Forgotten National Treasure:

Marriage, The Creation of Social Capital, and the Building of the Social Infrastructure

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I. Introduction: Perspective and Context

Thank you John Barich, for inviting me to join you here in Freemantle and for inviting me to speak. Thank you Phil Baker, and Peter Meurs for hosting me and making the trip possible. Thank you members of the Australian Family Association for your care, your civic action, your involvement, your service in defense of marriage and families. It matter!!!

A. Lest We Take Ourselves Too Seriously . . .

   Humor: I have been asked to address a serious subject and you have been consider a serious matter, but lest we take ourselves too seriously it should be taken with a bit of humor.

   1) Bumper sticker on soccer mom’s minivan: “Sometimes in the morning I wake up grumpy, but usually I just let him sleep.”
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   2) Cartoon: 2 women talking: one says” John & I agreed to have the wedding at 7 a.m.. That way, if it doesn’t work out, we won’t have wasted the entire day!!”
3) (Non Seq) cartoon: Govt’ office with 3 services windows marked: “Marriage Licenses”, which is next to the “Restraining Order” window, which is beside the “Divorce Filings” window. Clerk at “Marriage License” window says to man in line: “Or you can save time and money by getting all three forms at once; we call it the California Package.”

4) NYorker cartoon: 50-ish mom to her 30-ish daughter: “I don’t know what’s wrong with you, why you still aren’t married. By the time I was your age, I’d been married twice!!”

B. The Best of Times and the Worst of Times

We need to recognize the context in which family developments occur. I will mention only four factors that I call this: “The Best of Times” and “The Worst of Times” (apologies to Charles Dickens).

[“It was the best of times it was the worst of times, it was the age of wisdom it was the age of foolishness, it was the epoch of belief it was the epoch of incredulity, it was the season of light it was the season of darkness, it was the spring of hope it was the winter of despair, we had everything before us we had nothing before us . . . .” – Charles Dickens, A Tale of Two Cities (1859).]

Lete’s start with The Worst of Times

#1) Globally and in the United States, marriage and the marital family are under besieged by social and ideological influences that threaten and have greatly weakened these foundational social institutions.

#A century ago, the major challenges facing the family were external: poverty, illiteracy, inadequate medical treatment, infant mortality, low life expectancy, lack of economic and social opportunity, etc. In the past century, especially that past 60 years, most of those external dangers to the family have been dramatically reduced in most of the nations on earth.

#Today, while external conditions have never in human history been better for families in the world, internal conditions for families in many parts of the world have seriously degenerated - most seriously and most ironically in the nations in which the external conditions are best. Family formation, family stability, family continuity, and family integrity have experienced severe declines especially in affluent nations due to high rates of cohabitation, divorce, childbearing out of wedlock, and abortion. The
flight from the marital family has been stunning and the prospects for stability and happiness in family life in many nations are more grim than ever been.

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For example, in the USA, more than one-half of all couples cohabit before their first marriages; over 40% of all marriages end in divorce; 37% of all births in the US in 2005 were to unwed mothers; and nearly 25% of all known pregnancies in the US end in abortion.

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~Already same-sex marriage has been legalized legal in six sovereign nations (out of 191 sovereign nations) and in two (NOW THREE) USA States (out of 50 states) (though that may be reversed this November because a constitutional amendment will be voted on that would prohibit same-sex marriage). Also, same-sex unions equivalent to marriage have been created in thirteen nations and six US states. Additionally, same-sex union registries and some benefits are provided in seven nations and in five US states.

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We have gone from no nations with SSM in 2000 to six in 2008, and from 3 nations with marriage-equivalent civil partnerships in 1995 to fifteen in 2008. In the past eight years, 6 nations in the world and 2 US states have legalized SSM.

Advocates of SSM are aggressive and serious and willing to use hard-ball political tactics to promote their agenda.

#2) *Globally there is a strong movement to legalize SSM.*

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In Australia, the Australian Capital Territory has enacted marriage-like Civil Unions, and three other states (Tasmania, Victoria, and South Australia) and some recent federal legislation have moved in that direction.

Advocates of SSM are aggressive and serious and willing to use hard-ball political tactics to promote their agenda.

So much for the bad news.

It is also the best of times for marriage and that gives us hope and reason to protect the institution of marriage.

Best of Times

#3) Constitutional Protection for Marriage & Family Now Is the Global Norm

Today, there is more widespread legal recognition of the unique value and social importance of male-female marriage than ever before in world history.

<< The Universal Declaration of Human Rights adopted 1946, the foundation of modern international human rights law, recognizes that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Similar statements declaring the foundational importance and specially-protected role of families are found in dozens of other international conventions, compacts, treaties, and instruments.

Dozens of other international treaties, conventions and declarations contain similar provisions protecting marriage or marital family.

#145 nations (/191 sovereign nations in the world) have Constitutional Provisions Protecting and giving special status to “family.” This includes 83 Nations (/191) Have Substantive Constitutional Provisions Protecting “marriage.”

#Additionally, nearly 20% of the 191 sovereign nations recognized by the United Nations have adopted explicit protection for marriage as the union of a man and a woman in their national constitutions.

Let me show you a couple of examples.

Article 45 of the Cambodian Constitution: (4) Marriage shall be conducted according to conditions determined by law based on the principle of mutual consent between one husband and one wife.
Article 42 of the Constitution of Columbia: the family “is formed . . . by the free decision of a man and woman to contract matrimony . . . .”

Article 24 of the Constitution of Japan: “Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.”

Article 110 of the Constitution of Latvia reads: “The State shall protect and support marriage—a union between a man and a woman,...”

