network that was the foundation of the economy and society for thousands of years.[1]

Monogamy has been the most widely practiced form of matrimonial union although it has not been the only form. However, even in societies where polygamy is sanctioned, the majority of marriages are monogamous. Polygamy, or plural marriage, has two forms. Polyandry, when one woman has more than one husband, is rare.[2] Polygyny, when one man has more than one wife, is recognized in many societies. The Old Testament and the Qur'an endorse polygyny.[3] Polygyny helped ensure that inherited lands remain intact and enabled male leaders to create alliances. The ability to support many wives publicly demonstrated a man's wealth.[4]

Concubinage, the practice of forming a somewhat enduring union with some woman other than one's wife, or between two unmarried persons was legally accepted in Greece and Rome and among the Hebrews.[5]

Up until the Justinian Code[6] in the 6<sup>th</sup> century just saying you were married was enough. Couples put up a public notice that they were to be seen as married and often had a party to celebrate the announcement. In 866 Pope Nicholas I declared that a marriage was legal and binding even without any public or liturgical ceremony so long as parties gave their consent. In the 9<sup>th</sup> and 10<sup>th</sup> centuries ecclesiastical courts throughout Europe gained exclusive jurisdiction over marriages and divorce cases.[7] In the 13<sup>th</sup> century the Catholic Church declared marriage to be a sacrament. In 1563 the Council of Trent required that a Catholic marriage be conducted by a priest in a Church before two witnesses. By the 18<sup>th</sup> century a wedding was a religious event in all countries of Europe.

For hundreds of years different couples in the same geographical area might live under different marriage rules. A 13<sup>th</sup>-century Catholic couple would be married in the eyes of the Catholic Church while their Jewish neighbors would be married under Jewish law. Separate rules would govern their marriages. E. J. Graff observes, "So you have Jews allowing divorce and Christians forbidding it; Jews allowing an uncle and niece to marry, while Christians forbade you to marry your godmother's third cousin..."[8]

With the rise of strong and centralized nations came a desire for uniform rules of marriage and divorce within their borders. Tensions inevitably emerged between state and church, between those who developed the civil rules and those who developed the ecclesiastical rules. In the 16<sup>th</sup> century the Catholic Church declared that marriage was a sacrament and indissoluble. One could only remarry if the Church first annulled one's previous marriage. The English Reformation began in 1529 when King Henry VIII asked Pope Clement VII for an annulment of his marriage to Catherine of Aragon so he could marry Anne Boleyn. Clement denied the request. The Church of England was the result.[9]

A hundred years later the Puritans decamped England for Massachusetts bringing with them their disagreements with the Church of England. Puritans adhered strictly to the Bible, which they believed sanctioned only baptism and communion as sacraments since these were the only sacraments that Jesus took part in him.

In Massachusetts marriage was deliberately constructed as a form of civil union. Weddings were performed by civil magistrates (Justices of the Peace) and took place in private homes.

The Puritans created a judicial tribunal that granted divorce on "the grounds of adultery... bigamy, desertion and impotence."

Other colonies, like Virginia, continued to follow the rules of the Church of England. In Virginia one could be married only by the church. Civil marriages

### ***At a Glance...***

#### ***The conservative view:***

- Heterosexual marriage provides the most nurturing environment for children. Same-sex parenting puts children at risk of child abuse.
- Same-sex partners have a greater tendency to be involved in abusive relationships than do straight people.
- Long-term gay relationships increase the likelihood of AIDS.
- Same-sex marriage doesn't reduce promiscuity significantly.
- Same sex marriages are short lived.
- Where same sex unions are legal, few gay and lesbian couples marry.
- The institution of marriage and the role of the family in society have been weakened in nations that have legalized same-sex unions.

#### ***The liberal view:***

- The Courts have said that marriage is a fundamental civil right.
- Homosexuality is not a disease and does not impair a person's ability to function as a parent or partner.
- The most important ingredient for creating a healthy environment for children is two committed and loving parents.
- New technologies have severed the link between procreation and marriage.
- A growing number of churches recognize same sex marriages.
- Same-sex couples can and do form relationships that are as exclusive, mutually supportive and committed as heterosexual marriage, but because these couples can't enter into civil union, they are denied equal protection of the law.
- Amending the U.S. Constitution to prohibit same-sex unions would unfairly single out one class of Americans.
- The legalization of same sex unions in Scandinavia has strengthened the institution of marriage and the family in those countries.

were not permitted.

Today in the United States the bridge between civil and church marriages often occurs at the end of the religious ceremony. For in the U.S. marriage laws delegate to the religious leader conducting the ceremony the civil authority to sanction the marriage. This is why at the end of religious weddings the rabbi or minister or imam announces, "In the power vested in me by the state of \_\_\_\_\_, I now pronounce you husband and wife."

The tension between civil and religious authority regarding marriage and divorce is evident throughout U.S. history. As University of Iowa history professor Mark Peterson notes, the question for the country and its states has been whether "the state and its concern for fairness (or) the church and its concern for sanctity should govern the social rules for joining two people in perpetual union."**[10]** The institutional and philosophical differences have been the backdrop and context for many of the debates on a variety of issues. Who can marry? Who can divorce? What are the rights and obligations of individuals within a marriage? What level of government has the authority to determine who can get married or divorced?

