PROCREATIVE RESPONSIBILITY
AND THE RECOGNITION OF MARRIAGE

by Scott FitzGibbon

"Make thee another self, for love of me."
-- Shakespeare, Sonnet X

"The basic principles of justice are to live honorably, not to harm any other person, and to render each his due."
-- Justinian, Digest

INTRODUCTION

If you procreate at all, you should try to do it well. If you and another person procreate together, you should try for a good relationship. Goodness in procreation and goodness in a procreative relationship are the subjects of this paper. More specifically, justice in procreation is the subject. Justice makes special demands on those who procreate. It applies to the associations they establish to conduct the projects of procreate.

The usual instance of an association for the projects of procreation is an exclusive and aspirationally permanent affiliation between a man and a woman. In our day, various other arrangements are proposed, notably uncommitted cohabitational connections, arrangements between persons of the same sex, polygamy, polyandry, and “polyamorous” relationships involving shifting populations of various types. To assess such proposals wisely, to determine...
what is just in the matter of structuring associations for procreation, and to sustain sound procreative associations, are the great problematics of our age.

What criteria should be applied? Findings from the social sciences are suggestive but sketchy. No comprehensive standards have emerged for determining when an associational structure is appropriate and just for the projects of procreation. This paper proposes such standards.

Applying the standards here proposed leads to the conclusion that marriage between a man and a woman can be procreatively just. The structure and elements of marriage are wise ones -- its foundation in an oath of fidelity and in a certain unique kind of love; its commitments to permanence and exclusivity. None of the other forms fills the bill.

Forms which fail to fill the bill should not in all cases be prohibited or condemned. Plainly some procreatively oriented affiliations which fall short in one way or another deserve some measure of recognition. Sometimes exigencies preclude the optimal choice; no one would abolish orphanages or foster care. Sometimes optimal arrangements are supplemented with more limited ones; no one thinks it is wrong to hire a nanny. This paper proposes a set of criteria which identify the most appropriate form for a basic procreative affiliation.

This paper proposes that fully procreatively just affiliations -- the ones which satisfy the criteria developed here -- deserve special support and recognition. It proposes that procreative justice calls for such recognition. This paper proposes that it is unjust to conflate and revise the usual categories so as to confuse procreatively just affiliations with other forms. It discusses the harm that ensues.

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4 They indicate that marriage in the traditional sense produces better outcomes for the offspring than other structures. See ELIZABETH MARQUARDT, BETWEEN TWO WORLDS: THE INNER LIVES OF CHILDREN OF DIVORCE (2005). For a more recent discussion of the authorities, see Marriage and the Public Good: Ten Principles Section III (Witherspoon Institute, May, 2006) (available on line at princetonprinciples.org (accessed 8/21/06)).

5 Owing to space limitations for this conference, only passing attention can be paid to forms other than marriage and same-sex associations.
“Procreation” refers in part to “making” or “producing,” but goes beyond those terms. You make pies, you make mistakes, even, but you do not “procreate” them. Perhaps this is because procreation involves making or producing living things. Still, a scientist has not procreated when he colonizes bacteria. Procreation involves replication; reproduction of life; the making of something which resembles the maker. It involves developing and extending the maker into a new generation (and into generations thereafter). Only the sheep can procreate a sheep. The scientist can procreate humans.

Procreation is not just a matter of biology: it includes the development of the mind and heart and spirit as well. It means doing your part in commencing the existence of another human being and bringing him along towards responsible adulthood. It means fostering his full personal development, including development of the capacity himself to procreate some day.

It involves some degree of participation, in other words, in the procreation of subsequent generations as well. It aims at the full maturity of beings who will be in important ways extensions of the parents. It aims at offspring who may themselves pursue the projects of their parents and who may extend the line on into posterity. It is thus one of the great goods of life and a central element of human flourishing. It enters the procreator in the procession of “illustrious men whose good works have not been forgotten”:

“In their descendants they find
a rich inheritance, their posterity.
Their descendants stand by the commandments
And, thanks to them, so do their children’s children.”

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6 ECCLESIASTICUS 44 10-13 (NEW JERUSALEM BIBLE, 1985 ed., at 1141).
The problem of procreative responsibility includes a problem of affiliation. To be procreatively responsible you must relate well to your offspring and relate well to others who participate with you in the basic projects of procreation.

Affiliation – friendship, using that term broadly -- is a basic aspect of well-being. Friendship makes us fully human. Without it a person is, as Aristotle says, “tribeless, lawless, heartless” and “either a bad man or above humanity.”

“[H]e who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god . . . .”

Man, as Aristotle observes, is a social animal, a couple-forming animal, and a household-forming animal. We are creatures who flourish best in and through our involvement with one another. These observations correspond to common

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9 See Aristotle, Politics, supra n. xx, 1253a 2-4 (page 1987 in the Jowett translation)(“man is by nature a political animal.”). The term “political” here does not refer only to governmental affairs. The Greek is "politikón," and relates to the polis --- the city --- including not only its administrative or government aspects but also families and associations and all of civic life. Aristotle’s point is that man is by nature a city-forming, city-living, city-participating being. That is why the term “social” is used in the text supra. Aristotle also identifies man as politikón in id. 1278b 19 (page 2029 in the Jowett translation), in NICOMACHEAN ETHICS 1097b 11, 1162a 17 & 1169b 17-19 in II THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD TRANSLATION 1729 at 1734, 1836 & 1848 (Jonathan Barnes, ed., W. D. Ross, trans. (rev. by J.O. Urmson), 1984)(hereinafter referred to as “Aristotle, Nicomachean Ethics”) and in HISTORY OF ANIMALS 488a 9-20 in I THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD TRANSLATION 774, 777 (Jonathan Barnes, ed., d’A. W. Thompson, trans., 1984).

10 Aristotle, Nicomachean Ethics, supra n. xx, 1162 16-17 (page 1836 in the Ross translation)(“Between man and wife friendship seems to exist by nature; for man is naturally inclined to form couples . . . .”).

11 “koinonikon anthropos” and “oikonomikon zoon.” ARISTOTLE, EUDEMIAN ETHICS 1242a 22-25, in II THE COMPLETE WORKS OF ARISTOTLE 1922 at 1968 (J. Barnes, ed., J. Solomon, trans., 1984)(hereinafter referred to as “Aristotle, Eudemian Ethics”)(“[M]an is not merely a political but also a household-maintaining animal, and his unions are not, like those of the other animals, confined to certain times, and formed with any chance partner, whether male or female; but . . . man has a tendency to partnership with those to whom he is by nature akin.”)(elision in the text as quoted; note omitted).