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#4) In Many Nations & Communities There Is A Strong Grassroots Movement to Protect Conjugal Marriage and Marital Families That Surpasses the Movement for Same-Sex Marriage.

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The Australia: Marriage Amendment Act 2004 is a great example of this movement. It reads: “Marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life. Certain unions are not marriages. A union solemnised in a foreign country between: (a) a man and another man; or (b) a woman and another woman; must not be recognized as marriage in Australia.”

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Today SSM is forbidden in 45 states by constitution, statute or both.

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#In the past decade, the people in twenty-seven American states have enacted amendments to their state constitutions to provide constitutional protection for marriage as the union of a man and a woman.

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Voter approval for these amendments has been 69% overall.

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The map shows who dramatically and widely there is support in law for banning same-sex marriage in the United states.

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Minorities, including African-Americans, have strongly supported such amendments, often by larger percentages than in the general population.

General Colin Powell described the difference between black civil rights claims for equality and gay rights claims for equality. “Skin color is a benign, non-behavioral characteristic; sexual orientation is
perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument.” In states where proposed amendments have come before the voters, minorities often vote for those amendments in higher percentages than non-minorities.

- In the emerging democracies, support for marriage is especially strong. In a 2006 conference of family law experts from 11 nations in Central & Eastern Europe:
  - none have SSM,
  - only one has marriage-equivalent SSCUs.
- Five nations in Central and Eastern Europe are among the 37 Nations of the world whose constitutions explicitly define marriage as the unions of a man and a woman. (Bulgaria, Latvia, Lithuania, Moldova, Poland, and Ukraine).
- Allan Carlson’s remarkable 2007 Fourth World Congress of Families drew enthusiastic support from representatives from many central and eastern European nations.

C. **So What?**  So there is good news and bad news for marriage and marital families. So what? Who cares? What does it matter? Is it just a matter of preference – like choosing chocolate or vanilla?

II. **Marriage Is the Foundational Social Institution Which Creates Social Capital and Builds Social Infrastructure**

My theme, “Forgotten National Treasure” is taken from a famous speech by Russell Conwell, popular in the first decades of the twentieth century. He told of a man named Ali Hafed who became obsessed with the beauty and value of diamonds, so he sold his farm and spent his life searching all over the world for diamonds and died in poverty a broken man, while the man who bought the farm from Ali Hafed discovered diamonds right there on the farm, acres of diamonds in what became a mother-lode of diamond mines (Golconda). Conwell also told of a man from Pennsylvania who sold his farm to so that he could pursue the oil business and get rich, and after he sold it the buyer discovered oil right there on the farm. A moral of those stories is to not overlook the value of what you have before you exchange it to go looking for something else. You may be trading away “acres of diamonds” right in your own home.

Today, the national treasure of marriage has become a undervalued, taken-for-granted, de-valued in many nations. Especially in affluent countries, it has become a popular pass-time, especially among intellectuals, to dismiss marriage and marital families as of no more importance than any other personal relationship. Advocates of same-sex marriage and marriage-like civil unions or heterosexual cohabitation relationships urge their fellow-citizens to sell the national treasure, to abandon the family farm containing
acres of diamonds in order to pursue the illusion of equivalence in vastly less stable, less socially productive, and often self-destructive relationships.

Marriage is the cornerstone and the moral core of the family and thus generates the moral baselines and standards for society in many ways. In conjugal marriage and the marital family most persons learn the most poignant lessons about how to live in meaningful relationships. Marriage links genders, and creates inter-generational bonds of parenting. Marriage is not only the most critical bridge and bonding connection in society, it is the instrument of the most important moral transformation of individuals. Marriage transforms strangers and their families into kin, turns men into husbands and women into wives, gives security for the creation of new generations, and thereby connects the generations, changing grumpy old men and frumpy old women into living, loving grandparents. Marriage cultivates a morality of kinship love and sacrifice, to balance the morality of stranger competition and acquisition we learn in most of our other human relations. Moreover, societies for ages have channeled sexual relations into conjugal marriage, because married couples enjoy the most healthy, most satisfying, and most socially-beneficial sexual relations.

Aristotle famously taught viewed that marriage is “the foundation of the republic and the prototype of friendship,” and both Plato and Aristotle prescribed a set of laws governing the ideal ages, qualities, and duties of husband and wife to each other and to their children “to ensure that marital couples would remain bonded together for the sake of their children.” St. Augustine “called marriage a ‘faithful and sincere fellowship,’ ‘the ‘seedbed . . . of a city,’ [and] the ‘foundation of domestic peace.’ . . . His Greek contemporary, St. John Chrysostom (345-407), [wrote:] ‘The love of husband and wife is the force that welds society together. . . . Because when harmony prevails, the children are raised well, the household is kept in order, and neighbors and relatives praise the result. Great benefits, both for families and states, are thus produced.’” Anthropologist David W. Murray has noted: “Marriage is a society's cultural infrastructure . . . .”

Protestant “Robert Cleaver opened his famous 1598 tract, A Godlie Forme of Householde Government, with an oft-repeated maxim: ‘A household is as it were a little commonwealth, by the good government whereof, God's glory may be advanced, the commonwealth which stands of several families, benefited, and all that live in that family, may receive much comfort and commodity.’”