Whether and on what basis church or civil marriages can be dissolved has been a much-debated issue throughout U.S. history. The Catholic Church refuses to recognize a civil divorce but allows the Church itself to annul the previous marriage. **[11]** Most states have allowed divorce under only a few circumstances (e.g. adultery, cruelty, abandonment). Couples who sought a divorce had to submit evidence that one or both had engaged in these activities. States that passed laws allowing for divorce by out of state residents who stayed in that state for a few weeks created friction with their neighbors who all-but-outlawed divorce.**[12]** Many religious leaders advocated a uniform federal divorce law. Legislation for this purpose was introduced unsuccessfully in every Congress between 1884 and 1970.**[13]**

Some states refused to recognize quickie divorces. The issue went to the Supreme Court. North Carolina, which had refused to recognize a divorce issued in Nevada, argued before the Court that its refusal flowed from its desire to sustain marriages and encourage people to work through the hard times. Recognizing a quickie divorce would undermine that goal.

The Justices disagreed. They noted that the Full Faith and Credit Clause of the U.S. Constitution require that each state recognize "the public Acts, Records and Judicial Proceedings of every other state."**[14]** In its 1945 decision the Court observed, "It is objected, however, that if such divorce decrees must be given full faith and credit, a substantial dilution of the sovereignty of other states will be effected. For it is pointed out that under such a rule one state's policy of strict control over the institution of marriage could be thwarted by the decree of a more lax state...such is part of the price of our federal system...."**[15]**

Those with the means to do so could travel to quickie divorce states, but dissatisfaction continued to grow with a process that seemed to compel dishonesty and even perjury. The first no-fault divorce law was signed into law by California Governor Ronald Reagan on September 4, 1969. All previous grounds for divorce were eliminated, replaced with a sole standard: the irremediable breakdown of the marriage. Most states have adopted no-fault divorce laws since. These laws changed the legal and thus social expectations and obligations of marriage. "The idea that marriage partners themselves could simply decide to end their marriage was revolutionary; it affected thinking about the very nature of marriage and permanence," writes Mary Lyndon Shanley.**[16]**

Another major change in the rules of marriage has involved the legal status of wives. U.S. law has been heavily influenced by the writings of Sir William Blackstone, who codified and commented on English common law in the 18<sup>th</sup> century. Blackstone's common law often traced itself directly to biblical roots. With regard to marriage Blackstone said he was guided by the declaration in Genesis that husband and wife are "one flesh" in the eyes of God. To Blackstone that meant they were "one person" and the husband legally represented that person.**[17]** This meant in turn that a wife could own no personal property, make no personal contracts, and bring no lawsuits. In most jurisdictions wives could not prosecute their husbands for marital rape because marrying gave spouses blanket consent to sexual relations at any time.

Most American colonies followed the English common law in this matter.

By the late 19<sup>th</sup> century most states granted married women the same property rights they had when single. The legislative debates often were heated.**[18]** Blackstone's influence continues. In 1945, for example, the New Jersey Supreme Court declared, "The plaintiff (husband) is the master of his household. He is the managing head, with control and power to preserve the family relation, to protect its members and to guide their conduct."**[19]**

Another clash between civil and church authority occurred over the issue of monogamy. The Latter Day Saints (LDS), more popularly known as Mormons, practiced polygyny. They did so "because they believed that God had commanded them to do so."**[20]**

The U.S. government reacted by enacting a number of laws prohibiting polygamy in the territories and within the U.S. Mormons claimed the federal government had no jurisdiction to regulate internal church practices and this exercise in civil authority violated the First Amendment's right of freedom of religion. In 1879, the U.S. Supreme Court sided with the civil authority. "Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people," the Court commented.[21]

Monogamy became the law of the land. The federal government stripped polygamous Mormons of the right to vote, run for public office or serve on a jury. The government announced it would start to seize the temples. In 1890 the Mormon Church suspended the solemnization of plural marriage. In 1896, after five unsuccessful attempts over 37 years, Utah became the 45<sup>th</sup> state.

Much more enduring and widespread than the debate over polygamy was the question of whether blacks could marry whites. The idea of interracial romance enraged large segments of the American population. All but nine states banned interracial marriage at one time. Those states that did allow blacks and whites to marry often-enacted laws that would make void all marriages performed there when the couple was not eligible to be married in their home state.[22] Some tried to outlaw interracial marriages at the federal level. In December 1912 Representative Seaborn Roddenberry of Georgia proposed the following constitutional amendment, "Intermarriage between Negroes or persons of color and Caucasians...is forever prohibited."

In 1948 the California Supreme Court became the first state court to declare unconstitutional a ban on interracial marriages.[23] At that time, 38 states still forbade interracial marriage; 6 did so by constitutional provision.

Interracial marriages were not only unrecognized in many states; they were a crime. If an interracial couple got married in a state that sanctioned such marriages they could be arrested when returning home. In 1955 the Virginia Supreme Court of Appeals upheld that state's 1924 law criminalizing interracial marriages. The state had a legitimate right to prevent "a mongrel breed of citizens", the Court ruled.[24] The U.S. Supreme Court declined to review that decision. Legislatures and courts justified the interracial marriage ban on biblical grounds. In 1959, in a case involving an interracial couple that had married in another state and been arrested in Virginia, the trial judge declared, "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents... The fact that he separated the races shows that he did not intend for the races to mix."