12 Compare MARCUS TULLIUS CICERO, DE AMICITIA 17 (44 B.C.) in CICERO ON OLD AGE AND ON FRIENDSHIP (Frank O. Copley, trans., 1971, at 43, 53)(hereinafter referred to as "Cicero, De
experience. From your birth announcement through your obituary, who you are is intimately bound up with your membership in a family and with your other associations.

**PART THREE: JUSTICE**

Justice is the most fundamental social virtue. It involves all that is requisite in conduct affecting another person. Thus, in the most fundamental sense, justice involves understanding that another person is another person; a person comparable to oneself; a person who is, like oneself, entitled to decent treatment. The radically unjust person never gets this idea. The basically just person does get it. He accepts the demands of commutativity and reciprocity in human relations. Justice involves seeking common ground; applying a common normativity; being fair by applying the same standards in the same way to one person as to another; to others as to oneself.

Justice involves three basic principles. The first is not to harm. Subject (as all the requirements of justice must be) to excuses and justifications such as those founded on duress and impossibility, you act unjustly if you damage someone in an important way. Underlying this requirement lies the insight, grasped by the just man and not by the radically unjust one, that harm is a bad thing in a general way so that everyone, not only he himself, deserves to be free of it.

The second principle of justice is to “render each his due.” This requires, of some people in some situations, that they act affirmatively to assist or protect. Justice for a lifeguard, for example, involves more than not drowning people. He should rescue the distressed swimmer. Perhaps he has implicitly promised to do so; perhaps society has appointed him to a sort of office which requires him to do it; swimmers have probably relied upon him. No one else, perhaps, can swim so well or foresee so accurately the struggles of the drowning man. Other instances of special duty to render what is “due” can readily be adduced. A trustee is obliged to assist the beneficiaries and an executor to protect the estate. After a shipwreck, the only man with extra food should feed the survivors and the only man with knowledge of the native language should teach the others. Those who understand the indigenous society should help establish good relations.

*Amicitia* ("All I can do is to urge you to put friendship ahead of all other human concerns, for there is nothing so suited to man’s nature, nothing that can mean so much to him, whether in good times or in bad."). Here, and elsewhere where this work is cited unless otherwise indicated, Cicero attributes the words to Laelius.
The just person discerns what conduces to other people’s good and “gets the idea” that other people’s well-being can have a bearing on his own projects. He accepts – as a self-indulgent or self-involved person will not – that another person’s concerns have a traction on his own life, drawing him into a course of assistance, service, and sometimes even self-sacrifice.

A third aspect relates justice to practices of honor and the recognition of duty, office, and merit. It is just to honor the honorable and unjust to disgrace them; just to accredit what is creditable and not confuse it with the irrelevant or disgraceful; just to recognize someone for who he is and not to assign him to an order which is not his own. It is just to recognize someone as a distinctive person and not to reduce him to a “stereotype” or an indistinguishable particle in a larger aggregate. Bad social ideology violates these requirements. A communist or a fascist is unjust in this way. He thinks stereotypically, ignores individuality, places people in meretricious categories (“bourgeois,” “Aryan”), and assigns unjustified opprobrium and unmerited praise.

The just person “gets the idea” of honor and dishonor and the good of knowing which is which; he grasps the importance of recognizing things as what they really are. A person who is hostile to clear distinctions and anxious to avoid becoming “judgmental” will not be just in this way.

In all these ways the just man not only acts but also thinks and perhaps even feels as he should. As Aristotle observes, we would not call someone fully just who did the just thing but only under compulsion. The truly just person avoids harm, renders what is due, and is honorable, because he sees and appreciates the good of justice. Perhaps we can add that he has his heart behind the projects of justice. Justice is a state of mind and a disposition of the spirit.

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13 *Nicomachean Ethics, supra* n. xx, 1144a 12-18 (page 1807 in the Ross translation).

14 As Aristotle says, “in order to be good one must be in a certain state when one does the several acts, i.e. one must do them as a result of choice and for the sake of the acts themselves.” *Nicomachean Ethics, supra* n. xx, 1144a 18-20 (page 1807 in the Ross translation). “The agent . . . must be in a certain condition when he does them; in the first place he must have knowledge, secondly, he must choose the acts, and choose them for their own sakes, and thirdly his action must proceed from a firm and unchangeable character.” *Id.* 1105a 30 – 1105b 1 (page 1746 in the Ross translation). He should deliberate carefully and understand the good of what he does, since choice involves “consideration and deliberation.” *Aristotle, Eudemian Ethics, supra* n. xx, 1226b 8 (page 1942 of the Solomon translation).
I. Justice between Procreator and Procreated.

Consider how the requirements of justice may apply in the case of a baby or a child. His vulnerability to harm is extensive. His “due” may be great, as his circumstances bear comparison with the inexperienced swimmer and the castaway who needs food and shelter and successful integration into the indigenous society.

Consider how the requirements of justice may apply to you, as his procreator. You may be lifeguard, trustee, and estate executor rolled into one. You may be food owner, language teacher, and cultural guide; and you may be his greatest social intermediary, from the affiliations of the household on outwards into the wider world. Struggling through childhood, he will look to you for guidance; navigating through the difficult waters of adulthood, he will often call you to mind. His honor is involved. You are in a position to integrate him, well or poorly, into the order of your extended family and thence to afford him his place in society. You are his link to the affiliational chain of his ancestors and the ancestors of his descendants. You are a major determinant of how he “gets the idea” of systems of honor and a major guide to how he in later life will appraise merit and demerit, apportion praise or blame, and recognize the standing and roles of others.

If you are a just person, you must “get it” that this state of affairs has a traction on your own life. Implausible though it may seem during the months when he is a squalling infant, justice requires that you “get it” that he is another human being – like you when you were a baby – and that his future will be shaped by you as yours was shaped by your parents. It requires you to determine what is “due” to him by considering the basic goods of life and ascertaining your likely effect on whether he participates in those goods, bearing in mind the circumstances in which he is likely to find himself. It requires you to “get it” that he will be a grown up person like you some day and likely will procreate himself.

II. Justice Among Procreators.

Affiliations among those who work together on the basic projects of procreation (here, “procreative affiliations”) pay the rent and buy the groceries; more important still, they furnish examples to the offspring. Children develop morally through a process of modeling:
“A young child is able to latch onto the moral kind, bravery, or lying, by grasping central paradigms of that kind . . . . Moral development is . . . something much more complicated than simple concept displacement. It is: enlarging the stock of paradigms . . . developing better and better definitions of whatever it is that these paradigms exemplify; appreciating better the relation between straightforward instances of the kind and close relatives . . . .”

Children’s well-being – and much of what they do in later life – is thus affected intensely by the character of the affiliations around them. “Research clearly demonstrates” what common sense would in any case suggest: “family structure matters for children.” Children’s affiliational well-being: their own marriages and friendships in later life – are intensely affected by the affiliational order of their upbringing. Affiliational character is formed by a process of modeling on the close affiliations of early life. Doing justice to offspring thus requires procreators to establish well ordered relationships with one another.