The ancient Greek philosophers and Roman Stoics called marriage “the foundation of the republic,” “the private font of public virtue.” [FN286] The Church Fathers called marital and familial love “the seedbed of the city,” “the force that welds society together.” [FN287] Catholics called the family “a domestic church,” “a kind of school of deeper humanity.” [FN288] Protestants called the household a “little church,” a “little
state," a “little seminary,” a “little commonwealth.” [FN289] American jurists and theologians taught that marriage is both private and public, individual and social, temporal and transcendent in quality--a natural if not a spiritual estate, a useful if not an essential association, a pillar if not the foundation of civil society. [FN290]

At the core of all these metaphors is a perennial Western ideal that stable marriages and families are essential to the survival, flourishing, and happiness of the greater commonwealths of church, state, and civil society.12

Marriage is the well-spring of social capital in any community or polis. Social capital consists of the intangible resources and assets that contribute to a strong society, economy, and nation; economists emphasize the trust that facilitates exchange,13 while sociologists and others note that there are other attributes of social capital as well such as engagement, willingness to serve, and charity.14

In these times of increasing individualism, isolation, and alienation in post-industrial societies,15 family bonds and relations are also waning.16 Robert Putnam has famously noted that the time that families spend together eating family meals has dramatically declined in modern America, as has family attendance at religious services and even family television-watching together.17 More seriously, family integrity has declined as centrifugal forces such as child-bearing out-of-wedlock, non-marital cohabitation, and divorce have increased, fragmenting families.18 The decline in family integrity is accompanied by and associated with decline in civic participation and community life.19 The relationship between family disintegration in loss of civic commitment is complex, but a undeniably there is a significant relationship.20

Families both generate and distribute social capital.21 Gay law professor Richard Storrow admits: “[M]arriage generates ‘social capital’ – interfamily and intergenerational bonds that embed married couples and their children within larger social networks and direct their efforts to the good of all.”22 Conjugal marriage causes men to work harder and be more productive than when they are not married.23 It helps women to integrate and serve.24 Marriage “provides children with increased social capital and leads to increased educational achievement and security.”25 Thus, conjugal “[m]arriage is a powerful creator and sustainer of human and social capital for adults as well as children, about as important as education when it comes to promoting the health, wealth, and well-being of adults and communities.”26 This is due to the nature of marriage, not the label.

The marital family is the moral core of society, and marriage is the foundational institution for the most promising, most potentially beneficially family forms. The family is the unit of society in which relationships, patterns of behavior, and values are first, and most firmly, inculcated and acquired. The marital family is the initial and most significant source of our ideas of morality, moral order, and moral acting.
The marital family is not just another source of moral standards like many other social institutions (such as schools, employers, law, churches, private associations, etc.). The family is the most important source of the most important moral standards in our society.\textsuperscript{27} For example, the U.S. Supreme Court noted, marriage “giv[es] character to our whole civil polity,”\textsuperscript{28} and that marriage “is the foundation of the family and of society, without which there would be neither civilization nor progress.”\textsuperscript{29} Not long ago, the Supreme Court re-emphasized that “marriage involves interests of basic importance in our society,” because it relates to the States interest in “the stability of their social order, . . . the good morals of all their citizens, and . . . the needs of children from broken homes. The States, therefore, have particular interests in the kinds of laws regulating their citizens when they enter into, maintain, and dissolve marriages.”\textsuperscript{30}

Families are the first school-rooms, the seedbed of moral education, and the seedbed of democracy, for as children are raised so will they become responsible or irresponsible citizens. It is in families that children acquire their first and most deeply-imbedded identity, their kinship identity. Without a solid family identity, many persons struggle and some turn to gangs, and extremist movements as a substitute for family identity.\textsuperscript{31}

Marital families are a principal source of what cultural anthropologists call “root paradigms” to explain how society prepares and guides its members to live and cope with life crises.\textsuperscript{32} Root paradigms “are, at the socio-cultural level analogous to DNA or RNA at the genetic level.”\textsuperscript{33} They crystallize the formative validity beliefs of an individual, family, and society. Families are the most important medium in which root paradigms are inculcated in individuals, and the most significant means of transmission of core values from one generation to the next.

Our own experience confirms these declarations of constitutional and internation law. As one writer put it:

\begin{quote}
Reflecting on your personal experiences, we are reminded that the family is the most critical, fundamental unit of society, and that to sustain it is frankly full of large amounts of daily work. This is to be our greatest work: the loving and rearing of our own children. As all good men and women who have gone before us knew, we also know that no effort given in this regard is of small consequence. Every moment counts: each kind word, soft response, thoughtful expression, dedicated time. The success is found within our own selfless, small efforts in managing the main scenarios taking place throughout each day between parents and children.\textsuperscript{34}

It is in the marital family that most individuals learn the most about how to balance the pursuit of self-interest with commitment to the welfare of others, how (and when) to sacrifice, how to nurture, give, develop and express love, how and who to trust and respect (and how), how to be trust-worthy. Those qualities are essential to responsibly exercise freedom, live justly, and give obedience to law. The family
\end{quote}
is the site for the moral education about the most critical virtues that are essential to a republican (liberal democratic) society. Thus, families are the infrastructure of society, the moral foundations upon which economic, political, social, educational, governmental and all other forms of human relations are based.

The marriage-based family has “contributed enormously to the ultimate purposes of a democratic society by providing the stability and the structure that are essential to sustaining individual liberty over the long run.” By providing for the needs of children (especially their needs for parental bonding and affection) marriage helps lay the foundation for their moral and political maturation as responsible wielders of personal liberty. As the place of most influential socialization, the home teaches individuals (especially children, but also spouses and parents) the lesson of obedience to the unenforceable, which is the first principle of a free (liberal) society. Moreover, “marriage has become ‘an enormously important element in the rise of stable political systems and dynamic economies.’” Further, “[c]oncepts such as marriage . . . have played a supremely important role over the years in staking out broad, clear boundaries that give guidance to an arm of the legal system that is already overwhelmed with subjective determinations.”