In 1967, by a 9-0 vote the U.S. Supreme Court overturned Virginia's anti-miscegenation law. At that time 16 states still prohibited and criminalized marriages based on race. The Court declared, "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." [25] In *Palmore v. Sidoti*, a custody case decided in 1984, the Supreme Court overturned a Florida judicial decision that interracial couples were inherently considered less capable and effective parents than same race couples.[26]

Increasingly the Courts defined marriage as a fundamental civil liberty and required a "compelling" state interest to justify state restrictions. In 1978 the U.S. Supreme Court overturned a Wisconsin statute that denied marriage licenses to those who owed child support. Wisconsin argued it was doing so to ensure that children did not become "public charges" and as a collection device for delinquent dads. The Supreme Court recognized the value of those public goals but concluded they could not justify infringing on the right to marry. "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the 'basic civil rights of man', fundamental to our very existence and survival." [27]

In 1987 the U.S. Supreme Court overturned a Missouri Divisions of Corrections requirement allowing inmates to marry only if the superintendent of the prison decided there were "compelling reasons to do so". [28]

Civil and church authority has also clashed over the role of procreation in marriage. Before the 20th century, contraception was widely viewed as immoral, especially within marriage. Attempts to block pregnancy were punishable by law. The 1876 book *Conjugal Sins* insisted that contraception "degrades to bestiality the true feelings of manhood and the holy state of matrimony." The following year, Connecticut passed a law prohibiting the use of contraception by married as well as unmarried persons.

Some 90 years later the U.S. Supreme Court struck down the Connecticut statute and declared that married couples could decide not to have children. [29] It did so on the basis of the "right to privacy". The Court argued, "Marriage is a coming together for better or worse, hopefully enduring and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes..."

Recently the major controversy regarding the rules of marriage has been over same-sex marriage bans. In 1971 the Minnesota Supreme Court upheld that state's ban on same-sex marriage. The court argued, "The institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis."**[30]** It argued, "There is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex."

In 1961 all states had anti-sodomy statutes. Such statutes were enacted at the very beginnings of the nation, an outgrowth of English common law.**[31]** The vast majority of the state laws banned the act, whether engaged in by heterosexual or homosexual partners. It was not until the 1970s that states restricted the statutes to same-sex partners. In 1987 the U.S. Supreme Court upheld Georgia's anti-sodomy law.**[32]**

In 2003 the Supreme Court overturned the Bowers case when it found the Texas anti-sodomy statute lacked a legitimate interest in regulating private sexual conduct. The Court argued, "Liberty presumes an autonomy of self that includes freedom of thought, belief, expression and certain intimate conduct."**[33]** The Court's decision invalidated anti-sodomy statutes in the 13 states that still had them as of 2003.

In 1996 the Supreme Court overturned a constitutional amendment passed by the voters of Colorado that prohibited local or state governments from protecting homosexuals against discrimination.**[34]** The Court argued, "If the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."

States continue to have authority over whether same-sex couples can adopt children.**[35]** Three states, Florida, Mississippi and Utah absolutely bar same sex couples from adopting children. Ten permit adoption. In other states trial courts have sometimes granted adoption but there are no statewide laws permitting this. All states permit an unmarried person to adopt children.

In 1993 the Hawaii Supreme Court ruled that denying same-sex couples the right to marry violated that state's Equal Rights Amendment and could not be justified unless the state could demonstrate a compelling interest in the exclusion. It remanded the case to the trial court. In 1996 that court concluded that the state had not met the compelling interest standard.**[36]**

That same year, in reaction to the Hawaii decision, the U.S. Congress passed the Defense of Marriage Act. The Act defines marriage as the union of one man and one woman for all federal marital benefits and allows states to ignore the Full Faith and Credit Clause when dealing with same-sex marriages and civil unions licensed elsewhere. **[37]** Thirty-eight states have since enacted legislation banning gay marriages, four of them by constitutional amendments.**[38]**

In 1998 the Superior Court for Alaska struck down that state's ban on same-sex marriage, concluding, "The court finds that marriage, i.e. the recognition of one's choice of a life partner, is a fundamental right. The state must therefore have a compelling interest that supports its decision to refuse to recognize the exercise of this fundamental right."**[39]**

In July 2000 Vermont became the first state to allow same-sex civil unions. The civil union law entitles same-sex couples to "all the same benefits, protections and responsibilities" offered to opposite-sex couples who marry.**[40]** The couple is not eligible for these benefits and protections, however, if they leave Vermont.

In 2003 the Massachusetts Supreme Judicial Court ruled unconstitutional that state's ban on same-sex marriage. The Court concluded, " Barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution...a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law."**[41]**

In late April 2004 Massachusetts Governor Mitt Romney invoked a state law enacted in 1913 when the hostility to interracial marriages was at its peak. The law prohibits local registrars from issuing marriage licenses to couples whose marriages would be invalid in their home states.

On February 24, 2004 President George W. Bush called for a federal constitutional amendment to prohibit same-sex marriage. As of April 2004, 20 states were considering constitutional amendments to ban same-sex marriage.

## ***The question***

Should same-sex marriage be legal?

## ***The conservative perspective***

Conservatives believe that biology, human nature, tradition, religious teachings and the need for stable families dictate that the financial and personal privileges of marriage be restricted to the union of one man and one woman.

