

The Limited Government/Libertarian Case for Man Woman Marriage

*Jennifer Roback Morse, Ph.D.
Founder and President, the Ruth Institute
January 19, 2012*

What does it mean to be free, with respect to marriage and family? How does the definition of marriage affect the size and scope of the state? This Backgrounder is designed to help advocates of limited government think through the issues presented by the question of the definition of marriage.

Marriage is a naturally occurring, pre-political institution that emerges spontaneously from society. “Marriage equality” is sometimes presented as an enlargement of personal liberty and a diminishment of the power of the state. In fact however, redefining marriage as the union of any two persons, abandons the natural view of marriage. The institution of natural marriage, one man and one woman, is more consistent with a society of free and responsible individuals, governed by a constitutionally limited state, than the alternatives.

Several states and countries have redefined marriage as the union of any two persons. Some people argue that nothing so dire has happened: why shouldn't we continue with genderless marriage, or redefine marriage in our state?

Some of the problems detailed in this Backgrounder will take time to fully emerge. That is because marriage connects the generations to one another. Redefining marriage puts incentives into place and sets social processes into motion, whose full impact will take time to appear. It will require a generation, a full thirty years or more, for all the consequences to emerge. It is foolish to draw conclusions from isolated short-term social experiments. But we can already see how redefining marriage, in conjunction with the expansion of anti-discrimination laws, has expanded the power of the state.

Here are the questions this Backgrounder will consider. Does marriage serve some essential public purpose that requires some support from the government? What posture should the state adopt toward individual couples and their children? What is the proper role of the state with respect to the institution of marriage?

The essential public purpose of marriage is to attach mothers and fathers to their children and to one another. The proper posture of the state toward individual couples and their children is to facilitate their attachment to each other, not to artificially come between children and their parents. Finally, the proper role of the state is to respect marriage as a naturally occurring reality and to allow marriage to be itself.

What is marriage and why do we need it? The essential public purpose of marriage

The essential public purpose of marriage is to attach mothers and fathers to their children and to one another. This purpose is *essential*, in the sense that if we didn't need to get this job done, we wouldn't need marriage at all. If our young were born through some non-sexual process, or were born as adults, it is doubtful that anyone would have come up with the idea of lifelong a sexually exclusive union of a man and a woman. In fact, marriage has emerged in virtually every known society.¹

And attaching children to mothers and fathers is a *public* purpose, as opposed to all the *private* purposes people might have in getting married. An individual might get married to get health insurance

¹ David Blankenhorn, *The Future of Marriage*, (New York: Encounter Books, 2009).

or to make a public statement of love, or to wear a pretty dress, or to irritate their previous boyfriend. All of these private purposes, taken together, do not add up to a public reason to have a social institution of marriage in the first place.

Marriage is our society's primary institutional arrangement defining parenthood. A woman's husband is presumed to be the father of any children she gives birth to during the life of their union. The legal "presumption of paternity," coupled with a social practice of sexual exclusivity within marriage, attaches children to their biological parents. These two people, the natural parents, are the legally recognized parents of this child, and *no one else is*. The grandparents are not; the former boyfriend is not; the nanny who spends all day with the kids is not. Biological parents hold their rights against all other competing claimants. This is an intrinsically social, public function of marriage that cannot be privatized.

Our common law has the wisdom to accommodate exceptional situations. Where the natural parents cannot care for their children, the child may be placed for adoption. But adoption does not undermine the biological basis for parenthood. In fact, everything about adoption screams that biology matters.

Biological parents do not give up their children lightly. When a mother makes an adoption plan for her baby, she has the opportunity to change her mind after the baby is born. The state does not involuntarily remove children from their natural parents without good cause and procedural safeguards. In most jurisdictions, adopted children have some opportunity to discover their biological origins. Thus, adoption accommodates exceptional situations, without undermining the basic biological reality of parenthood. And adoption is a child-centered institution that gives children the parents they need.