Anthropologist David W. Murray has noted: “Marriage is a society's cultural infrastructure . . . .” Marriage is the well-spring of social capital in any community or polis. Social capital consists of the intangible resources and assets that contribute to a strong society, economy, and nation; economists emphasize the trust that facilitates exchange, while sociologists and others note that there are other attributes of social capital as well such as engagement, willingness to serve, and charity.

Legal historian Charles Reid has explained why: “The family is the original cell of social life. It is the natural society in which husband and wife are called to give themselves in love and in the gift of life. Authority, stability, and a life of relationships within the family constitute the foundation for freedom, security, and fraternity within society. The family is the community in which, from childhood, one can learn moral values, begin to honor God, and make good use of freedom. Family life is an initiation into life in society.”

Distinguished Professor John Witte adds: “The Family is the first school where we learn good or evil. It is the source and fountainhead of morality or immorality.”

**IV. When Marriage and Marital Families Disintegrate, Society and Individuals Suffer, Struggle and Are Vulnerable.**

“A breakdown of marriage and the family will eventually have devastating consequences on these larger social institutions.”

Pope John Paul II famously said: “As the family goes, so goes the nation, and so goes the whole world in which we live.” LDS Church President Gordon B. Hinckley likewise declared: “A nation will
rise no higher than the strength of its homes. If you want to reform a nation, you begin with families . . .”

Likewise, highly respected Neal A. Maxwell, Mormon Apostle and scholar, warned more than a decade ago:

“As parenting declines, the need for policing increases. There will always be a shortage of police if there is a shortage of effective parents! Likewise, there will not be enough prisons if there are not enough good homes.

“. . . How can a nation nurture family values without consistently valuing and protecting the family in its public policies? How can we value the family without valuing parenting? And how can we value parenting if we do not value marriage? How can there be "love at home" without love in marriage?”

Evidence for that is undeniable. One recent example: A study by a Business School professor published this Summer (2008) by the Institute for American Values and the Institute for Marriage and Public Policy reports that the public costs – costs to American taxpayers -- of family marital break-up and of non-marital child-bearing (CBOW) in the United States, total at least $112 billion each year for American taxpayers, $70 Billion federal tax dollars and $42 Billion state and local tax dollars each year. In California the state and local costs attributed to family fragmentation amount to 11.5% of the total state and local tax burden, or $4.829 billion in taxes per year.

So there is a huge public interest in protecting and strengthening the institution of marriage. There is a huge fiscal danger to legalizing same-sex marriage if it weakens the institution of marriage.

V. The Attack Upon Marriage

A. The Greatest Threat to Marriage & Family Today is the Movement to Legalize Same-Sex Marriage

The movement to legalize same-sex marriage is an attack upon marriage, for redefining marriage to allow same-sex couples to marry will dramatically change the institution of marriage through the transformative power of inclusion. It will change the common understanding of what that social institution is, and changes the script for marriage and for how we expect to live our lives when we marry, it changes the social understanding of the responsibilities we undertake by entering the institution of marriage. It weakens and lowers expectations of marriage by accepting/including gay-lesbian lifestyles as marriage; it undermines the principle that children deserve to have both mother and father.

B. Seven Preliminary Points. To answer that I will begin with 7 PRELIMINARY PTS:
The issue in the debate about SSM is about marriage—period! The issue is whether the basic social institution of marriage should be radically redefined. It is not about homosexual relations, which have long existed without being called “marriages.” It’s not about gays or lesbians, or same-sex attraction, or nature-vs-nurture, or civil rights for individuals with any sexual orientation. It is not about homosexuality. Many advocates of same-sex marriage want to divert attention from the sole issue and talk about other things. Other things are not the issue; marriage is the issue. We all have close friends or families who consider themselves gay or lesbian or have at some time lived or are living LGBT lifestyles. Prop 8 is not about them or their lifestyles or sexualities. It is about defending and defining marriage—period.

Today, tragically, marriage and marital families are under great pressure today and are many marriages fail, but legalizing same-sex marriage will not solve or reduce that serious problem. Rather, by altering the meaning and reducing the expectations of marriage, by applying the “marriage” label to gay and lesbian relations, which have an even higher rate of instability than heterosexual couples, legalizing SSM will only substantially worsen the problem.

The past disintegration of marriage is not the fault of the gay community; rather, they are to some extent a result of it, and their claim for SSM is a logical extension of the “anything goes” attitude toward marriage that has prevailed for the past 30-40 years in America. The blight of the high rate of divorce, of nonmarital cohabitation, of childbearing out of wedlock, all occurred long before, and was tolerated long before the movement for SSM seriously began. Don’t blame them for that. Much needs to be done to reform our marriage & family laws, but legalizing SSM is a huge step in the wrong direction, a step off the edge of the cliff of irresponsibility.

Advocates of same-sex marriage seek to change marriage, not marriage.

The claim for same-sex marriage usually is presented as a claim to simply extend the basic human civil right to marry to a new group of persons, and analogies are made to the extension of other basic civil rights to racial and ethnic minorities. The pitch is: “Just give gays and lesbians the same right that other couples, male-female couples, enjoy.”

However, by redefining marriage to allow same-sex couples to marry, the very institution of marriage that gays and lesbians seek will be transformed dramatically. What they would get in the end would not be marriage but a different (redefined) social institution. Redefining marriage to include same-sex couples likewise will eliminate the institution of marriage and will replace it with something else that may bear the same name but which in substance will be a very different institution, with very different social effects. Thus, the claim for same-sex marriage is not a claim for marriage but a claim to change marriage.
(3) **Calling a same-sex union a marriage does not make it so.** Marriage is more than a mere “piece of paper.” It is not a matter of simple legal positivism. Conjugal Marriage is a ubiquitous social institution, a pre-state and pre-legal institution. Calling the union of two men or two women a marriage does not make it one; such word games do not transform the nature of the relationships. It is like the story attributed to Abraham Lincoln: he once asked a heckler how many legs a calf would have if you counted a tail as a leg. To the response "five legs," Lincoln said, "No; calling a tail a leg doesn't make it a leg." Likewise, calling the union of two men or two women a marriage doesn’t make it a marriage in nature, characteristics, or social consequences.