This section proposes seven requirements for justice in structuring procreative affiliations. The first two requirements respond to the offspring’s good in general. The next four respond to the offspring’s good as regards his own affiliative future, looking to the day when he himself will form friendships and other important associations. The final requirement looks to his procreative future. Procreative affiliations which fulfill these requirements are here called “Procreatively Just Affiliations.”


16 Kristin Anderson Moore, Susan M. Jekielek & Carol Emig, Marriage from a Child's Perspective: How Does Family Structure Affect Children, and What Can We Do About It?, CHILD TRENDS (June, 2002), available at http://www.childtrends.org/files/Marriage8602..pdf. (accessed August 22, 2006) (“[R]esearch clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two-biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes than do children in intact families headed by two biological parents. Parental divorce is also linked to a range of poorer academic and behavioral outcomes among children.”)(at page 6). See Dean Lillard & Jennifer Gerner, Getting to the Ivy League: How Family Composition Affects College Choice, 70 J. HIGHER ED. 706 (1999)(reporting a survey of 26,000 students finding that students who lived with both biological parents were more likely than those who did not to apply to, and to attend college, and much more likely to attend a selective college).


18 Specifically, primary affiliations. These standards are not proposed to be applied in their entirety to the nanny or the wet nurse.
A. The Metaphor of the House; the First Two Requirements of Justice in Procreative Affiliations.

What sort of house is suitable for raising a child? A house may be a metaphor for a household.

1. The First Requirement. – A procreativity appropriate house is not built on sand and will not collapse in a windstorm. It gives the offspring his “due” in the sense that it affords what its residents need from a house: shelter from the rain, warmth in winter, and facilities for cooking. The metaphor illustrates one aspect of the procreative affiliation: it is a “tasked” association. It aims at instrumental goods. Whereas other sorts of association might be arranged ad libitem, or as an exercise in risk, adventure, and the recurrent temptation of fate – like Zelda and Scott Fitzgerald during their early years together -- procreative affiliations are dedicated to supplying an offspring’s necessities. They should pay the rent, for example, and supply the food. These points can be summed up as the first requirement of justice for procreative affiliations: they should be well ordered towards supplying an offspring’s practical needs.

2. The Second Requirement. – More abstractly: perhaps a house ought to be in a sense “honorable” in that it should convey true and not disordered implications about the residents and their appropriate roles. It should not be a slave quarters nor, in a republic, should it be a palace. It should be human-sized, with human-sized rooms and hallways, well suited to balanced, person-to-person, on-the-level relationships. Fascist architecture, complete with monstrous staiirsteps and cavernous hallways filled with heroic fascist sculpture would be procreativity inappropriate. So also would the temporary shelters of Woodstock.

Applying similar criteria: the affiliations of the household should be “honorable,” in the sense that they should conform to a reasonable order of honor, merit, and demerit, and reflect a reasonable recognition of office and role. Honor implies not just one affiliation but an affiliational system. In a household or any such system, people who do their part should be acknowledged as doing their part and people who stand as pillars of the household establishment should not be confused with those whose involvement is sporadic and self-serving.

Married couples recognize this aspect of procreative justice when they promise to “love, honor and cherish” one another and when they set their shoulders to the tasks of maintaining a household. A husband would violate this requirement of procreative justice by bringing girlfriends in to live and
demanding that they be treated with respect. A polyamorous affiliation – one with members selected for amorous amenability rather than procreative dedication – would be procreativity unjust under this criterion.

B. The Metaphor of the Sculptors; Four Further Requirements of Justice in Procreative Affiliations.

The first two requirements of procreative justice might be satisfied by colleagues whose associations were deeply chilly. People who cared little about one another’s well-being and perhaps even disliked one another could perform the practical tasks of a household and treat one another with grudging respect. This suggests a search for further requirements.

Suppose two sculptors undertake to carve a statue out of some mythological material which has a sort of life of its own. It gradually changes shape in response to variations in its environment such as wind and light and it changes responsively to the characters and personalities, beliefs, intentions, and motives of the sculptors themselves. If they dislike sculpting and are disappointed with the statue it becomes less attractive. If they determine to destroy it, it shrivels up. If they dislike one another, and each plans to harm the other, the statue, similarly, acquires a malevolent aspect. Suppose further that this statue will spring up some day and take on life-like characteristics like Pinocchio, and that its character and conduct as well as its outward form will reflect the influences of the sculptors. If the sculptors are malicious or insensitive, the statue may become that way as well. If they are unfriendly to one another, the statue’s capacity to affiliate and befriend will be affected.

The metaphor illuminates another aspect of the procreative affiliation: it is a model. Were progeny not involved, there might be little objection to conducting an association largely with an eye to generating tumultuous raw material for semi-autobiographical fiction (as may have been the case with Zelda and Scott Fitzgerald). But where offspring are involved, the procreative affiliation should be conducted with a mind to the example presented. It should model

19 This refers to Pinocchio’s condition before he became a real boy.

20 See SALLY CLINE, ZELDA FITZGERALD: HER VOICE IN PARADISE 111 (2002) (“Zelda and Scott . . . achieved their stories by obsessively mining their own lives and each other’s for material and created their fiction almost entirely from personal experience.”).

21 Zelda’s and Scott’s daughter Scottie described her childhood as a good one: see ELEANOR LANAHAN, SCOTTIE THE DAUGHTER OF . . .: THE LIFE OF FRANCES SCOTT FITZGERALD LANAHAN SMITH 36 & 96 (1995). But she can be suspected of what is called “denial.” See id. at 62 & 71.
successful affiliation, not only by way of efficiency in performing tasks, but also by way of the noninstrumental goods. It should model those elements which make affiliation good for its own sake, and a basic dimension of human life.

1. The Third and Fourth Requirements. -- Benevolence and knowledge are fundamental elements of affiliation. You would certainly not be friends if you wished one another ill; you would certainly not be friends if you did not even know one another; and you would not be good friends unless each of you cared quite a bit for the well-being of the other nor unless you knew one another well. Friendship involves shared benevolence and knowledge; benevolence leading on to discourse: “sharing discussion and thought,” as Aristotle observes. Thoroughgoing friendship involves benevolence as to a fulsome range of the friends’ projects and knowledge as to much of their actions and plans. Exercising their benevolence and deepening their knowledge, friends participate together, as Aristotle observes, in much of life.

These two virtues can, therefore, be identified as the objects of the third and fourth requirements of procreative justice: procreators should model the virtues of benevolence and knowledge and their integration into an affiliation. Procreative affiliates should wish each other well and act well towards one another. They should know one another, and they should aspire to know one another well.

