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What Marriage is For

Maggie Gallagher

Gay marriage is no longer a theoretical issue. Canada has it. Massachusetts is expected to get it any day. The Goodridge decision there could set off a legal, political, and cultural battle in the courts of 50 states and in the U.S. Congress. Every politician, every judge, every citizen has to decide: Does same-sex marriage matter? If so, how and why?

The timing could not be worse. Marriage is in crisis, as everyone knows: High rates of divorce and illegitimacy have eroded marriage norms and created millions of fatherless children, whole neighborhoods where lifelong marriage is no longer customary, driving up poverty, crime, teen pregnancy, welfare dependency, drug abuse, and mental and physical health problems. And yet, amid the broader negative trends, recent signs point to a modest but significant recovery.

Divorce rates appear to have declined a little from historic highs; illegitimacy rates, after doubling every decade from 1960 to 1990, appear to have leveled off, albeit at a high level (33 percent of American births are to unmarried women); teen pregnancy and sexual activity are down; the proportion of homemaking mothers is up; marital fertility appears to be on the rise. Research suggests that married adults are more committed to marital permanence than they were twenty years ago. A new generation of children of divorce appears on the brink of making a commitment to lifelong marriage. In 1977, 55 percent of American teenagers thought a divorce should be harder to get; in 2001, 75 percent did.

A new marriage movement—a distinctively American phenomenon—has been born. The scholarly consensus on the importance of marriage has broadened and deepened; it is now the conventional wisdom among child welfare organizations. As a Child Trends research brief summed up: 'Research clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes . . . There is thus value for children in promoting strong, stable marriages between biological parents.'

What will court-imposed gay marriage do to this incipient recovery at marriage? For, even as support for marriage in general has been rising, the gay marriage debate has proceeded on a separate track. Now the time has come to decide: Will unisex marriage help or hurt marriage as a social institution?

Why should it do either, some may ask? How can Bill and Bob's marriage hurt Mary and Joe? In an exchange with me in the just-released book *Marriage and Same Sex Unions: A Debate*, Evan Wolfson, chief legal strategist for same-sex marriage in the Hawaii case, *Baer v. Lewin*, argues there is 'enough marriage to share.' What counts, he says, 'is not family structure, but the quality of dedication, commitment, self-sacrifice, and love in the household.'

Family structure does not count. Then what is marriage for? Why have laws about it? Why care whether people get married or stay married? Do children need mothers and fathers, or will any sort of family do? When the sexual desires of adults clash with the interests of children, which carries more weight, socially and legally?

These are the questions that same-sex marriage raises. Our answers will affect not only gay and lesbian families, but marriage as a whole.

In ordering gay marriage on June 10, 2003, the highest court in Ontario, Canada, explicitly endorsed a brand new vision of marriage along the lines Wolfson suggests: 'Marriage is, without dispute, one of the most significant forms of personal relationships . . . Through the institution of marriage, individuals can publicly express their love and commitment to each other. Through this institution, society publicly recognizes expressions of love and commitment between individuals, granting them respect and legitimacy as a couple.'

The Ontario court views marriage as a kind of Good Housekeeping Seal of Approval that government stamps on certain registered intimacies because, well, for no particular reason the court can articulate except that society likes to recognize expressions of love and commitment. In this view, endorsement of gay marriage is a no-brainer, for nothing really important rides on whether anyone gets married or stays married. Marriage is merely individual expressive conduct, and there is no obvious reason why some individuals' expression of gay love should hurt other individuals' expressions of non-gay love.

There is, however, a different view—indeed, a view that is radically opposed to this: Marriage is the fundamental, cross-cultural institution for bridging the male-female divide so that children have loving, committed mothers and fathers. Marriage is inherently normative: It is about holding out a certain kind of relationship as a social ideal, especially when there are children involved. Marriage is not simply an artifact of law; neither is it a mere delivery mechanism for a set of legal benefits that might as well be shared more broadly. The laws of marriage do not create marriage, but in societies ruled by law they help trace the boundaries and sustain the public meanings of marriage.

In other words, while individuals freely choose to enter marriage, society upholds the marriage option, formalizes its definition, and surrounds it with norms and reinforcements, so we can raise boys and girls who aspire to become the kind of men and women who can make

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a sexual act that can and does generate life. Marriage is our attempt to reconcile and harmonize the erotic, social, sexual, and financial needs of men and women with the needs of their partner and their children.

How to reconcile the needs of children with the sexual desires of adults? Every society has to face that question, and some resolve it in ways that inflict horrendous cruelty on children born outside marriage. Some cultures decide these children don't matter: Men can have all the sex they want, and any children they create outside of marriage will be throwaway kids; marriage is for citizens—slaves and peasants need not apply. You can see a version of this elitist vision of marriage emerging in America under cover of acceptance of family diversity. Marriage will continue to exist as the social advantage of elite communities. The poor and the working class? Who cares whether their kids have dads? We can always import people from abroad to fill our need for disciplined, educated workers.

Our better tradition, and the only one consistent with democratic principles, is to hold up a single ideal for all parents, which is ultimately based on our deep cultural commitment to the equal dignity and social worth of all children. All kids need and deserve a married mom and dad. All parents are supposed to at least try to behave in ways that will give their own children this important protection. Privately, religiously, emotionally, individually, marriage may have many meanings. But this is the core of its public, shared meaning: Marriage is the place where having children is not only tolerated but welcomed and encouraged, because it gives children mothers and fathers.