Conservatives view same-sex marriage as a fundamental threat to marriage as the bedrock and heart of civilization. Reacting to the Massachusetts decision Brian Fahling, senior trial attorney for the American Family Association Center for Law & Policy argued, "The court has tampered with society's DNA, and the consequent mutation will reap unimaginable consequences for Massachusetts and our nation."**[42]**

Religious conservatives view homosexuality as a sin. They note that all major religions condemn homosexuality. The Catholic Church calls it 'a serious depravity'.**[43]** Islam and Orthodox Judaism condemn homosexuality.**[44]** So do some major interpreters of Buddhist thought.**[45]**

Richard Land, president of the Southern Baptist Ethics & Religious Liberty Commission comments, "If we were to allow same-sex marriage to be legalized, then we have sent the message to our society and to our young people that this is a perfectly normal healthy lifestyle choice but in fact the Bible tells us in Romans 1 it is an unnatural, sinful choice. ...The homosexual community does not want tolerance; they want affirmation. That is something that someone who believes in biblical authority cannot give them..."**[46]**

Conservatives argue that sanctioning same-sex marriage is not the same as sanctioning interracial marriage. "Race and gender are immutable characteristics. Clearly, sexual orientation is not in the same category...", observe two members of the Hawaii Commission on Sexual Orientation.**[47]**

Conservatives believe that the primary purpose of marriage is to bear and raise children. Same-sex couples cannot by themselves have children. And same-sex parenting harms the child. Psychiatrist Harold M. Voth of the Menninger Foundation wrote in 1978, "One of the most important functions of parenting is to evoke, develop and reinforce gender identity and then proceed to shepherd the developing child in such a way as to bring his psychological side into harmony with his biological side and therefore develop a solid sense of maleness or femaleness...Fully masculine men and feminine women are by definition mature, and that term implies the ability to live out one's abilities. These include the capacity to mate...and carry out the responsibilities of parenthood."**[48]**

"(G)overnment is not in the business of stabilizing every friendship," write University of St. Thomas professors Stephen J. Heaney, Charles J. Reid Jr. and Steven A Long in 2004. "If parents do this job well (raising children), society benefits; if not society is weakened". Same-sex couples "want the affirmation of society and the legal benefits of marriage without offering society any comparable benefit in return."**[49]**

Conservatives maintain that children are better off when raised by their biological parents. Child abuse is lowest among intact biological families and higher for children who live with at least one non-biological parent or caregiver. **[50]** Same-sex parenthood prevents children from living with both biological parents, thus increasing their risk of abuse.

Conservatives maintain that same-sex partners have a greater tendency to be involved in abusive relationships than do heterosexuals. The National Violence against Women Survey, sponsored by the National Institute of Justice found "same-sex cohabitants reported significantly more intimate partner violence than did opposite-sex cohabitants."**[51]**

Conservatives maintain there is "indisputable evidence of the unavoidably promiscuous, fleeting nature of most same-sex relationships".**[52]** "The evidence is overwhelming that homosexual and lesbian 'committed' relationships are not the equivalent of marriage", argues the Family Research Council. "In addition, there is little evidence that homosexuals and lesbians truly desire to commit themselves to the kind of monogamous relationships as signified by marriage."**[53]**

A 1984 study of gay males found that every single couple that had been together more than five years had incorporated a provision for outside sexual activity.**[54]** In the Netherlands, where gay civil unions are legal, gay men in committed relationships have an average of eight sexual partners outside of their unions each year.**[55]**

Conservatives maintain that sexual activity among men is inherently dangerous and that long-term relationships actually increase the likelihood of AIDS. The journal *AIDS* reports that men involved in relationships engage in anal intercourse and oral-anal intercourse with greater frequency than do those without a steady partner.**[56]** The exclusivity of the relationship does not diminish the incidence of unhealthy sexual acts.**[57]** A study of steady and casual male homosexual relationships in Amsterdam found that "steady partners

contribute to (HIV) incidence more than casual partners."**[58]**

Conservatives argue that there is a relatively small demand by gay and lesbian couples for marriage even when legally able. The number of registered same-sex unions in Sweden is reported to be about 1,500 (for a total of 3,000 individuals) out of the estimated homosexual and lesbian population of 140,000, or about 2% of gay and lesbian people.**[59]**

Conservatives argue that where nations have legalized same-sex unions the institution of marriage has been severely weakened as has the role of the family in society. Social anthropologist Stanley N. Kurtz argues that "Scandinavian gay marriage has driven home the message that marriage itself is outdated, and that virtually any family form, including out-of-wedlock parenthood, is acceptable."**[60]** He notes that after Norway and Sweden legalized gas marriages, in 1993 and 1994 respectively, the out-of-wedlock birth rate rose significantly.

Conservatives argue that legalizing same-sex marriages will lead us down a slippery slope to where anything goes: prostitution, polygamy, incest.**[61]** Stanley Kurtz argues in National Review, "once gay marriage itself has been granted on grounds of "equal protection" or "equal benefits," it will be impossible to deny either parental or marital status to any number of adults."**[62]** He adds, "Having learned how to expand and undermine legislative definitions of marriage and family through the courts, petitioners will present us with ever more exotic cases. The end of the line is the end of marriage..."

## ***The liberal perspective***

Liberals believe same-sex unions should be legally recognized. They agree that marriage is the bedrock of civilization. But as Jonathan Rauch observes, "But why would the establishment of gay matrimony erode it? Would millions of straight spouse flock to divorce court if they knew that gay couples too could wed?" **[63]** As Barney Frank (D-MA), a gay member of the U.S. House of Representatives asked his colleagues, "When I go home from today's work and I choose because of my nature to associate with another man, how is that a problem for you? How does that hurt you?"**[64]**

Liberals note that modern medical and psychological opinion overwhelmingly supports the view that homosexuality is not a disorder. Medical groups like the American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, the American Psychological Association, the National Association of School Psychologists, and the National Association of Social Workers, together representing more than 477,000 health and mental health professionals, have all taken the position that homosexuality is not a mental disorder and thus there is no need for a "cure".**[65]**