In addition to the attachment between parents and children, marriage also recognizes and protects the attachment of parents to one another. The child is the common project of the man and the woman. Recognizing both natural parents as the legal parents protects the legitimate interests of each in caring for their child. Neither parent can legally exclude the other from the parental rights to relationship and decision-making. Neither parent can legally abandon their responsibilities for the family.²

Attaching parents to each other also protects legitimate interests of children. Unlike adults, the child does not need autonomy or independence. The child is entitled to a relationship with and care from both of the people who brought him into being. The parent's relationship with each other provides the vehicle that allows the child to be in relationship with both parents. Therefore, the child has a legitimate interest in the stability of his parents' union.

But no child can defend these entitlements himself. Nor is it adequate to make restitution after these rights have been violated. The child's rights to care and relationship must be supported pro-actively, before harm is done, for those rights to be protected at all.

Marriage is adult society's institutional structure for protecting these legitimate interests of children.

One might object that some marriages don't have children. This is perfectly true. However, every child has parents. Depriving a child of relationships with his or her parents is an injustice to the child, and should not be done without some compelling or unavoidable reason. This objection stands marriage on its head. It views marriage strictly from the adult's perspective, instead of from the child's perspective.

² It should be acknowledged however, that the state in recent years has violated these common-sense requirements of natural justice. The behavior of family courts in the aftermath of divorce sometimes does violate one parent's legitimate claims to relationship with their child. See Stephen Baskerville, *Taken Into Custody: the War Against Fathers, Marriage and the Family*, (Nashville, TN: Cumberland House Publishing, 2007). Under these circumstances, it hardly seems correct to refer to the state as "neutral" with respect to people's private decisions about whether to get married or stay married.

Taking the perspective of the child also explains why marriage is not simply a special case of the market, and why family law is not simply a subset of contract and property law. Children are not, and intrinsically cannot be, contracting parties. Children are protected parties. And property law cannot do the job of family law because children are not objects, to which other people have property rights. Children are persons with rights of their own.

What is the proper posture of the state toward marriage? Facilitating the attachment of mothers and fathers to their children and to one another

The proper posture of the state toward marriage is to facilitate the attachment of mothers and fathers to their children and to one another. Attempting to create one legal institution that treats same sex couples identically with opposite sex couples is inconsistent with this posture of the state toward marriage. We can see this by looking at legal disputes between same sex partners over child custody, disputes that are already redefining parenthood.

Redefining marriage redefines parenthood

The typical case involves a female couple, one of whom has a baby through artificial reproductive technology. Usually the father is an anonymous sperm donor, and so has been walled out of the child's life, before the child was even born. The sexual relationship between the two women breaks down. The mother no longer wants her former sex partner to have anything to do with her child.

The former lover goes to court to obtain parental rights. She is not related to the child, either by blood or adoption. Let us call her a "non-parent." The legal issue at stake thus is whether the court can assign parental rights to a non-parent.

In response to these situations, the courts are defining "de facto parenthood" as a new category of parenthood. Determining whether someone qualifies as a "de facto parent" category usually involves multi-part tests. The court inquires into things like how much care the non-parent provided and whether the child called her "mommy." The court scrutinizes the minutiae of family life to decide whether a non-parent counts as a parent.³

Making these kinds of inquiries into the privacy of a home simply cannot be counted as an increase in liberty. The redefinition of parenthood comes along as a side-effect of redefining marriage. Hence, the move to redefine marriage brings in its immediate wake a rationale for the expansion of state power over the home.