Of course, many couples fail to live up to this ideal. Many of the things men and women have to do to sustain their own marriages, and a culture of marriage, are *hard*. Few people will do them consistently if the larger culture does not affirm the critical importance of marriage as a social institution. Why stick out a frustrating relationship, turn down a tempting new love, abstain from sex outside marriage, or even take pains not to conceive children out of wedlock if family structure does not matter? If marriage is not a shared norm, and if successful marriage is not socially valued, do not expect it to survive as the generally accepted context for raising children. If marriage is just a way of publicly celebrating private love, then there is no need to encourage couples to stick it out for the sake of the children. If family structure does not matter, why have marriage laws at all? Do adults, or do they not, have a basic obligation to control their desires so that children can have mothers and fathers?

The problem with endorsing gay marriage is not that it would allow a handful of people to choose alternative family forms, but that it would require society at large to gut marriage of its central presumptions about family in order to accommodate a few adults' desires.

The debate over same-sex marriage, then, is not some sideline discussion. It is the marriage debate. Either we win—or we lose the central

meaning of marriage. The great threat unisex marriage poses to marriage as a social institution is not some distant or nearby slippery slope, it is an abyss at our feet. If we cannot explain why unisex marriage is, in itself, a disaster, we have already lost the marriage ideal.

Same-sex marriage would enshrine in law a public judgment that the desire of adults for families of choice outweighs the need of children for mothers and fathers. It would give sanction and approval to the creation of a motherless or fatherless family as a deliberately chosen 'good.' It would mean the law was neutral as to whether children had mothers and fathers. Motherless and fatherless families would be deemed just fine. 24

Same-sex marriage advocates are startlingly clear on this point. Marriage law, they repeatedly claim, has nothing to do with babies or procreation or getting mothers and fathers for children. In forcing the state legislature to create civil unions for gay couples, the high court of Vermont explicitly ruled that marriage in the state of Vermont has nothing to do with procreation. Evan Wolfson made the same point in *Marriage and Same Sex Unions*: '[I]sn't having the law pretend that there is only one family model that works (let alone exists) a lie?' He goes on to say that in law, 'marriage is not just about procreation—indeed is not necessarily about procreation at all.' 25

Wolfson is right that in the course of the sexual revolution the Supreme Court struck down many legal features designed to reinforce the connection of marriage to babies. The animus of elites (including legal elites) against the marriage idea is not brand new. It stretches back at least thirty years. That is part of the problem we face, part of the reason 40 percent of our children are growing up without their fathers. 26

It is also true, as gay-marriage advocates note, that we impose no fertility tests for marriage: Infertile and older couples marry, and not every fertile couple chooses procreation. But every marriage between a man and a woman is capable of giving any child they create or adopt a mother and a father. Every marriage between a man and a woman discourages either from creating fatherless children outside the marriage vow. In this sense, neither older married couples nor childless husbands and wives publicly challenge or dilute the core meaning of marriage. Even when a man marries an older woman and they do not adopt, his marriage helps protect children. How? His marriage means, if he keeps his vows, that he will not produce out-of-wedlock children. 27

Does marriage discriminate against gays and lesbians? Formally speaking, no. There are no sexual-orientation tests for marriage; many gays and lesbians do choose to marry members of the opposite sex, and some of these unions succeed. Our laws do not require a person to marry the individual to whom he or she is most erotically attracted, so long as he or she is willing to promise sexual fidelity, mutual caretaking, and shared parenting of any children of the marriage. 28

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But marriage is unsuited to the wants and desires of many gays and lesbians, precisely because it is designed to bridge the male-female divide and sustain the idea that children need mothers and fathers. To make a marriage, what you need is a husband and a wife. Redefining marriage so that it suits gays and lesbians would require fundamentally changing our legal, public, and social conception of what marriage is in ways that threaten its core public purposes. 29

Some who criticize the refusal to embrace gay marriage liken it to the outlawing of interracial marriage, but the analogy is woefully false. The Supreme Court overturned anti-miscegenation laws because they frustrated the core purpose of marriage in order to sustain a racist legal order. Marriage laws, by contrast, were not invented to express animus toward homosexuals or anyone else. Their purpose is not negative, but positive: They uphold an institution that developed, over thousands of years, in thousands of cultures, to help direct the erotic desires of men and women into a relatively narrow but indispensably fruitful channel. We need men and women to marry and make babies for our society to survive. We have no similar public stake in any other family form—in the union of same-sex couples or the singleness of single moms. 30

Meanwhile, *cui bono*? To meet the desires of whom would we put our most basic social institution at risk? No good research on the marriage intentions of homosexual people exists. For what it's worth, the Census Bureau reports that 0.5 percent of households now consist of same-sex partners. To get a proxy for how many gay couples would avail themselves of the health insurance benefits marriage can provide, I asked the top 10 companies listed on the Human Rights Campaign's website as providing same-sex insurance benefits how many of their employees use this option. Only one company, General Motors, released its data. Out of 1.3 million employees, 166 claimed benefits for a same-sex partner, *one one-hundredth of one percent*. 31

People who argue for creating gay marriage do so in the name of high ideals: justice, compassion, fairness. Their sincerity is not in question. Nevertheless, to take the already troubled institution most responsible for the protection of children and throw out its most basic presumption in order to further adult interests in sexual freedom would not be high-minded. It would be morally callous and socially irresponsible. 32

If we cannot stand and defend this ground, then face it: The marriage debate is over. Dan Quayle¹ was wrong. We lost. 33

Note

1 Vice President of the United States under George H.W. Bush, Quayle was a staunch defender of the traditional family. [Eds.]