In 1973 the American Psychiatric Association formally declared that homosexuality "implies no impairment in judgment, stability, reliability or general social or vocational capabilities."**[66]** The American Psychological Association took the same position in 1975 and the National Association of Social Workers (NASW) in 1993.**[67]**

The psychological profession disagrees with the conservative assertion that race is innate but sexual orientation is behavior and can be changed. "There is no reliable evidence that sexual orientation is amenable to redirection or significant influence from psychological intervention" argues the amicus brief by the American Psychological and American Psychiatric Association and the NASW in their brief to the Supreme Court in *Romer v. Evans*.**[68]**

Liberals acknowledge that religious traditions condemn same-sex marriage but they note that biblical traditions grew out of different times with different customs and different needs. The Old and New Testament endorse many forms of behavior no longer considered acceptable by modern society (e.g. slavery, concubinage, punishment for heresy). The National Organization of Women points out that civil recognition of same-sex marriages "will not require any religion to perform or recognize these marriages." **[69]** The Catholic Church, for example, does not recognize remarriages by divorced individuals unless the Church has first issued an annulment erasing the first marriage.

Liberals note that a growing number of churches and congregations now bless same-sex unions. Among them are Reform Judaism, Unitarian Universalists and the Metropolitan Community Church. The Presbyterian Church (USA) allows ceremonies to be performed although they are not considered the same as a marriage ceremony. The United Church of Christ, as well as many dioceses in the Episcopal Church, allows individual churches to set their own policies on same-sex unions as do the Quakers.**[70]** And although sects in Buddhism condemn same-sex activity, many American Buddhist centers perform same-sex marriage ceremonies.**[71]**

Liberals argue that marriage has never been conditioned on the ability of the couple to have children. Contraceptive technology allows married couples to remain childless if they so chose. Infertile heterosexuals are allowed to marry as are women past their childbearing years.

In any event, liberals maintain that the social function of marriage has changed. "Sex, childbearing and childrearing—which marriage once bound as tightly as the atomic nucleus—have been disaggregated", observes Christopher Caldwell. "This has happened partly through law (divorce and adoption), partly through technology (contraception, abortion and artificial insemination) and partly through knowledge (on the innateness of homosexuality, for instance)." [72]

Marriage is no longer necessary to produce children but it retains its central place as an institution for the care and rearing of children and as the basis for mutual support. ("To have and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, till death do us part."). Same-sex couples can fulfill these functions as effectively as heterosexual couples.

Regarding the raising of children, liberals note that according to the 2000 census, 27 percent of households headed by same sex couples are already raising children. "Would these children be better off if their parents remained unmarried?" asks Jonathan Rauch.

Liberals maintain that the most important ingredient for children is that they have two committed and loving parents. It doesn't matter whether these are biological parents or same sex parents. The American Academy of Pediatrics, the American Psychological Association, the American Psychiatric Association and the National Association of Social Workers and others have concluded that children raised by gay and lesbian parents are developmentally normal on every measure. [73]

Liberals note that gay or lesbian unmarried parents are twice as likely as unmarried heterosexual parents to be involved in long-term relationships of five years or more. [74]

The American Academy of Pediatrics' Committee on Psychosocial Aspects of Child and Family health issued the most recent comprehensive review of gay-parenting studies. No meaningful differences were identified between children raised by gay parents and those raised by heterosexual parents, nor did being raised by a same-sex couple harm children. The committee reviewed three types of studies. The first looked at parenting styles and found "more similarities than differences in the parenting styles and attitudes of gay and nongay fathers." Lesbians and straight mothers were found to score the same in self-esteem, psychological adjustment and attitudes toward childrearing. The second set of studies looked at gender identity and sexual orientation of children raised by gay parents. These children suffered no gender identity confusion. The final research area compared the emotional and social well being of children raised by lesbians with that of children raised by divorced mothers; the only meaningful difference that the study identified was the finding that children of lesbians were "more tolerant of diversity and more nurturing toward younger children than the children of heterosexual parents". [75]

As for the potential for child abuse, the psychological profession maintains, "there is no evidence of any positive correlation between homosexual orientation and child molestation". [76]

Liberals argue that banning same-sex marriage means that partners are ineligible for important rights that have nothing to do with children. These include the ability to visit the deathbed of a loved one. Transfer of property upon dissolution of the relationship is tax-free for legally married couples but not for unmarrieds. [77]

A 1996 General Accounting Office study found that federal statutes and regulations confer 1,096 rights and benefits to married couples. It has been estimated that state laws confer approximately 300 additional rights and responsibilities on spouses. Many of these rights and responsibilities (such as the right to sue for wrongful death, the right to family medical leave, and the spousal privilege against testifying in court) cannot be obtained through private contract; rather, they are available only through the state's grant of a marriage license. [78]

Liberals argue that the legalization of same sex unions in Scandinavia strengthened families. Out-of-wedlock births may be common but they cannot be used as an indicator of the decline of stable families. Sociologist James Q. Wilson, Ronald Reagan Professor of Public Policy at Pepperdine, comments that in Sweden, "the cohabiting parents tend to stay together whereas in [the United States] when children are born to cohabiting parents, the father leaves." Professor Irwin Garfinkel, Columbia University School of Social Work adds, "If you ask what proportion of children who grow up in different countries spend their entire childhood—the numbers we have are only up to age sixteen—with both parents, in the United States, forty-five percent of children—at least forty-five—flunk—flunk that test. They grow up [away] from one parent. In Sweden the percentage is only fifteen percent." [79]