#4 The Movement to Protect the Institution of Marriage is a Civil Rights Movement. The right of all adults to enter into the social institution of marriage between a man and woman is one of the oldest and most basic civil rights. The attempt to fundamentally and radically change that institution, to drain it of essential qualities that have given it its unique value and meaning, attempts to eliminate by redefinition the cherished institution of marriage. Protection of marriage is a civil rights cause of the first and highest importance.

As my colleague Dr. Scott Loveless has written:

“In the context of California’s Proposition 8, the question is whether marriage is merely a creature of governmental creation and therefore subject to modification by judicial or legislative whim and preference, or an “inalienable” feature of life that . . . the Declaration of Independence and Constitution were intended to protect. . . . [T]he definition of marriage is not an item subject to definition or redefinition by the government, even by the judiciary. It predated our or any other government and created the children to whom natural law granted their “unalienable” rights.”

(A. Scott Loveless, Ph.D., Acting Managing Director, World Family Policy Forum, 081008)

<>#5 The claim for Same-Sex Marriage is Not a Claim for Tolerance

The claim for marriage is presented at a claim for tolerance. But that is neither accurate nor the consequence of SSM. The law treats human relations in three ways: many relations are prohibited, others are tolerated and a few relationships are preferred and privileged. Historically, same-sex relationships were prohibited, but in recent decades they have become tolerated and permitted in many countries. But tolerance is quite different from preference. Conjugal marriage, on the other hand, always has been the most preferred and privileged social relationship because it is the foundation of society. The claim for same-sex “marriage” moves beyond a claim for tolerance and seeks special preference.

Moreover, where same-sex marriage is legalized, tolerance for moral beliefs is restricted. Freedom of religion is undermined, and freedom of speech is curtailed. Children in public schools are
taught not true tolerance but the moral relativism of equivalency, i.e. that different forms of human sexuality are no more than matters of personal preference. Disagreement with this “principle” is not tolerated.

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#6) All Relationships Are NOT Equal. The claim for same-sex marriage levels marriage to equate it to any other form of adult intimate relationship. The premise is that all relationships are equivalent and all should be equal in the law. That is a demonstrably false assumption. All relationships are not equal; marriage produces goods and beneficial effects for individuals, children, families and society that are unmatched by the effects of all other relationships. The equality claims is false advertising.

Marriage is more than a mere “word” or “piece of paper.” It is not a matter of simple legal positivism –marriage does not mean whatever the lawmakers choose. While the law regulates marriage, conjugal marriage is the oldest social institution in the world; it is a ubiquitous, natural, pre-legal, pre-state institution found in some form in all societies.

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#7) We did not choose but cannot avoid this battle. We did not seek this controversy, or want it, but advocates of radical redefinition and deconstruction of marriage have aggressively taken steps to change public law & policy and have forced the issue upon us. Under those circumstances, we must “stand up for something.” Marriage is the infrastructure of society, not just the foundation, but the cornerstone in the foundation of society. When marriage is under attack, we have no choice but to stand up and defend that basic institution of society.

C. The Movement to Legalize Same-Sex Marriage Seeks to Capture Marriage

The effort to legalize same-sex marriage follows the same strategy that was used by the racial eugencists when they attempted to ban inter-racial marriage in American states. Their strategy was to capture the institution of marriage, by redefining marriage in order to promote their racist ideology, and to advance their social program of racial segregation. They were successful for a time, as for a few years most states, and for many years a few states banned inter-racial marriage on the ground that colored races were inferior to the white race (reflecting their social Darwinism perspective of racial hierarchy reflecting the relative advancement of the races), and that it was contrary to the public interest to allow the mixing and pollution of the races. Because marriage is such a ubiquitous institution, the imbedding of their
message of racial superiority-inferiority into the marriage laws had a pervasive influence throughout society, even if it only impeded a relatively few interracial marriages. Their tactic of capturing marriage was very effective in effectuating their policy to thwart racial integration and cultural blending in America for well over a century. The same tactic is followed by homosexual rights activists in today, who also seek to redefine marriage to promote their social ideology and political agenda.

The inclusion of same-sex couples in marriage will transform the meaning, expectations and standards of marriage because the morality and behavior of gays and lesbians differ markedly from married men and women. For example, promiscuity, infidelity, multiple sexual partners, and dangerous sexual practices are the behavioral norms among gay couples (and also, to a lesser extent, lesbian couples), rather than monogamy and sexual self-control which are the norms fostered by and nurtured in heterosexual marriages.

For example, a study by Dutch AIDS researchers, published in 2003 in the journal AIDS, reported on the number of partners among Amsterdam’s homosexual population. They found:

- 86% of new HIV/AIDS infections in gay men were in men who had steady partners.
- Gay men with steady partners engage in more risky sexual behaviors than gays without steady partners.
- Gay men with steady partners had eight (8) other sex partners (“casual partners”) per year, on average.
- The average duration of committed relationships among gay steady partners was 1.5 years.

A more recent study of 2,583 older sexually active gay men reported that “the modal range for number of sexual partners ever . . . was 101-500,” while 10.2 percent to 15.7 percent had between 501 and 1,000 partners, and another 10.2 percent to 15.7 percent reported having had more than one thousand sexual partners in their lifetime.