The concepts of "mother" and "father" are natural, pre-political concepts, immediately intelligible to the entire human race. Up until now, the state has seen its role as simply recording this natural reality. Custody disputes, bitter as they sometimes can be, and as empowering of the state as they can be, do not typically involve the state deciding whether someone counts as a parent in the first place. But now, parenthood is becoming the creation of the state.⁴

³ See for instance the State of Washington case, *In re parentage of L.B.*, creating 4 part test for definition of de facto parents. 155 Wn. 2d 679, (decided Nov 2005), and the state of Delaware statute: "Court upholds woman's 'de facto' parental rights," Delaware on-line, April 18, 2011, The Delaware statute "is not specific to same sex couples, but applies to other unmarried partners and stepparents." <http://www.delawareonline.com/article/20110419/NEWS01/104190347/Court-upholds-woman-s-de-facto-parental-rights?odyssey=mod|newswell|text|Home|s>; For an analysis, see William C. Duncan, "The Legal Fiction of De Facto Parenthood," *Journal of Legislation*, 36:262, (2010).

⁴ For examples of law professors who applaud this trend, see Melanie B. Jacobs, "Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents," 9 *Journal of Law and Family Studies* 309 (2007) and Katharine K. Baker, "Bionormativity and the Construction of Parenthood," 42 *Georgia Law Review* 649 (2008).

Rather than attaching children to their biological parents as marriage does, the legal institution of a “same sex marriage” becomes the vehicle that separates children from a parent. More than that, the state itself takes a stand against the natural family. No longer will the law hold that children need a mother and a father. In the wake of marriage redefinition in other states, courts are saying silly things like, “the traditional notion that children need a mother and a father to be raised into healthy, well-adjusted adults is based more on stereotype than anything else.”⁵

This statement made by the Iowa Supreme Court in *Varnum v Brien*, is simply false as a general statement. Mountains of data show that children do need their mothers and their fathers,⁶ and that children care deeply about biological connections.⁷

Equating same sex parenting with opposite sex parenting also marginalizes men from the family. By legalizing same sex unions, the authority of the government declares that mothers and fathers are interchangeable. Society asserts that children do equally well with two mommies, two daddies or one of each. And when mothers and fathers are interchangeable, it is fathers who will be pushed aside.

In Canada, where same sex unions have been legal since 2005, the birth certificates reflect this marginalization of fathers. Each birth certificate in British Columbia has a place to mention the biological mother. The second parent is listed as “father or co-parent,” and people check off whether the “other parent” is the father or co-parent.⁸ Fatherhood is officially reduced to a check-off box.

One might object that the birth certificates are purely symbolic, and that we could solve this symbolic problem by simply recording Parent A and Parent B. Very well. Suppose we do that. The state would record two individuals as parents, without taking note of which one has any biological relationship to the child. That way, the genetic connection between the child and one member of the couple would not “privilege” her in any way.

This suggestion makes plain how deeply redefining marriage alters our idea of parenthood. The biological principle of determining parentage has to be suppressed, and eventually replaced with another principle. That principle will be that the state will decide who counts as a parent.

In short, redefining marriage from the union of a man and a woman to the union of any two persons jettisons three principles that we now take for granted. First, children are entitled to a relationship with both parents. Second, legal parenthood ordinarily tracks biological parentage. Third, the state recognizes parentage, but does not assign it.

Trying to create equality between same sex and opposite sex couples is reversing the proper posture of the state toward marriage. The state should be oriented toward facilitating the attachment between parents and children and parents with one another. Instead, the legal system is adopting the posture of giving adults what they want, suppressing biological reality, if necessary.

Marriage “Equality” creates New Inequalities

The point of this new posture is to create equality for same sex couples. But same sex couples and opposite sex couples are not situated similarly with respect to the essential public purpose of marriage: attaching mothers and fathers to their children and to one another. So, there is no barrier in law or in justice, in treating same sex couples differently from opposite sex couples.

⁵ *Varnum v Brien* Supreme Court of Iowa, No. 07–1499, Filed April 3, 2009, pg 54, footnote 26

⁶ Among the many citations that could be given, “Why Marriage Matters: 26 Conclusions from the Social Sciences,” (NY: Institute for American Values, 2005), summarizes some of the most important research.