Married couples recognize these requirements of procreative affiliation when they promise to love and cherish one another. Studies of marital practices reflect the importance of benevolence and knowledge within marriage when they report that “marital practices highly predictive of divorce” include “negative communication patterns such as criticism, defensiveness, contempt, stonewalling, and rejection of a wife’s influence.” An association could not be fully procreatively just if it were based, as some modern writers recommend, on emotion rather than cognition, nor if it were attempted by people who were too

22 See Aristotle, Nicomachean Ethics, supra n. xx, 1155b 31 -- 1156a 10 (pages 1826-27 in the Ross translation):

“[T]o a friend we say we ought to wish what is good for his sake. . . . [G]oodwill when it is reciprocated being friendship. * * * To be friends, [people] . . . must be mutually recognized as bearing goodwill and wishing well to each other . . . .”

23 Aristotle, Nicomachean Ethics, supra n. xx, 1170b 11-12 (page 1850 in the Ross translation)(passage quoted more fully in n. xx infra.

24 See Aristotle, Nicomachean Ethics 1170b 10-13 (page 1850 in the Ross translation)(A friend “needs . . . to be conscious of the existence of his friend . . . and this will be realized in their living together and sharing in discussion and thought; for this is what living together would seem to mean in the case of man, and not, as in the case of cattle, feeding in the same place.”).
selfish, narcissistic, confabulatory or delusional to understand one another well (as may have been the case with Zelda and Scott Fitzgerald).

Such a couple would be likely to transmit their cognitive deficiencies on to the parent-child affiliation and thence into the next generation. “I was an imaginary daughter,” wrote their daughter Scottie Fitzgerald, “as fictional as one of his early heroines.” When one of her own kids grew up he said much the same thing. (“We were characters in our mother’s novel”).

2. The Fifth Requirement. - Fidelity is a fundamental component of affiliation. Steadiness grounds affiliational benevolence, which is more than a matter of “random acts of kindness,” as the bumper sticker puts it. True friends stand by you “through thick and thin.” Steadiness is a cornerstone of affiliational knowledge, which is not a matter of episodic insights and brief glimpses of the truth. Knowledge between true friends is, rather, hard-headed and clear-eyed, informed by an honest and extensive exchange of views, and not occluded by the shifting clouds of self-indulged romanticism. This virtue can, then, be identified as the object of the fifth requirement of procreative justice: procreators should model the virtue of fidelity and its integration into an affiliation.

The traction of this requirement helps explain the intention, generally to be found among couples who marry, that their relationship be permanent rather than dissoluble upon the completion or frustration of the practical projects of maintaining a household. A short-term affiliation – a “marriage” planned in advance to expire after a term of years – would be procreatively unjust; and so also would be an affiliation whose members had a strong disposition to split up, even though they had not set a date: a readiness to quit upon the occurrence of eventualities such as discomfort or dissatisfaction. Procreators should not only

25 See SALLY CLINE, ZELDA FITZGERALD: HER VOICE IN PARADISE 152 (2002) (“Hemingway recalls Scott telling several versions . . . of an episode involving] Zelda falling in love with a French aviator. The later versions, according to Hemingway, were less sad and seemed to be created as useful fictional material.”).


27 Id. at 255.

28 Fidelity underlies all the virtues. Every exercise of virtue is incomplete, Aristotle indicates, unless it “proceed[s] from a firm and unchangeable character.” Aristotle, Nicomachean Ethics, supra n. xx, 1105b 1 (page 1746 of the Ross translation). Only the self-governing, steady person, steadily reflecting and firmly choosing, “is at one mind with himself” when he acts and so to speak puts his entire self behind each action. Not so “inferior people,” who are “at variance with themselves” (id. at 1166b 6-7, page 1843 of the Ross translation) and whose souls are "rent by faction" (id. at 1166b 19, page 1844 of the Ross translation).

29 See generally Scott FitzGibbon, Marriage and the Good of Obligation, 47 AM. J. JUR. 41 (2002).
act with consistency, they should “think consistent” in order to model consistency and stability of mind to their offspring. Fully procreatively just affiliations are founded on fully committed intentions. A contingent intention to betray or desert will affect the offspring even if it is never acted upon.

Cohabitating couples omit the commitment to permanence and so fail to satisfy this requirement. Studies establish that cohabitation is deleterious to offspring compared to marriage, and that it adversely implicates the offspring’s own affiliational and procreative future. Cohabitation by parents predicts premarital births among the offspring.

The Sixth Requirement. A further requirement relates to the connection between affiliations and the wider societies in which they are embedded. The affiliations which the offspring forms when he matures will likely not subsist in isolation but will intersect with many others, including the extended families of the procreators, the neighborhood, the region, and the nation. Man flourishes best when he participates not only in small units like partnerships, but also in a wider social order. This suggests a sixth requirement: procreators should model a successful relationship between their affiliation and the society in which it is embedded. It is not unjust to be a hermit, but it would be procreatively unjust to raise a family in a hermitage.

30 “Although many cohabiting couples have one or more children, the families they form are often fragile, with less than half these relationships lasting five years or more.” Kristin Anderson Moore, Susan M. Jekielek & Carol Emig, Marriage from a Child’s Perspective: How Does Family Structure Affect Children, and What Can We Do About It?, CHILD TRENDS at 5 (June, 2002), available at http://www.childtrends.org/files/Marriage8602..pdf. (accessed August 22, 2006). “Fully three-quarters of children born to cohabiting couples are likely to see their parent split up before they reach age sixteen, whereas only about a third of children born to married parents face a similar fate.” DAVID POPENOE & BARBARA DAFOE WHITEHEAD, SHOULD WE LIVE TOGETHER? WHAT YOUNG ADULTS NEED TO KNOW ABOUT COHABITATION BEFORE MARRIAGE 8 (2002), quoted in The Future of Family Law: Law and the Marriage Crisis in North America n. 66 (Dan Cere, Principal Investigator, 2005): “Cohabiting is not the functional equivalent of marriage. . . . Children with cohabiting parents have outcomes more similar to the children living with single (or remarried) parents than children from intact marriages. . . . Couples who live together . . . report relationships of lower quality than do married couples – with cohabiters reporting more conflict, more violence and lower levels of satisfaction and commitment.” WILLIAM J. DOHERTY et al., WHY MARRIAGE MATTERS: 21 CONCLUSIONS FROM THE SOCIAL SCIENCES 7-8 (2002)(footnotes omitted), quoted in The Future of Family Law: Law and the Marriage Crisis in North America 25 (Dan Cere, Principal Investigator, 2005).

Uncritical conformity is not the ticket; and certainly where procreators find themselves surrounded by a social order which is seriously unjust this criterion will not demand that they conform to its unjust practices. The successful relationship by society identified by this sixth requirement should involve critical reciprocity.

