In liberal democratic theory, the fundamental purpose for the creation of special legal protections for basic social relationships and institutions is essentially the same as the purpose for the creation of special legal protections of basic human rights. It is to protect the resources and conditions necessary for individuals and free, democratic communities to survive, thrive and flourish. It short, it is to protect the critical infrastructure of a liberal, democratic society. This paper will explore the reasons and needs for giving special constitutional protection to conjugal marriage.

It is not surprising that half of the sovereign nations in the world that have written constitutions include in those constitutions express protection for the family and for marriage. Nor is it surprising that nearly one-quarter of the national constitutions clearly define or indicate that marriage is the union of a man and a woman. Nor is it surprising that there is a strong and growing movement to adopt constitutional protection for conjugal marriage in the constitutions of most American states.

The movement to legalize same-sex marriage challenges the history of legal protection for conjugal marriage. It also challenges the understanding that conjugal marriage is unique, makes unique contributions to society, and requires unique legal protection. This is occurring at a time when scientific evidence of the unique value of conjugal marriage to individuals, families and society is greater and more conclusive than ever before.

The connection between family structure and political structure in societies, between family systems and political systems, has been known and discussed for millennia. That understanding seems to have been lost in recent years in some affluent nations, including the United States of America -- an apparent casualty of the success of our liberal democracy.

One reason for the loss of recognition of the value of conjugal marriage as an institution relates to the instability of marriage. The rise of the movement for equivalent recognition for alternative relationships, including same-sex marriage, correlates with the rise of no-fault divorce and non-marital births, and the marked rise in the rate of divorce and the number of young adults who experienced the divorce of their parents, or who were born out of wedlock and raised for some period of their childhood outside of a marital family. Another reason for the diminished status of conjugal marriage today is the failure to receive a clear answer to the question: “What’s the harm (of giving equivalent legal recognition to alternative relationships, of legalizing same-sex marriage, etc.)? That reflects a time-frame of immediacy that excludes recognition of the most serious and severe harms.

This paper will link these “goods” of marriage with the “harms” of “leveling” marriage.