⁷ See Elizabeth Marquardt, Norvell Glenn and Karen Clark, “My Daddy’s Name is Donor: A Pathbreaking Study of Young Adults Conceived through Sperm Donation,” (NY: Institute for American Values, 2010).

⁸ <http://www.vs.gov.bc.ca/forms/vsa404c.pdf>

But the attempt to create “marriage equality” will not be harmless. The state will end up creating a whole new set of inequalities. We have already alluded to one such inequality: a mother in a same sex relationship has fewer rights than every other mother. Let us spell it out in more detail.

In this situation but no other, a perfectly fit mother can lose the right to control who her child sees and has a relationship with. She can be compelled to allow her former lover access to her child. Through her same sex union, she has made an implicit agreement to share the parenting of any children she gives birth to, with another woman.⁹ Mothers do not usually do this easily, even with other women whom they love very much.

No one else is required to do an “implicit” adoption. Any frightened pregnant teenager who makes an adoption plan has the right to change her mind after her child is born. No court in America would enforce an adoption contract, where a mother promises in advance of the child’s birth to give it up for adoption. The law recognizes the unique status of motherhood, and does not expect a mother to predict how she will feel after her child is born.

It is only the mother in a sexual relationship with another woman who in effect, promises to deliver her child up for adoption to her sex partner. Only she is required to fully anticipate what it will feel like to share the care of her child with another woman. Only she is in a relationship in which she is not legally “privileged” by the fact that she gave birth to the child.

And no, this is not comparable to ordinary custody cases after a divorce. The mother has to grant the father access to the child because he is the child’s father. He has some rights too, we might even say, natural parental rights, to have a relationship with his own child.

Thus, mothers in a lesbian relationship will not be treated equally with other mothers. Neither will fathers. If a man is the father of a child in a lesbian couple, he has fewer rights and responsibilities than other fathers. Courts around the world are trying to figure out how to handle these cases.¹⁰ They are concluding that there is no truly fair way to do it.

And finally, treating same sex couples as if they were opposite sex couples creates inequalities among children. Some children have the opportunity to learn how members of the opposite sex treat one another by watching their parents: others live in a structure that is incapable of providing them with that experience. Some children have the opportunity to model their own sexual identity on a parent of their same gender; other children do not. Most importantly, some children are legally entitled to care and support from their fathers. Some children are entitled to know their own personal identity. The state actively prevents other children from obtaining these goods.

So creating “equality” for same sex couples creates new inequalities within all the relationships that depend on marriage.

Biology really is significant, in spite of the fact that some people don’t care about their biological parents and some people feel closer to a stepfather than their birth father. Do we seriously want the state to insist that that biology is NEVER allowed to matter to a child? Should the state have the power to

⁹ See for example, the Miller-Jenkins case, “FBI arrests Tenn. Pastor in Vt.-VA custody case,” Sign On San Diego, April 22, 2011. <http://www.signonsandiego.com/news/2011/apr/22/fbi-arrests-tenn-pastor-in-vt-va-custody-case/> “Vermont: ruling in Lesbian Custody Case,” New York Times, January 22, 2010, http://www.nytimes.com/2010/01/23/us/23brfs-RULINGINLESB_BRF.html

¹⁰ Three people vie for parental rights in this Canadian case: <http://www.calgarysun.com/2011/10/19/groundbreaking-ruling-in-gay-custody-case> Four people vie for parental rights in this British case: <http://www.dailymail.co.uk/news/article-2047671/High-Court-judges-blast-gay-parents-fighting-little-sisters.html#ixzz1buTCawCX> In Iowa, two women want to be put on the birth certificate, even though “it is a biological impossibility for a woman to establish legal paternity.” <http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=2012120104026> In Florida, courts had to rule on a custody dispute in which one woman is the gestational mother, the other is the genetic mother. <http://www.latimes.com/news/nationworld/nation/la-na-lesbian-custody-battle-20120103,0,3890777.story>

insist that no child should ever wonder about their biological origins? Should the state demand that mothers in same sex relationships have no reluctance to share the care of their child with another woman? Does the state really have the right to create institutional structures that permanently separate children from their fathers? Yet, these will be the consequence of redefining marriage and parenthood as genderless institutions.