Many of the familiar projects of parenthood have just these aims in view: affording the offspring vocational or professional education; introducing him into the extended family and into the framework of region and nation; and exemplifying suitable manners and social judgment.

C. The Seventh Requirement of Procreative Justice.

The sculptors’ little Pinocchio would be headed for disaster if he turned into a real boy, grew up, and started down the usual road towards procreating himself. Little in the affiliation of the sculptors prepares him for that project. This suggests the seventh requirement of procreative justice: the affiliation of procreators should model successful procreative affiliation. It should, in other words, model the fulfillment of the first six requirements of procreative justice as applied, not just in any context, but specifically in the procreative role which the offspring is likely to assume.

The offspring, as soon as he reaches his early teenage years, is likely to start thinking and acting in ways which lead to biological procreation. Sooner than he expects, he may find that he has begotten a child and is charged with responsibility for its upbringing. He is likely to find himself affiliated with a partner in these projects. These circumstances will present him with a special problematic, and with the opportunity to participate in special goods.

1. The Special Problematic. — Procreators are usually pulled in two directions: on the one hand by the urgent demands of erotic love, on the other by the requirements of procreative justice. Eros, in its primitive forms, can be the enemy of procreative justice. It is a sort of love, but the love “of the wolf for the sheep,” characterized by “furor and agony” and leading on to unreason and

32 See Barbara Dafoe Whitehead & David Popenoe, The State of Our Unions: The Social Health of Marriage in America 2006. Essay: Life Without Children (National Marriage Project, 2006), available on line at http://marriage.rutgers.edu/Publications/SOOU/TEXTSOOU2006.htm (accessed July 15, 2006) (reporting survey results finding that 82% of teenage girls and 77% of teenage boys say that having a good marriage and family life was "extremely important" to them; and that 84.5% of girls and 77% of boys expect to marry (or are already married.).

destruction. *Eros* can delight in conquest, whereas justice entails “getting it” that the other person should be treated as one would wish to be treated oneself. *Eros* chafes under the bonds of obligation, whereas justice involves respecting the call of duty. *Eros* can be unstable, whereas procreative justice calls for fidelity. *Eros* may seek additional partners, whereas procreative justice calls for exclusivity. *Eros* may seek concealment, whereas procreative justice calls for the development of a successful relationship with society. *Eros* can lead to shame, whereas procreative justice deserves honor. *Eros* can lead to a loss of self-possession and the debasing of the character, as Pinocchio discovered when he realized that he and his friends were turning into donkeys.  

The erotic man, Plato emphasizes in the *Republic*, may throw off the discipline of reason in favor of a dreamy mentality swayed by sensations and emotions, whereas justice requires sustained consideration of the other person’s good. The erotic man may experience a “blurring of form” and suffer the “forgetting of form,” whereas justice calls for focusing on relevant distinctions and bearing them steadily in mind. After he has lived a life governed by pleasure for a while, the erotic man may develop an antipathy to many important distinctions:

“[I]f someone says that there are some pleasures belonging to fine and good desires and some belonging to bad desires, and that the ones must be practiced and honored and the others checked and enslaved . . . . [he] throws his head back and says that all are alike and must be honored equally.”

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34 Epicurus defined *eros* as “a strong appetite for sexual pleasures, accompanied by furor and agony.”

35 See generally HAROLD B. SEGEL, PINOCCHIO’S PROGENY: PUPPETS, MARIONETTES, AUTOMATONS, AND ROBOTS IN MODERNIST AND AVANT-GARDE DRAMA (1995)(arguing that puppets and marionettes were used as a metaphor by the modernist movement for the helplessness of man under the influence of various powerful forces, including *eros*).


The Special Goods. -- From resolution of the special problematic can emerge a unique two-stranded affiliation between the procreators. Their benevolence derives an intensity from its erotic roots unknown to an affiliation of sculptors. They give themselves to one another physically, and in unique psychological ways as well.

Their mutual knowledge is unique. Procreative affiliates can “know” in the biblical, carnal sense. They may experience the heightened, rhapsodic awareness which emerges during courtship. They draw one another into unfamiliar territory:

“Heterosexual union is imbued with the sense that your partner’s sexual nature is strange to you, a territory into which you intrude without prior knowledge and in which the other and not the self is the only reliable guide. This experience has profound repercussions for our sense of the danger and the mystery of sexual union.”

The couple awakens from the dreamy eroticism of Plato’s Republic and open their eyes to very real projects calling for very clear thought. They eschew the concealment of erotic shame and display a social side.

The procreators are benevolent by procreating: each gives the gift of procreation to the other. They know one another better by procreating: each knows the other in the capacity of procreator and, eventually, through the eyes of their offspring. They confirm their fidelity through commitment to the

39 See generally JOHN PAUL II, THE THEOLOGY OF THE BODY: HUMAN LOVE IN THE DIVINE PLAN 99 (1997)(hereinafter referred to as “Theology of the Body.”)(“To know” (jadaq) in biblical language does not mean only a purely intellectual knowledge, but also concrete knowledge, such as the experience of suffering (cf Is 533), of sin (Wis 3:13), of war and peace (Jgs 3:1; Is 59:8). From this experience moral judgment also springs: ‘knowledge of good and evil’ (Gn 2:9-17.”).

40 Roger Scruton, Sacrilege and Sacrament, in THE MEANING OF MARRIAGE: FAMILY, STATE, MARKET & MORALS 3, 26 (Robert P. George & Jean Bethke Elshtain, eds., 2006). Scruton adds: “Marriage has grown up around the idea of sexual difference and all that sexual difference means.” Id.
offspring. They extend their affiliational benevolence and knowledge and fidelity on into future generations.

“In their descendants they find
a rich inheritance, their posterity.
Their descendants stand by the commandments
And, thanks to them, so do their children’s children.”

3. The Special Importance of a Good Model. -- Few of the basic problems of life, least of all this one, are amenable to solution solely through the perusal of books and articles. The most prominent media of our own age present, in any case, a highly distorted set of impressions, tending to degrade the erotic and to disconnect close personal affiliations from the requirements of justice. An offspring – today’s offspring more than those of earlier eras – therefore needs a model from an early age and for a long time. It is his “due.” A procreative affiliation is therefore fully just only when it models a solution to the great problem of integrating erotic and responsible love, and only when it provides a guide to participation in the special procreative goods.

41 Cf. Don Browning & Elizabeth Marquardt, What About the Children? Liberal Cautions on Same-Sex Marriage, in THE MEANING OF MARRIAGE: FAMILY, STATE, MARKET & MORALS 29, 50 (Robert P. George & Jean Bethke Elshtain, eds., 2006)(referring to “the classic definition of marriage as a public institution that integrates sexual desire and affection into the heavy-duty tasks of generativity and kin-based intergenerational child care”).