Kirk and Madsen reported that “the cheating ratio of ‘married’ gay males, given enough time, approaches 100%.”

Advocates of same-sex marriage argue for change. There is no doubt that we need change in marriage today. With historic high numbers of young people unsure whether they want to marry and looking for alternatives to marriage (such as nonmarital cohabitation or serial temporary relationships), and unprecedented rates of childbearing out of wedlock, and with record high levels of separation and divorce among married couples, it is clear that marriage in the twenty-first century truly is in need of some profound changes to make it more satisfying, more stable, more secure, and more reliable. But the effect of legalizing same-sex marriage will only exacerbate the current problems, not solve them. It will confuse and obfuscate the purposes of marriage and import into marriage an ethic of promiscuity, infidelity and casual commitment that will further weaken and damage marriage as a social institution.
D. The Threat to Civil Rights

To create new same-sex marriage liberties comes at the expense of reducing and weakening the institution of conjugal marriage and the liberties of all other Americans to continue to enjoy the blessings of that institution undiluted and untransformed by the inclusion of same-sex unions.

Changing the core definition of marriage in the law will lead to clashes between those law and religion. Opponents of SSM will be deemed mere “bigots.” Religious organizations may be compelled to provide support for and service for same-sex married couples or be punished for not doing so. Individuals with religious convictions have been and will be forced to put aside their religious convictions or suffer punishment, or discrimination. Civil liability or exclusion from government benefits may be imposed on religions and religious believers that decline to accommodate same-sex marriage. These are the “wake-effects” of legalizing SSM.

From soup kitchens to homeless shelters, from hospitals to social services, religious organizations provide a variety of services to the public and participate in many public service programs that may be shut down or censored if they do not accommodate same-sex marriage. Religious universities have been forced to provide housing to gay and lesbian couples in violation of core religious principles, and shelters may be similarly treated.

In Massachusetts since same-sex marriage has been legalized Boston Catholic Charities, which provided adoption services to Catholic families for a century had to shut down because a law required all adoption agencies to place children with gays and lesbians, in violation of the strong moral principles of the Church. The state refused to grant a religious exemption.

In California, non-discrimination laws were used to force a Protestant adoption agency to provide adoption services to lesbian couples, and to require an Arizona online adoption agency (adoption.com) to cease doing business in CA with Californians. The implications for LDS Family Services are obvious.

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Last month, the Ca Supreme Court ruled in a suit against a clinic and Catholic doctors who declined on grounds of religious convictions to give assisted reproduction services to a lesbian even though they tried to mitigate by referring her to another physician. The court held that there was no religious exemption, and rejected their defense of free exercise of religion and freedom of expression.

The Catholic Church’s Georgetown University was required to allow the Gay Rights Coalition and their programs to promote homosexual lifestyle with the same access to facilities and the same university support, resources and services as it provides to its own church-doctrine-
supporting groups.

In Canada, the Knights of Columbus was held liable and forced to pay damages by the British Columbia Human Rights Commission after it cancelled (very politely, promptly) rental of its hall for a marriage celebration, when it learned that it was for a lesbian wedding. In the United States, the Boy Scouts who require their members to be “morally straight” have been denied privileges and the use of public facilities and lands. The most recent example of this is in Philadelphia, where the Scouts have been ordered by the openly gay City Solicitor to vacate a building that they built with their own funds nearly eighty ago and donated to the city in return for a lease in perpetuity.

Since hospital are regulated public institutions, church-owned hospitals and teaching clinics may be forced to offer procedures (like sex-change) and teaching (about gay lifestyle) that violate church doctrines. In the United States, this has occurred in the abortion context, so we must expect it to occur with same-sex marriage, also.

Educators and schools are vulnerable. Religious schools that refuse to approve, subsidize, perform or endorse SSM could be lose access to public facilities, programs, and tax exemption (even be prosecuted). In Massachusetts since same-sex marriage has been legalized there already have been numerous controversies about curriculum, assemblies, classes, clubs, and parents’ rights to protect their children from exposure to gay propoganda. In British Columbia, Canada, the government accrediting agency denied accreditation to Trinity Western University, sponsored by the Evangelical Free Church of Canada, for its Teacher Training Program because the school requires students to sign an honor code manifesting their belief in Bible verses that condemn homosexual behavior as immoral, and the provincial supreme court affirmed.

Elsewhere, free speech rights also have already been abused. In Sweden Pentacostal Pastor Ake Green in Sweden was prosecuted, convicted, and forced through years of litigation for quoting from the Bible against homosexual relations. He finally won in the Swedish Supreme Court, where the prosecutor argued that since there were other translations of the Bible that did not use strong condemnatory language, the Pastor had no right to quote from the traditional version. Many similar cases have been reported in Canada and England. In Ireland, during public debate over legalizing same-sex unions, the Irish Council for Civil Liberties warned that Catholic Bishops and clergy who distributed a Vatican publication opposing homosexual relations could be prosecuted for violating a hate speech act.

The “wake-effects” of legalizing SSM are profoundly harmful to persons of faith and religions. It will also be especially harmful to children, because it is simply undeniable that marriage provides the most beneficial, advantageous environment in which to raise children. Marriage provides the most critical legal bond and strongest social connections that ties parents to children. Only male-female couples are capable of procreation, and only male-female marriage is best capable of sending the message
and reinforcing the natural bonds between biological parents and children. All children deserve to be raised by their father and mother who love each other and love them, and marriage sends and reinforces that critical message and value.