What is the proper role of the state toward marriage? Respect marriage as a spontaneous order. Leave marriage the freedom to be itself.

Let's look at marriage and the state from a more systemic point of view. How should we think about marriage as a social institution?

Libertarians have every reason to respect marriage as a social institution. Marriage is an organic institution that emerges spontaneously from society. People of the opposite sex are naturally attracted to one another, couple with each other, co-create children, and raise those children. The little society of the family replenishes and sustains itself. Humanity's natural sociability expresses itself most vibrantly within the family. A minimum-government libertarian can view this self-sustaining system with unadulterated awe.¹¹

Government does not create marriage, any more than government creates jobs. Just as people have a natural "propensity to truck, barter and exchange one thing for another," in Adam Smith's famous words from the second chapter of *The Wealth of Nations*, we likewise have a natural propensity to couple, procreate and rear children. People instinctively create marriage, both as couples and as cultures, without any support from the government whatsoever.

The sexual urge is a natural engine of human sociability. Our desire for sexual satisfaction draws us out of our self-centeredness and into connection with other people. Just as the desire to make money induces business owners to try to please their customers, so too, the desire to copulate induces men to try to please women, and women to try to attract men. The attachment of mothers to their babies, and women to their sex partners, tends to keep this little society together.

We know from Adam Smith, Frederick Hayek and Milton Friedman that the market is more than buying and selling. The market is a complex system of social cooperation. Similarly, the family is a form of social cooperation. In fact, mothers and fathers working together to raise their children is the most basic unit of social cooperation.

The fact that marriage emerges spontaneously does not imply that people get to do anything they want. In every known society, communities around the couple develop customs and norms that define the parameters of socially acceptable sexual, spousal and parental behavior. The culture around marriage may have some legal or governmental elements. But by far, the greater part of that cultural machinery in most societies is more informal than legal, and is based more on kinship than on law.

Now, at the dawn of the twenty-first century, we have the idea that no particular type of relationship should be "privileged" over any other. The supposedly libertarian subtext of this idea is that people should be as free as possible to make their personal choices. But the very non-libertarian consequence of this new idea is that it creates a culture that obliterates the informal, social methods of enforcement, and increases our reliance on formal, legal methods.

Weakening the marriage institution means that marriage cannot provide structure for people's lives. The social history of the last 50 years bears this out. Every "increase of freedom" turned out to initiate

¹¹ The argument in this section is based in part upon "Marriage and the Limits of Contract" *Policy Review*, April 2005, available on-line: <http://www.hoover.org/publications/policy-review/article/6909>

another episode of lawlessness. No-fault divorce, out-of-wedlock childbearing, and the early sexualization of children, all seemed like a good ideas at the time, ideas that would free us from social and legal constraints.

But lawlessness turned out to impose constraints of its own. Children suffered from loss of connection with their parents. Parents suffered from loss of connection with their children. And adults find themselves ever more lonely and unable to sustain meaningful long-term relationships.

Besides these personal tragedies, the public consequence is that the state steps in to clean up the mess. We now know that the mess created by divorce, and out of wedlock childbearing, can include poverty, mental illness, lower educational attainment, and juvenile crime. Experience teaches us that the decline of marriage as a social institution has corresponded with an increase in the role of the state in other aspects of society. One study conservatively estimated the taxpayer cost of fractured families at \$112 billion per year.¹²

We have confused freedom with license: I am free if and only if I get to do what I want. I am free if and only if I get to walk away from human relationships when they become burdensome.