Liberals argue that if gay male promiscuity is a problem one way to reduce it would be to encourage gay marriage. This is the argument of conservative gay journalist Andrew Sullivan as well. He writes, "In Denmark, where de facto gay

marriage has existed for some time, the rate of marriage among gays is far lower than among straights, but, perhaps as a result, the gay divorce rate is just over one-fifth that of heterosexuals. And, during the first six years in which gay marriage was legal... the rate of straight marriages rose 10 percent, and the rate of straight divorces decreased by 12 percent. In the only country where we have real data on the impact of gay marriage, the net result has clearly been a conservative one.”[80]

Liberals point out that the proposed amendment to the Constitution to define marriage as a union of a man and a woman would be the only amendment to single out one class of Americans for discrimination.[81]

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## Notes and Sources

### ■ A note on internet citations

[1] Marriage generally functioned to provide a “legitimate” identity to children. But biological paternity was not universally the basis of that identity. In many cases the biological father(the Latin term is genitor) was distinct from the legal father(pater) produced by the marriage contract and ceremony.

[2] The majority of these marriages were fraternal in nature, that is, the husbands were all brothers.

[3] King David had 7 wives and 10 concubines.(Samuel 3:1). King Solomon had 60 wives and 80 concubines.(Kings 3:1). The Qur’an(4:3) says, "Marry women of your choice, two or three or four; but if you fear that you shall not be able to deal justly with them, then only one or one that your right hands possess. That will be more suitable, to prevent you from doing injustice."

[4] Conrad Philip Kottak, “Cultural Anthropology. 8<sup>th</sup> edition. McGraw Hill, New York. 2000

[5] Where marriages produced no heir, wives presented a slave concubine to their husbands in order to raise an heir (Gen. 16). Concubines were protected under Mosaic law (Exod. 21:7-11; Dt. 21:10-14), though they were distinguished from wives (Jdg. 8:31) and were more easily divorced (Gen.21:10-14).

[6] Corpus Juris Civilis

[7] “The man who divorces his wife...and marries another, is guilty of adultery.”(Matt 19:6)

[8] E.J. Graff, *What IS Marriage For?* Beacon Press. Boston, MA. 1999.

[9] When Elizabeth became Queen in 1558 the Anglican Church became the established church. It was not merely a religious organization, but it was also an instrument of the state, especially in its functions of recording births, marriages and deaths.

[10] Mark A. Peterson, **Common-Place**. April 2004.

[11] An annulment, in effect, says that the marriage never took place. Annulments by the Church were granted very infrequently for many years. Recently this has changed. For example, in the U.S. only 338 annulments were granted in 1968. By 1999 the number rose to 60,000 and more than 80 percent of those who sought annulments obtained them.

[12] Although most of us think of Nevada as the place people went to get divorces some 10 states and the District of Columbia were known as divorce mills in the 20<sup>th</sup> century. In 1960 Alabama granted 17, 328 divorces compared with 9,724 in Nevada. **History of Divorce in New York**.

[13] A uniform marriage and divorce act was enacted in 1970 but has not been adopted by all states

[14] United States Constitution. Article IV, Section 1

[15] **Williams v. State of North Carolina**, 325 U.S. 226 (1945)

[16] Mary Lyndon Shanley, *Just Marriage: On the public importance of private unions*

[17] Sir William Blackstone, *Commentaries On The Laws Of England* (1753). The suspension of the wife’s legal personality was known as the doctrine of spousal unity or “coverture”. Since wives had no separate legal identity, injuries to the wife could be considered as injuries to the husband and so legal action had to be brought in the names of both husband and wife.



[18] During a vote on a proposed law, a New York legislator pleaded, "If any single thing should remain untouched by the hand of the reformer, it was the sacred institution of marriage [which] is about to be destroyed in one thoughtless blow that might produce change in all phases of domestic life." See **Marriage Equality**.

[19] Chapman v. Mitchell. 223 N.J. Misc. 358, 44 A. 2d 392

[20] Historian Richard E. Turley Jr. managing director of the Mormon Church's Family and Church History Department. Joseph Smith, the founder of the Church maintained, "God commanded Abraham, and Sarah gave Hagar to Abraham to wife. And why did she do it? Because this was the law; and from Hagar sprang many people. This, therefore, was fulfilling, among other things, the promises. Was Abraham, therefore, under condemnation? Verily I say unto you, Nay; for I, the Lord, commanded it." Doctrine & Covenants / Section 132. Revelation through Joseph Smith recorded on July 12, 1843. **History of the Church** 5:501-7.

[21] "...it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal... it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion." Reynolds v. United States, 98 U.S. 145 (1879).

[22] Such laws were adopted in Massachusetts, Illinois, Wisconsin and Vermont. Louisiana also adopted the law but later repealed it. Raphael Lewis, "Romney Vows No Illegal Unions". Boston Globe. April 22, 2004

[23] The Court overturned a Florida Appeals Court decision. The Court accepted that racial prejudice did exist in the society and the child's life might be burdened by such prejudices. "Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." **Perez v. Lippold**, 32 Cal.2d 711 (1948)

[24] Naim v. Naim, 197 Va. 80, 87 S. E. 2d 749, vacated and remanded, 350 U.S. 891 (1955), reinstated and aff'd, 197 Va. 734, 90 S. E. 2d 849, app. dismissed, 350 U.S. 985 (1956).