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**VI. Conclusion: Stand Up and Speak Up for Marriage**

I recently reread Elie Wiezel’s “Night” and noticed that the very first name mentioned by Wiezel in the very first line of his auto-biographical account of the Holocaust was not his beloved father’s name, or his beloved mother’s name, or the name of any other relative who were victims of the Holocaust. It was the name of “Moishe the Beadle,” whom Wiezel honored for his effort to warn his neighbors of the dangers that he saw coming. Moishe was ignored, and my article emphasizes that those who warn of dangers to marriage, family and society from legalizing same-sex marriage must be prepared to be belittled and marginalized like Moishe the Beadle, but should speak up anyway.

In his Nobel Acceptance Speech, Weisel declared: “I swore never to be silent . . . . We must take sides. He added: “There is so much to be done, there is so much that can be done. One person . . . – one person of integrity can make a difference, a different of life and death.”

President Gordon B. Hinckley wrote, in *Standing for Something*:

“We go to great lengths to preserve historical buildings and sites in our cities. We need to apply the same fervor to preserving the most ancient and sacred of institutions – the family.

What we desperately need today on all fronts . . . are leaders, men and women who are willing to stand for something. We need people . . . who are willing to stand up for decency, truth, integrity, morality, and law and order . . . even when it is unpopular to do so – perhaps especially when it is unpopular to do so.

That is our challenge today. I conclude with some lines written by a mother about her mother:

I realized that for mother, the kitchen was a cathedral where she could share her love, impart true principles to her children, sing, laugh through dirty pots and sticky floors, and set an example that would nourish our souls as well as our bodies. The stove was an altar of service and the refrigerator a repository of potential charitable contributions. As we watched her work and labored alongside her in the classroom of character, knowing that it was all for others, the kitchen was a chapel of charity, a temple of testimony and a well of work freely and cheerfully offered to those she loved. And that was everyone.49

That is what this battle is all about. That is what we are fighting to preserve. May we all stand up for conjugal marriage and work diligently to protect marital families. Thank you.
> The claim for same-sex marriage would do much more than is usually admitted. It usually is presented as a claim to simply extend the basic human civil right to marry to a new group of persons, and analogies are made to the extension of other basic civil rights to racial, ethnic and socio-economic minorities. The pitch is: “Just give gays and lesbians the same right that other couples, male-female couples, enjoy.”

This is deceptive, for by redefining marriage to allow same-sex couples to marry, the very institution that gays and lesbians claim to want would be transformed dramatically. What they would get in the end would not be marriage but a different social institution. Thus, the claim for same-sex marriage is not a claim for marriage but a claim to change marriage. It is not unlike the child who insisted on cutting open a bird to see what made the bird’s heart beat; the process transformed the bird from living to dead, and that prevented the child from obtaining what he was trying to learn. Redefining marriage to include same-sex couples will kill the institution of marriage and will replace it with something else that may bear the same name but which in substance will be a very different institution, with very different social effects.

The claim for marriage is also sometimes presented at a claim for tolerance. Tolerance opposes same-sex marriage. The law treats relationships in three ways: some are barred and prohibited; others are tolerated and permitted; and still others are preferred and privileged. Historically, same-sex relationships were prohibited, but in recent decades they have become tolerated and permitted in many countries. But tolerance is quite different from preference. Conjugal marriage always has been the most preferred and privileged social relationship because it is the foundation of society. The claim for same-sex “marriage” moves beyond tolerance and seeks special preference. The claim for tolerance is not the claim for same-sex marriage.

> Calling the union of two men or two women a marriage does not make it one; such word games do not transform the nature of the relationships. It is like the story attributed to Abraham Lincoln: he once asked a heckler how many legs a calf would have if you counted a tail as a leg. To the response "five legs," Lincoln said, "No; calling a tail a leg doesn't make it a leg." Likewise, calling the union of two men or two women a marriage doesn’t make it a marriage in nature, in characteristics or in social consequences.

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Our first society, our first interaction involving any society, is in a family. The Universal Declaration of Human Rights adopted 1946, declares unequivocally that all adult men and women “have the right to marry and found a family,” and recognizes that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” Similar statements about the foundational importance and specially-protected role of families are found in nearly three dozens other international conventions, compacts and instruments, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Hague Convention on the Civil Aspects of International Child Abduction, the Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights.

Likewise, most national constitutions that have been adopted since the UN Declaration of Human Rights (in the past 60+ years) have included some constitutional protection for marriage and/or family. Indeed, at least thirty-seven national constitutions contain provisions that clearly define or describe marriage as the union of a man and a woman.
A recent study by a Business School professor published by the Institute for American Values and the Institute for Marriage and Public Policy calculates that the public costs – costs to American taxpayers – of family marital break-up and of non-marital child-bearing (CBOW), total at least $112 billion each year for the USA, more than a $ one trillion every decade. (For comparison, that is more per year than we spent on the war in Iraq during the first 2 years, and the cost per decade is about 2/3 as much as the total amount the US has spent in the entire six-and-one-half years on the war in Iraq.) $70 billion in federal budget costs go to dealing with the consequences of marital break-down and avoidance every year, and family fragmentation costs state and local governments $42 billion every year. In California the state and local costs attributed to family fragmentation amount to 11.5% of the total state and local tax burden, or $4.829 billion in taxes per year. So there is a huge public interest in protecting and strengthening the institution of marriage. There is a huge fiscal danger to legalizing same-sex marriage if it weakens the institution of marriage.

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Already same-sex marriage has been legalized legal in six sovereign nations (out of 191) and in two USA States (out of 50 states) (though that may be reversed by constitutional amendment in California this November because a constitutional amendment will be voted on that would prohibit same-sex marriage). Also, same-sex unions equivalent to marriage have been created in thirteen nations and six US states. Additionally, same-sex union registries and some benefits are provided in seven nations and in five US states.