But no fiscal conservative or libertarian would make comparable claims about the economy. People don't get to do whatever they want in a free market economy. Economic laissez-faire doesn't mean the government can ignore people who violate the norms of property rights, contracts and fair exchange. Nor do people get to walk away from their burdensome economic relationships. With these structures in place, individuals can create wealth and pursue their own interests with little or no additional assistance from the state.

Similarly, the freedom of particular couples is supported by and made possible by the institutional structure of marriage and family law. Marriage provides boundaries on people's behavior: you have sex with your spouse and no one else; you take care of the children born to you and your spouse; you respect the parenting decisions of other families. And until the advent of no-fault divorce, you stayed married, unless someone did something really awful. As long a family stays within those boundaries, they can do anything they want.

Some might argue that the greater social acceptance of same sex relationships is part of the evolution of the marriage institution. Society should adapt to these new realities and preferences and decisions made by individuals.

This statement is seductive, because it is partially true. People are free to have sex with whomever they want, move in with whomever they want, buy a house with whomever they want, leave their property to whomever they want. Mothers are free to make adoption plans for their children.

All these activities are being chosen more frequently by same sex couples than ever before. All of these activities can be handled by contracts, an extremely flexible institution that has adapted to these new social situations. Same sex couples could even give each other permission to adopt each other's children as a way of sharing parental rights.

But all these contractual activities taken together, do not add up to marriage. To change the institution of marriage itself requires specific legal action by the state. And that legal structure is precisely what we are debating.

Moreover, most people resist the idea that same sex couples and opposite sex couples are identical in every respect, just as most people resist the idea that men and women are completely interchangeable as parents, as spouses and as sex partners. If the state commits itself to "marriage equality," the state will have to enforce this idea upon the populace. "Marriage equality" is a completely artificial creation of the state,

¹² Benjamin Scafidi, "The Taxpayer Costs of Divorce and Unwed Childbearing: First-Ever Estimates for the Nation and for All Fifty States," (New York: Institute for American Values, 2008).

which cannot sustain itself. And precisely because it is an unnatural idea that does not spring unbidden to the human mind, the state will end up intervening in every aspect of society that touches upon marriage or gender or parenthood.¹³ This is far too much power to grant to the state, far too much social engineering, far too much thought control.

In fact, in places that have redefined marriage, the state has intervened into aspects of civil society never before under its jurisdiction. Far from limiting the power of the state, this version of “equality” has become a tool for the hostile takeover of civil society by the state. Churches are already under attack for daring to dissent from the new state-imposed Orthodoxy that marriage is whatever the government says it is.¹⁴ Parents are losing the right to direct the education of their own children.¹⁵ Foster parents in the UK must submit to the state’s views about marriage.¹⁶ Reputable adoption agencies have been put out of business.

And the pettiness of some of the complaints brought by same sex couples is simply staggering. Christian bed and breakfast owners have been sued for not allowing unmarried couples to stay in double rooms. They would have gladly rented them separate rooms, but that was not good enough for the thought police.¹⁷ Same sex couples have brought legal complaints against wedding photographers, as if there were a constitutional right to have your picture taken by the person of your choice.¹⁸

Why has this happened to us? Marriage between a man and a woman is a natural pre-political institution. Man/woman marriage can, for the most part, take care of itself. It naturally renews and replenishes itself.

By contrast, marriage without a gender requirement is entirely the construction of the state. Genderless marriage requires continual support and even coddling by the state. It simply cannot survive without the state.¹⁹

The most natural thing in the world would be for the evolved partnerships between two women to take a different form than the partnerships between two men, and for both to look different from a lifelong monogamous union of a man and a woman. It is only the artificial creation of the state called “same sex marriage” attempting to achieve “marriage equality” that would even consider treating all three types of relationships as if they were identical.²⁰

¹³ Douglas Farrow, *Nation of Bastards: Essays on the End of Marriage*, (Toronto: BPS Books, 2007)

¹⁴ For a general discussion of the likely impact of same sex marriage on a variety of church-related activities, see Douglas Laycock, Anthony R. Picarello, Jr. and Robin Fretwell Wilson, *Same-Sex Marriage and Religious Liberty: Emerging Conflicts*, (Lanham, MD: Rowman and Littlefield Publishers, 2008).