42 ECCLESIASTICUS 44 10-13 (NEW JERUSALEM BIBLE, 1985 ed., at 1141).

43 See Roger Scruton, Sacrilege and Sacrament, in THE MEANING OF MARRIAGE: FAMILY, STATE, MARKET & MORALS 3, 16 (Robert P. George & Jean Bethke Elshtain, eds., 2006):

“There is a picture of human sexuality propagated by the media, by popular culture, and by much sex education in our schools, which tries both to discount the difference between us and the other animals and also to remove every hint of the forbidden, the dangerous, and the sacred. It is a picture that makes no place for shame, save as a lingering disability, and which describes the experience of sex as a kind of bodily sensation. Sexual initiation, according to this picture, means learning to overcome guilt and shame, to put aside our hesitations, and to enjoy what is described in the literature as ‘good sex.’ The function of sex education in schools . . . is to rescue children from the commitments that have been attached to desire by displaying sex as a matter of cost-free pleasure.”

44 Cf. PETER N. STEARNS, ANXIOUS PARENTS: A HISTORY OF MODERN CHILDREARING IN AMERICA (2003)(observing that parents today are more doubtful of their own competence as parents than parents of earlier generations may have been).
4. *Marriage.* -- Marriage between a man and a woman uniquely satisfies this requirement. As a leading authority puts it:

“Children learn about male-female relationships through the modeling of their parents. Parental relationships provide children with a model of marriage – the most meaningful relationship that the vast majority of individuals will have during their lifetimes.”45

Marriage between a man and a woman uniquely involves procreative eros: the kind of love which can produce a baby. Marriage between a man and a woman uniquely deploys procreative justice to extend and integrate the activities suggested by procreative eros. Marriage between man and a woman thus uniquely embeds procreative justice, giving it a special heart and spirit.46

**PART FIVE: SAME-SEX AFFILIATIONS**

Same-sex affiliations are not procreatively just under the criteria set forth above. This is the case even in the instance of those same-sex affiliations which most nearly resemble traditional marriage.

I. The First Six Requirements.

Same-sex affiliations are likely to fail to satisfy some of the first six requirements. “[P]eople who conceive a child . . . will . . . be the most invested in its nurture”47 and people who procreate an offspring who will procreate the way they do have a greater investment still.

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47 Don Browning & Elizabeth Marquardt, *What About the Children? Liberal Cautions on Same-Sex Marriage*, in *THE MEANING OF MARRIAGE: FAMILY, STATE, MARKET & MORALS* 29, 36 (Robert P. George & Jean Bethke Elshtain, eds., 2006)(referring to the quoted proposition as a “widely held assumption” but, apparently, embracing it. The authors also note “the observation that . . . children themselves want – indeed, often long – to be raised by those who gave them life.”).
If homosexual conduct is wrongful and homosexual inclinations are disordered, as many thinkers from Plato (in the *Laws*) through Kant have maintained, and as many religious bodies such as orthodox Judaism, Catholicism and Islam have taught, then an affiliation which includes homosexual practices and stimulates homosexual inclinations is deleterious to the parties. Affiliates who sustain an association which is bad for both of them cannot be entirely beneficent. Their affiliation would, therefore, fail to satisfy the third requirement of procreative justice. Similar conclusion apply if, as findings from the social sciences indicate, same-sex affiliations are unstable and not conducive to good health.

Social orders may reasonably refuse full recognition to affiliations which are bad for their members. In a society which does refuse such recognition, noncompliant procreative affiliations likely violate the sixth requirement of procreative justice.

B. The Seventh Requirement.

Same-sex relationships always fail to satisfy the seventh requirement of procreative justice. They either leave *eros* aside altogether or they involve *eros* in a special way, divergent from the form it will take for the great majority of the offspring and thus unsuccessful as their model for the great problematic of procreative responsibility. Such associations cannot model the erotic benevolence unique to men and women, nor can they exemplify the inter-gender knowledge which is unique to men and women. They do not recapitulate and ramify themselves, generation after generation.

PART SIX: THE INJUSTICE OF RECOGNIZING SAME-SEX AFFILIATIONS AS MARRIAGES

When a legal or governmental authority identifies same-sex affiliations as marriages, it acts unjustly, contravening all three of the basic principles of justice.

It does harm insofar as people follow its guidance. (Part Seven discusses the extent to which that may occur.) It deprives people of their due when an authority or leader, charged with responsibilities comparable to that of a lifeguard, a trustee or a guardian, misleads those who rely on him. It falls short as regards the third aspect of justice by treating as the same things that are different, and by conflating procreatively just affiliations with associations which fall short of fulfilling the requirements of procreative justice.
PART SEVEN: HOW EXTENSIVE MAY BE THE HARM ENSUING UPON LEGAL RECOGNITION OF SAME-SEX MARRIAGE

When a leading legal authority mandates that same-sex associations be treated like marriages, the consequences are extensive. The full ramifications must take generations to unfold, but some shorter-term consequences can be identified by considering developments in Massachusetts (and in those few foreign jurisdictions whose legal institutions have, as in Massachusetts, mandated legal recognition of same-sex marriage).48

I. Legal Recognition of Same-Sex Marriage Encourages Social Recognition of Same-Sex Marriage.

A. In Higher Education and Among the Social Elite.

Legal recognition of same-sex marriage encourages social promotion of same-sex marriage in prominent universities. Here is one instance from Massachusetts:

“Last weekend, on the Fourth of July, Cambridge saw one of its most prominent lesbian couples marry at Memorial Church in Harvard Yard. Professor Diana Eck, of Harvard Divinity School, and her partner, the Reverend Dorothy Austin, who ministers at the famed church, wed amid a crowd of well-wishers that included Supreme Judicial Court chief justice Margaret Marshall. And not only did the brides purposely choose Independence Day for their nuptials, the ceremony's final hymn was "America" ("My Country 'Tis of Thee").”49

48 This Part Seven considers developments in the social order, leaving aside the (likely extensive) further legal developments. Marriage is the axle upon which the entirety of family law pivots, so its definition is likely to affect doctrines pertinent to visitation rights and custody, for example. Hundred of doctrines outside of family law which refer to marriage and the family are likely to be affected as well. Marital status has been identified as implicated in more than a thousand federal laws. See Letter from GAO Associate General Counsel Barry Bedrick to the Hon. Henry Hyde dated January 31, 1997, GAO/OGC-97-16; GAO-04-353R, Defense of Marriage Act (January 23, 2004); letter from GAO Associate General Counsel Dayna K. Shah to the Hon. Bill Frist, dated Jan. 23, 2004.