[25] Loving v. Virginia 388 U.S. 1

[26] **Palmori v. Sidoti** 466 US 429 (1984)

[27] Zablocki v. Redhail. 434 US 374 (1978)

[28] Turner v. Safley. 482 US 78 (1987)

[29] **Griswold v. Connecticut** 381 U.S. 479 (1965)

[30] **Baker v. Nelson** 191 N.W.2d (1971)

[31] In 1533 Henry VIII outlawed sodomy. Blackstone described it as "the infamous crime against nature". 4 Blackstone Commentaries 215. The common law of England because the received law of Georgia and other American colonies. Georgia's anti-sodomy statute was enacted in 1816.

[32] **Bowers v. Hardwick** 478 US 186 (1986)

[33] **Lawrence et. al v. Texas** 123 S. Ct. 2472 (2003)

[34] **Romer v. Evans** 517 US 620 (1996)

[35] **State by State Adoption Laws Regarding Same Sex Parenting**

[36] The Court stayed enforcement of its decision pending appeal to the Hawaii Supreme Court. By the time that Court considered the appeal the Hawaii legislature had passed a constitutional amendment reserving marriage to opposite-sex couples. Hawaiians ratified the amendment in November 1998. In December 1999 the state Supreme Court dismissed the Baehr case due to the new amendment.

[37] **Defense of Marriage Act**. 1996

[38] Alaska, Hawaii, Nevada and Nebraska have constitutional provisions banning same sex marriage.

[39] Jay Brause and Gene Dugan v. Bureau of Vital Statistics, Alaska Department of Health and Social Services and the Alaska Court System. Case No. 3AN-95-6562-C1. February 1998. In 1999 Alaskans approved a constitutional

amendment banning same sex marriages.

[40] Vt. Stat. Ann. tit. 15, § 1204(a). Also see **Vermont Civil Union Guide**. State of Vermont. Montpelier. 2001

[41] **Goodridge v. Dep't of Public Health** (2003).

[42] **Belief Net. Quotations for and Against the Massachusetts Ruling**.

[43] Rom 1:24-27; 1 Cor. 6:10; 1 Tim 1:10. See also Cardinal Joseph Ratzinger. **Considerations Regarding Proposals To Give Legal Recognition to Unions Between Homosexual Persons**. Congregation for the Doctrine of the Faith. Vatican.

[44] Paul Varnell. "Islamic Doctrine on Gays." **Independent Gay Forum**. Originally appeared Oct. 17, 2001, in the Chicago Free Press.

[45] In 1997, the Dalai Lama argued, "*From a Buddhist point of view [lesbian and gay sex]...is generally considered sexual misconduct*". Buddhism prohibits oral, manual and anal sex for everyone - both homosexuals and heterosexuals. Thus in his book "*Beyond Dogma*," the Dalai Lama explains "*homosexuality, whether it is between men or between women, is not improper in itself. What is improper is the use of organs already defined as inappropriate for sexual contact*." Julie Chao. "Dalai Lama's words sting gays; Those who found refuge in Buddhism say they're hurt by passages in book." *San Francisco Examiner*. April 13, 1997.

[46] Cited in **Homosexual (Same-Sex) Marriages in Alaska**.

[47] State of Hawaii Report of the Commission on Sexual Orientation and the law 1995. December 8, 1995. Requested by Act 5, Session Laws of Hawaii 1995.

[48] Harold M. Voth, "The Family and the Future of America", *Alabama Journal of Medicine*. July 1978.

[49] Stephen J. Heaney, Charles J. Reid Jr, and Steven A. Long. "Religion and gay marriages: Stand on marriage transcends faith." *Minneapolis Star Tribune*. April 4, 2004.

[50] Catherine Malkin and Michael Lamb, "Child Treatment: A test of the Siobiological Theory." *Journal of Comparative Family Studies* 25(1994): David Popenoe Life without Father. New York: The Free Press, 1996. Cited in *Is marriage in jeopardy?* Colorado Springs: Focus on the Family, 2003.

[51] Thirty-nine percent of the same-sex cohabitants reported being raped, physically assaulted, and/or stalked by a marital/cohabitating partner at some time in their lifetimes, compared to 21.7 percent of the opposite-sex cohabitants. Among men, the comparable figures are 23.1 percent and 7.4 percent. Extent, Nature, and Consequences of Intimate Partner Violence," *U.S. Department of Justice: Office of Justice Programs* (July, 2000): 30.

[52] Minority report of State of Hawaii Report of the Commission on Sexual Orientation and the Law 1995. December 8, 1995.

[53] Timothy J. Dailey. **Comparing the Lifestyles of Homosexual Couples to Married Couples. Insight**. Family Research Council. No date. Accessed: April 8, 2004.

[54] Cited in Sam Kastensmidt. "**Study Finds Gay Unions Don't Last**" *The Inside Track*. July 23, 2003. Center for Reclaiming America. Accessed: April 8, 2004.

[55] Maria Xindou, et al. A classic study of male and female homosexuality, found that 43 percent of white male homosexuals had sex with 500 or more partners, with 28 percent having one thousand or more sex partners A. P. Bell and M. S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* (New York: Simon and Schuster, 1978), pp. 308, 309; See also A. P. Bell, M. S. Weinberg, and S. K. Hammersmith, *Sexual Preference* (Bloomington: Indiana University Press, 1981). A more recent study arrives at similar estimates. Paul Van de Ven et al., "A Comparative Demographic and Sexual Profile of Older Homosexually Active Men," *Journal of Sex Research* 34 (1997): 354.

[56] A.P.M. Coxon, et al., "Sex Role Separation in Diaries of Homosexual Men," *AIDS* (July 1993):877-882.