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American researchers Bell and Weinberg reported 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 more recent study of 2,583 older sexually active gay men reported that “the modal range for number of sexual partners ever . . . was 101-500,” while 10.2 percent to 15.7 percent had between 501 and 1,000 partners, and another 10.2 percent to 15.7 percent reported having had more than one thousand sexual partners in their lifetime.

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ENDNOTES:

1 Parts of this paper have been published or presented earlier. See, e.g., Lynn D. Wardle, The Attack on Marriage As the Union of a Man and a Woman, 83 N. Dak. L. Rev. 1365 (2007); Lynn D. Wardle, Potrzeba globalnego odrodzenia małżeństwa (Global Need for Revival of Marriage), in Rotzina -- Wiosna dla Europy i Swiata (Family -- Sprtime for Europe and the World) 368-372 (Lomianki 2008).


7 Id. at 1030.


9 Id. at 1058.

10 Id. at 1070-71.

11 "The literature on social capital defines it a number of ways, but the essential element is an association between people, either formal or informal, which facilitates trade through "trust." Trust potentially lowers the cost of trading through a number of mechanisms: information on exogenous types, coordination resolution, and reinforcement of personal and personal mores." Douglas W. Allen & Clyde G. Reed, The Duel of Honor: Screening for Unobservable Social Capital, 8 Am. L. & Econ. Rev. 81, 88 n.9 (2006). Id. ("Social capital is also acquired through education, marriage, business connections, and family history. Social capital is often difficult to observe, because it depends on the quality of the interpersonal associations." See further James Coleman, Social Capital in the Creation of Human Capital, 94 Am. J. Sociol. S 95 (1988)).

12 See, e.g., Robert D. Putnam, Tuning In, Tuning Out: The Strange Disappearance of Social Capital in America, 28 PS: Pol. Sci. & Pol. 664, 671 (1995) ("married men and women are about a third more trusting and belong to about 15-25% more groups than comparable single men and women").


15 Bowling Along, supra note 73, at 100-101.


17 See generally Bowling Along, supra note __, at ___ (evidence of loss of civic spirit and commitment).

18 Compare Hafen, supra note ___ at __, ___ (linking decline in family belonging and decline in civic virtue), and Bruce C. Hafen, The Belonging Heart, ___ (2007) ("--"); with Scott L. McLean, Patriotism, Generational Change, and the Politics of Sacrifice, in Social Capital at 147, 155 ("Putnam sees the family bound together by affection and identity rather than by interest, more so than other types of association, and thus he sees it as fundamentally a private institution. Hence, for Putnam the family, while a powerful institution shaping moral life, and a prime example of 'bonding' social capital, simply lacks sufficient power to revitalize civic society in the direction he things is necessary. . . . What is most desperately needed, he says, is not more 'bonding' social capital -- of the sort seen in 'identity' groups and families -- but instead much more social capital of the 'bridging' sort, which occurs outside the family.") and Bowling Along, supra note __, at 279 ("Apart from youth and church related engagement, none of the major declines in social capital and civic engagement . . . can be accounted for by the decline of traditional family structure.").

18 See generally Frank F. Furstenberg, Banking on families: How families generate and distribute social capital, 67 J. Marr. & Fam. 809 (2005)


Id. at 211 (emphasis added). Thus, marriage “is an institution, in the maintenance of which in its purity the public is deeply interested.” Id. See also Murphy v. Ramsey, 114 U.S. 15, 45 (1885) (“[C]ertainty no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth . . . than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony, the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.”)


32 Id. at 45.

33 Id.


37 Id. at 473-5.

38 Id. at 476-478.

39 Id. at 485.

40 Id. at 489.

41 Witte, supra note __, at 1071.


43 President Gordon B. Hinckley, (Interview with Mike Wallace), Ensign, November 1996, at 48-49.


45 Maria Kindo, Ronald Geskus, et al., The contribution of steady and casual partnerships to incidence of HIV infection among homosexual men in Amsterdam, 17 (7) AIDS 1029 (2 May 2003), available at http://www.aids-online.com/pdfs/aids/pdfs/hiv/hiv20030502000012.pdf (seen February 20, 2007). The purpose of the study was to assess whether provision of certain AIDS drugs had resulted in an increase of unsafe sexual practices in the gay community in The Netherlands.

46 Id.

47 Paul Van de Ven, et al., A Comparative Demographic and Sexual Profile of Older Homosexually Active Men, 34 Journal of Sex Research 354 (1997), cited in Dailey, supra note __, at __.

48 Marshall Kirk & Hunter Madsen, After the Ball 330 (1989). Likewise, Andrew Sullivan contrasts male-female marriages with same sex relationships and explains, “there is more likely to be a greater understanding of the need for extramarital outlets between two men than between a man and a woman.” Andrew Sullivan, Virtually Normal 202 (1996), cited in IVC Statistics, supra note __, at __.


52 Id.

53 The Netherlands, Belgium, Canada, Spain, South Africa, * and Norway (2009); US: MA & CA.

54 Denmark, Norway, Sweden, Iceland, Finland, France, Germany, Luxembourg, Slovenia, South Africa, * Andorra, Switzerland, UK, New Zealand; US: CA, CN, NH, NJ, OR, VT.

55 Argentina, Columbia, Croatia, Czech Republic, Hungary, Israel, Portugal; US: AK, DC, HI, ME &WA.


57 Paul Van de Ven, et al., A Comparative Demographic and Sexual Profile of Older Homosexually Active Men, 34 Journal of Sex Research 354 (1997), cited in Dailey, supra note __, at __.