B. In the Schools.

Legal recognition of same-sex marriage encourages the promotion of same-sex relationships by public school teachers and administrators. A few months after the Massachusetts same-sex marriage decision, Thomas W. Payzant, Superintendent of the Boston Public Schools,\(^\text{50}\) issued a memorandum to the Boston School System announcing that “[t]his is a historic moment in our Commonwealth and in our country” and that the decision “continues to have, a profound impact on our civil life and discourse” which “filters through our society and our schools.”\(^\text{51}\) Superintendent Payzant’s memorandum establishes a “zero-tolerance policy”:

“Administrators, teachers, parents and students are reminded that no action or speech will be tolerated that results in harassment, discrimination, bias or intimidation toward any member of our community for any reason, including his/her sexual orientation or perceived sexual orientation. We urge school staff to report and act promptly on any incidents that may create a climate of intolerance in our schools. Such incidents will be considered a serious violation of the BPS Code of Discipline . . . and will result in discipline up to and including expulsion of the responsible student or termination of the offending employee.”

After this, a teacher would take her career into her hands by encouraging an examination of the cons as well as the pros of same-sex marriage.\(^\text{52}\)

A further development has been the introduction of vivid and sometimes graphic presentation of various sexual practices, as indicated in the following interview on National Public Radio program of an eighth-grade teacher in Brookline, Massachusetts:


\(^{51}\) Memorandum dated May 13, 2004 (first paragraph).

\(^{52}\) The way the memorandum is drafted, she violates the rules even if she has no bias; all she need do is say something that causes someone else to develop bias. If the teacher says nothing at all, she still may have to worry about an obligation to blow the whistle if one of her students says something unpleasant (“report and act promptly on any incidents that may create a climate of intolerance”). And as to advising a student about concerns in his social life, the mind boggles. He better not exhibit bias in the way he conducts it.
“[Teacher] In my mind, I know that, `OK, this is legal now.' If somebody wants to challenge me, I'll say, `Give me a break. It's legal now.'

“SMITH: And, [she] says, teaching about homosexuality is also more important now. She says the debate around gay marriage is prompting kids to ask a lot more questions, like what is gay sex, which [she] answers thoroughly and explicitly with a chart.

“[Teacher]: And on the side, I'm going to draw some different activities, like kissing and hugging, and different kinds of intercourse. All right?

“SMITH: [She] asks her students to fill in the chart with yeses and nos.

“[Teacher]: All right. So can a woman and a woman kiss and hug? Yes. Can a woman and a woman have vaginal intercourse, and they will all say no. And I'll say, `Hold it. Of course, they can. They can use a sex toy.

...[A]nd we talk -- and we discuss that.”

The effect of the Massachusetts same-sex marriage decision has been to encourage the indoctrination of public school students in the merits of same-sex relationships; and in other jurisdictions, similar pressures have been felt:

“In the wake of Canada's legalization of same-sex marriage, a human-rights complaint has been filed in British Columbia alleging the absence of pro-homosexual instruction in public schools is a denial of equal treatment. . . [Petitioner] wants [the curriculum] changed to include: ‘Queer history and historical figures, the presences of positive queer role models . . . the contributions made by queers to various epochs, societies and civilizations, and legal issues relating to [lesbian, gay, bisexual, transgendered] people, same-sex marriage and adoption.”

53 All Things Considered, September 13, 2004.

II. Legal Recognition of Same-Sex Marriage Can be Predicted to Lead on to Degradation of Beliefs and Practices as to Heterosexual Marriage and the Family.

The Massachusetts same-sex marriage decision and others like it project what might almost be called a theory of marriage, or at least a certain “take” on how to think about that institution and what it means. That “profound impact on our civil life and discourse” to which Superintendent Payzant portentously referred would include an impact not only on practice but on thought and belief as well.

The marital morality of the Massachusetts and other same-sex marriage authorities displays several important features. The first might be called “positivism”: the view that things all come down to the mandates of the State. The Massachusetts court announced:

“[T]he terms of marriage – who may marry and what obligations, benefits, and liabilities attach to civil marriage – are set by the Commonwealth.”

“[T]he government creates civil marriage.”

Statements like these close the door firmly on the nonpositive roots of the institution of marriage and on nonpositive, extra-state authorities for defining and understanding it; sources widely relied on in judicial authorities until recent decades, namely custom, nature, tradition, and religion. Indeed, statements in some same-sex marriage cases bluntly excoriate the marital beliefs of the citizenry. “[L]ike it or not,” a Hawaii court announced, “constitutional law may mandate … that customs change.”

“[R]ooted in persistent prejudices,”

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55 Memorandum from Thomas W. Payzant, Superintendent, Boston Public Schools dated May 13, 2004 paragraph one.


58 Id.

concludes the Massachusetts court.\textsuperscript{60} “[F]undamentally repugnant,” states an Ontario court.\textsuperscript{61}

The second feature of the same-sex marriage authorities might be called “deconstruction.” This feature arises from the circumstance that Massachusetts has adopted no comprehensive definition of marriage, either as a matter of the common law or as a matter of statute; people have generally understood what marriage meant through custom, tradition, religion, and morality. The Supreme Judicial Court’s same-sex marriage decision called everything into question, put everything up for litigation and challenge, and closed the door on the most obvious bases for reaching a solution. Marriage is something defined by the state, we are told; but then the state does not define it.\textsuperscript{62}

A third feature of some judicial authorities in this area is a derogatory attitude towards moral normativity. The Massachusetts court, in its same-sex marriage decision, referred to the desirability of “defin[ing] the liberty of all, not . . . mandat[ing] our own moral code.”\textsuperscript{63} Justice O’Connor’s concurring opinion in Laurence v. Texas seeks “other reasons . . . to promote the institution of marriage beyond mere moral disapproval of an excluded group” (turning, instead, to “state interest”).\textsuperscript{64} Note that this third feature is not merely an extension of the first: it seems to be not only social morals, or religious morals, or objective ethical morals which are to be avoided, but even positive, legal moralizing (“our own” moral order). Fixed standards of conduct are to be generally suspect, it seems, and subject to derogation when they conflict – as they almost always do – with liberty very broadly defined as “the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”\textsuperscript{65} Law and morality survive only in those (undefined and shifting) circumstances in which it serves the “interests” of the state.

\textsuperscript{60} Id., 798 N.E. 2d at 968.

\textsuperscript{61} Halpern v. Canada, 215 D.L.R. (4th) 223 (Can.), par. 243 (“Any justification based upon the belief that heterosexual relationships are superior to same-sex relationships would be rejected as being ‘fundamentally repugnant . . . .’”).

\textsuperscript{62} There is some language in Goodridge which aims at a definition: “the voluntary union of two persons as spouses, to the exclusion of all others.” 798 N.E.2d at 969. This impossibly vague language – leaving aside the use of the term “spouses,” which is in this context a redundancy – would turn a two-person law partnership or hiking trip into a marriage.