[57] G. J. Hart, et al., "Risk Behaviour, Anti-HIV and Anti-Hepatitis B Core Prevalence in Clinic and Non-clinic Samples of Gay Men in England, 1991-1992," *AIDS* (July 1993): 863-869, cited in "Homosexual Marriage: The Next Demand," Position Analysis paper by Colorado for Family Values, May 1994.

[58] Maria Xindou, et al., "The contributions of steady and casual Partnerships to the Incidence of HIV infection Among Homosexual Men in Amsterdam." *AIDS* 17 (2003): 1029.38

[59] Scott Shane, "Many Swedes Say 'I Don't' to Nuptials; Unions" *Baltimore Sun* (January 16, 2004): 1A.

[60] From 39 percent in 1993 to 50 percent in 2000 in Norway. From 47 to 55 percent from 1994 to 2000 in Sweden. Stanley N. Kurtz, "**The End of Marriage in Scandinavia: The 'conservative case' for same-sex marriage collapses.**" *The Weekly Standard*. February 2, 2004. Kurtz expands his analysis in an affidavit posted online at <http://nogaymarriage.com/AffidavitKurtz.pdf>. PDF file

[61] See for example Supreme Court Justice Anthony Scalia's dissent in *Lawrence v. Texas*.

[62] Stanley Kurtz. "Seeing the Slip". *National Review Online*. April 14, 2003

[63] Jonathan Rauch, *Gay Marriage: Why It Is Good For Gays, Good for Straights and Good for America*. Times Books. April 2004. The quote is from the *New York Times*, March 7, 2004.

[64] The Associated Press. March 24th, 2004.

[65] **Just the Facts About Sexual Orientation & Youth: A Primer for Principals, Educators and School Personnel**. American Psychological Association. 2003.

[66] Resolution of the American Psychiatric Association (December 15, 1973). Reprinted in 131 *Am.J. Psychiatry* 497 (1974)

[67] Minutes of the Annual Meeting of the Council of Representatives. 30 *Am. Psychologist* 620,633 (1975) and Policy Statement on Lesbian and Gay Issues (approved by NASW Delegate Assembly Aug. 1993), reprinted in NASW, *Social Work Speaks: NASW Policy Statements* 161, 162-5 (3<sup>rd</sup>, ed. 1994).

[68] **Amicus Curiae**. 1994. Among the studies cited are: Douglas C. Haldeman, "The Practice and Ethics of Sexual Orientation Conversion Therapy", 62 *J. Consulting & Clinical Psychol.* 221, 224 (1994); Richard A. Isay, "Dynamic Psychotherapy with Gay Men: Developmental Considerations", 12 *Rev. Psychiatry* 85, 86 (1993).

[69] **Same-Sex Marriage**. National Organization of Women. March 1, 2004. Accessed April 16, 2004.

[70] **"I believe God meant marriage for men and women. How can I support marriage for same-sex couples?"** Human Rights Campaign. 2004.

See:

Religious Action Center of Reform Judaism. **Gay and Lesbian Rights**. April 20, 2001.

Unitarian-Universalist Association. **Support of the Right to Marry for Same-Sex Couples**  
**1996 Resolution of Immediate Witness**.

**Metropolitan Community Churches**.

Presbyterian Church USA. **Advisory Opinions: Note 7 Ceremonies Blessing Same-Sex Relationships**. December 2002.

United Church of Christ. **A call to dialogue: A pastoral letter from the Conference Ministers of the United Church of Christ**. June 4, 1997.

Episcopal Church USA. **Resolution C051 Rites: Blessing of Committed Same-Gender Relationships**. General Convention 2003.

[71] John Dart. "For Buddhists, Gay Marriage is As Holy as Any Other Kind. *Los Angeles Times*. July 1, 1995: B11.

[72] Christopher Caldwell, Vows. *New York Times*. April 11, 2004.

[73] *Marriage Myths*. Mass Equality. Op cit.

Also:

Ellen C. Perrin **Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents**. (1 Feb 2002) *Pediatrics* 109 (2) : 341-344. American Association of Pediatrics.

Charlotte J. Patterson. "**Lesbian and Gay Parenting.**" *Public Interest*. American Psychological Association. 1995. APAOnline.

American Psychiatric Association. ***Gay, Lesbian, and Bisexual Issues***. Factsheet. PDF file

National Association of Social Workers. ***Gay, Lesbian, and Bisexual Issues***. Social Work Speaks Abstracts.

**[74]** Lisa Bennett and Gary J. Gates. **The Cost of Marriage Inequality to Children and Their Same-Sex Parents. A Human Rights Campaign Foundation Report.** April 13, 2004.

**[75]** Perrin, Ellen C. Technical Report: Co-parent or Second-Parent Adoption by Same Sex Parents. *Pediatrics*. 2002: 109: 3410344.

**[76]** Amicus Curiae. Op. Cit.

**[77]** Lisa Bennett and Gary J. Gates, *The Cost of Marriage Inequality to Gay, Lesbian and Bisexual Seniors*. Human Rights Campaign. January 21, 2004 stay-at-home parenthood occurs at about the same rate for heterosexual couples (25%), gay male couples (26%) and lesbian couples (22%).

**[78]** **Defense of Marriage Act.** GAO. GAO/ODC-97-16 PDF file

**[79]** Peter Robinson, host. "**For Richer or Poorer.**" Uncommon Knowledge. April 1, 2002.

**[80]** Andrew Sullivan. "**Unveiled.**" Independent Gay Forum. Originally appeared August 13, 2001, in the author's "TRB From Washington" column, *The New Republic*.

**[81]** **Answers to Questions About Marriage Equality.** Human Rights Campaign. 2004.



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