¹⁵ See in Massachusetts for instance, *Parker v. Hurley*, 514 F.3d 87, 92-93 (1st Cir. 2008), *cert. denied*, 2008 WL 1926813 (Oct. 6, 2008), and in California, SB 777 requires “non-discrimination” in instruction, for private as well as public schools. Senate Floor Analysis of S.B. 777, Senate Rules Committee, Office of Senate Floor Analysis 2 (Sept. 19, 2007) (internal quotations omitted), *available at* http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0751-0800/sb_777_cfa_20070919_103650_sen_floor.html. See S.B. 777, 2007-2008 Reg. Sess. (Cal. 2007), *available at* http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0751-0800/sb_777_bill_20071012_chaptered.pdf.

¹⁶ In the UK, see the recent cases of Owen and Eunice Johns, <http://www.dailymail.co.uk/news/article-1325311/Gay-rights-laws-danger-freedoms-Bishops-speak-homosexuality.html> and John and Charlotte Yallop, <http://www.cbn.com/cbnnews/world/2010/August/Christians-Denied-Foster-Kids-Over-Moral-Stance/>

¹⁷ A UK couple who runs a bed and breakfast out of their own home is being sued by a same sex couple because they were denied a double room. [http://wn.com/Christian B&B owners sued by homosexual couple](http://wn.com/Christian_B&B_owners_sued_by_homosexual_couple)

¹⁸ The New Mexico Human Rights Commission fined a Christian wedding photographer because she declined to take photos of a lesbian commitment ceremony. <http://media.npr.org/documents/2008/jun/photography.pdf>

¹⁹ “Soft Despotism and Same-Sex Marriage,” Seana Sugrue, in *The Meaning of Marriage: Family, state, Market and Morals*, eds. Robert P. George and Jean Bethke Elshtain, (Dallas: Spence Publishing, 2006).

²⁰ Douglas W. Allen, “An Economic Assessment of Same-Sex Marriage,” *Harvard Journal of Law and Public Policy* Vol. 29 (3) Summer 2006: pp. 949-980. Reprinted in *Same Sex Marriages: An Overview* C.P. Nandini (ed) (Hyderabad: Amicus Books, 2008).

Conclusion

The essential public purpose of marriage is to attach mothers and fathers to their children and to one another. This is an intrinsically public function which cannot be privatized. The state has a duty to provide the basic legal scaffolding that supports the natural family.

Unfortunately, the state in our time has badly neglected this responsibility, and has actually facilitated the separation of children from their parents and parents from one another. In no-fault divorce, the state sides with the least committed partner. Many of our public assistance programs penalize poor families for having a husband or father living in the home.

And the government's practice of permitting anonymous sperm donors to be "legal strangers" to their children creates a completely artificial separation of fathers from their children and of mothers and fathers from one another. This is a situation which some adults obviously want. But it is an injustice to the child to permanently cut them off from a relationship with one of their parents. This is an entirely unnatural situation, completely impossible in any ordinary encounters between men and women, only made possible by the state.

Of course, voting on the definition is not the same as voting on all these issues. You have the opportunity to decide whether to support marriage as the union of a man and a woman. You must decide whether your community will continue the trend of pretending to increase freedom, while breaking down the institutional structures that make true freedom possible. You must decide whether to go along quietly with turning the family, the last truly private sector, into a creation of the state, or whether to take a stand for marriage as a natural reality that the state recognizes, but ultimately does not create.

The state must stop attacking the family. The state has no right to take over marriage and redefine it out of existence, or redefine it to suit its own purposes. ■



THE RUTH INSTITUTE
663 S. Rancho Santa Fe Rd. Suite 222,
San Marcos, CA 92078

WWW.RUTHINSTITUTE.ORG