\textsuperscript{63} Id., 798 N.E. 2d at 948, quoting Laurence v. Texas, 123 S. Ct. 2472, 2480 (2003).

\textsuperscript{64} 539 U.S. 558, 123 S. Ct. 2472, 2487-88 (2003).

The fourth feature, inevitably, is confusion and the possibility of infinite malleability in the meaning and conduct of marriage, both socially and as a matter of law. “Civil marriage,” the Massachusetts court announced in its same-sex marriage opinion, “is an evolving paradigm.”

In Toronto recently, two heterosexual men, still heterosexual, each still interested in finding a woman to love, decided to take advantage of that jurisdiction’s same-sex marriage law and marry one another. (For the tax advantage, they said). They have been advised by counsel that they are eligible to do so. Same-sex marriage authorities say little or nothing about the purposes and activities which couples need to perform or intend.

Not only same-sex marriage but also heterosexual marriage and the terms which define the traditional family tumble into this post-modern void. The barriers between marriage and cohabitation collapse. The furthest extension to date may appear in a recent provision in Ontario where the legislature, under the prodding of a judicial mandate to revise marriage-related terminology in its statutes, has redefined “spouse” to include people who are not married. See Bill 56 (2004), amending the Employment Standards Act to make the term “spouse” include:

“either of two persons which . . . live together in a conjugal relationship outside of marriage.”

Your spouse might be someone you are not married to? The ultimate social consequence of the same-sex marriage authorities may be the destruction of the sense of the ridiculous.

The trajectory leads on to the recognition of all sorts of “pair-bonded” structures -- including those intended to be temporary rather than permanent. It implies the “nonjudgmental” attitude recommended by a sociologist:

“[Policymakers] could attempt to create policies to support and help people in whatever type of social structures they create, giving equal credence and respect to divorced and married people, cohabiting and


married couples, to children born out of wedlock and children born to married couples, and to married and unmarried parents.

“. . . [S]ocial policies need to support people as they enter into, reside within, and move to whatever pair-bond structures fit their needs and goals. . . . Social policies must be based on respect for people’s right to choose . . . to live . . . within any particular pair-bond structure.” 69

And there seems to be no reason why only pairs should be supported and recognized. Polygamy – the absurdity to which same-sex marriage advocates resisted being reduced in argument even a year or two ago70 – has recently come to be treated by leading authorities as eligible for legal recognition. A respected Boston columnist sees it on the horizon.71 The head of the ACLU now favors its protection.72

As legal authorities and social policy makers lose their grasp on any coherent and common understanding of marriage, that institution forfeits its definitive status as a matter of general opinion and social practice as well. Marriage becomes harder and harder to distinguish from nonmarital cohabitation. Custom, tradition, and religion may be ruled out as determinative and the slight definitive language in the same-sex marriage authorities is unhelpful.73 Both kinds of relationship are based on “choice.” The most vivid example is afforded by the Ontario amendment, quoted above, which makes one of the Ontario statutes define “spouse” to include people who are not married.


70 “Advocates of same-sex marriage, who held their own State House briefing yesterday, dismissed the argument [that SSM leads to the recognition of polygamy] by their opponents as ‘an old myth’ that has little to do with fundamental rights of people. Carol Rose of the American Civil Liberties Union of Massachusetts said homosexuality is about ‘who they are,’ while multiple marriage ‘isn't about who you are.’” Raphael Lewis, “Opponents Warn Lawmakers that Polygamy Will be Next,” BOSTON GLOBE, February 10, 2004 http://www.boston.com/news/local/massachusetts/articles/2004/02/10/opponents_warn_lawmakers_that_polygamy_will_be_next/ (accessed October 9, 2005).


“In response to a student's question about gay marriage, bigamy and polygamy in certain communities, Strossen [the President of the ACLU] said the ACLU is actively fighting to defend freedom of choice in marriage and partnerships. ‘We have defended the right for individuals to engage in polygamy,’ Strossen said. ‘We defend the freedom of choice for mature, consenting individuals.’”

73 See note xx, supra.
In Denmark, where same-sex marriage provisions have been in place for many years, cohabitation is now a “normatively accepted option.” The practice has increased in frequency.\textsuperscript{74}

In America and other countries, cohabitation often leads to family turbulence and parental split-ups. Authorities note:

“Fully three-quarters of children born to cohabiting couples are likely to see their parent split up before they reach age sixteen, whereas only about a third of children born to married parents face a similar fate.”\textsuperscript{76}

“Cohabiting is not the functional equivalent of marriage. . . . Children with cohabiting parents have outcomes more similar to the children living with single (or remarried) parents than children from intact marriages. . . . Couples who live together . . . report relationships of lower quality than do married couples – with cohabiters reporting more conflict, more violence and lower levels of satisfaction and commitment.”\textsuperscript{77}

Following parental split-ups, children are often raised by reconstituted couples, preponderantly by their biological mother and her new partner. “A large body of social scientific evidence now shows that the risk of physical or sexual abuse rises dramatically when children are cared for in the home by adults unrelated to them, with children being especially at risk when left at home with their mothers’ boyfriends.”\textsuperscript{78}

\begin{itemize}
\item \textsuperscript{74} Cecilie Whehner, Mia Kambskard & Peter Abrahamson, Demography of the Family: The Case of Denmark, http://www.york.ac.uk/inst/spru/research/nordic/denmdemo.pdf (accessed October 9, 2005).
\item \textsuperscript{75} Id.
\item \textsuperscript{76} DAVID POPENOE & BARBARA DAFOE WHITEHEAD, SHOULD WE LIVE TOGETHER? WHAT YOUNG ADULTS NEED TO KNOW ABOUT COHABITATION BEFORE MARRIAGE 8 (2002), quoted in note 66 of The Future of Family Law, supra.
\item \textsuperscript{77} WILLIAM J. DOHERTY et al., WHY MARRIAGE MATTERS: 21 CONCLUSIONS FROM THE SOCIAL SCIENCES 7-8 (2002)(footnotes omitted), quoted in The Future of Family Law: Law and the Marriage Crisis in North America 25 (Dan Cere, Principal Investigator, 2005).
\item \textsuperscript{78} The Future of Family Law: Law and the Marriage Crisis in North America 39 (Dan Cere, Principal Investigator, 2005).
\end{itemize}
CONCLUSION

Marriage in its traditional form is, structurally, a procreatively just affiliation. Same-sex relationships are not. Legal recognition of same-sex relationships as marriage can be predicted to ramify in its consequences, encouraging educational and social promotion of same-sex affiliations. It can also lead to the degradation of opposite-sex marriage, with predictable adverse consequences for the future, including the procreative future, of subsequent generations.