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SYMPOSIUM: MORAL REALISM AND THE RENAISSANCE OF TRADITIONAL MARRIAGE

KEYNOTE ADDRESS: THE CASE FOR THE FUTURE OF MARRIAGE

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I. INTRODUCTION

Thanks. It's wonderful to be here. I can tell you, this is one of the warmer and more welcoming audiences that I've spoken to this year on the subject. The subject today is a renaissance of marriage. What are the reasons to be optimistic, other than, of course, most of us are coming off the high of an election in which the issue of marriage emerged as an important issue in the presidential election and in which Americans in widely varying geographic regions expressed their support for the traditional vision of marriage as the union of husband and wife?

There are now, seventeen states that have passed state constitutional amendments¹ defining marriage as the union of husband and wife. And the margin of victory has ranged from Mississippi, where it passed 86% to 14%, to the tighter race in my home state, my native state, of Oregon where it passed by a margin of 57% to 43%. The latter is, I think, extremely significant, not only because Oregon is a reasonably liberal state, a blue state, but because it's also one of the most secular states in the United States. It has one of the highest

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¹ In April 2005, Kansas became the eighteenth state to pass a state marriage amendment.

proportion of individuals who are unchurched and have no particular religious affiliation.

The victory for marriage in Oregon is even more remarkable because the advocates of gay marriage, recognizing the impossibility of victory in most places, conceded eleven states and concentrated their financial and political resources on defeating the state marriage amendment in Oregon, which has a history of defeating state referendums that are considered anti-gay.

And so I can tell you, a few weeks ago I was pretty worried. I was getting phone calls. Marriage supporters “went dark” three weeks before the election. They basically ran out of money in Oregon, and were being outspent radically.

But it turns out that, even under those circumstances, in a secular, blue liberal state, a relatively cheap media market where advocates of gay marriage massed their support, gay marriage still lost and lost badly, by a measure of 57% to 43%. That’s about the best that same-sex marriage advocates can do at the polls.

We’re here today to reflect on some other reasons to be hopeful about marriage. I guess I want to offer you, let’s call it, seven other reasons to be optimistic about the future of marriage in this country.

II. SCIENTIFIC EVIDENCE.

I’m a person who has spent, not the last year or the last five years, but the last fifteen years engaging in a marriage debate in this country. It had nothing to do with gays and lesbians. This debate is about a marriage crisis in America, one that wasn’t caused by gays and lesbians: our high rates of family fragmentation, divorce, and unmarried child bearing, which have led to really astonishing proportions of children who are raised in fatherless homes, generally without close and warm relationships with their fathers.

These profound social shifts triggered a marriage debate, not only among politicians and the general public, but among social scientists and family scholars. There is now a veritable mountain of social science research evaluating the effects of this vast social experiment with family structure on child well-being.

So, reason number one to be optimistic about the future of marriage is that, as we go to make a marriage argument in the public square, in addition to common sense, our religious traditions, and the natural law, we now have an enormous body of scientific evidence.² We now have not dozens, not hundreds, but literally thousands of studies across different

² Much of the information that is referred to throughout this address can be found in LINDA J. WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF* (2000).

disciplines, psychology, epidemiology, communications, sociology, and economics, among others. To sum up this vast literature: in every way that the social science knows how to measure, men, women, adults, and communities are better off if parents get and stay married, provided those marriages are not high conflict or violent.

When it comes to adult well-being, men and women who marry live longer, they're physically healthier, they have better mental health, fewer signs of mental illness and distress, less anxiety, less depression, less hostility, they're happier than people who aren't married, they make more money than otherwise similar workers who are single, and at the same income levels, married couples acquire more wealth than otherwise similar couples or singles who are not married. To top it off, adults who are married even have better sex more often than people who are single, over the long run.

When it comes to children, the results are similarly clear: every bad thing that can happen to a child happens more often when men and women don't get and stay married. We're talking about a wide range of indicators such as poverty, physical illness, infant mortality, mental illness, teen suicide, substance abuse, and school failure. Children whose parents don't get and stay married, for example, are more likely to be held back a grade, more likely to drop out of high school, and more likely to be in special education. If they graduate from high school, they are less likely to go on to college, and if they go to college, they are less likely to graduate from college.

Years later, one can tell the difference in terms of the likelihood of attaining a high-status job, or any job at all, between people who had the good luck to have parents who got and stayed married versus children who, through no fault of their own, were deprived of this important form of emotional, psychological, financial, human, and social capital.

Children whose parents did not get and stay married have higher rates of premature and promiscuous sexual activity, higher rates of sexually transmitted diseases, higher rates of unmarried pregnancy and childbirth, and as they go on to marry they have higher rates of divorce themselves. So they are less likely as adults, again on average, to enjoy the enormous benefits of a stable, happy, satisfying marriage themselves.

Children raised outside of marriage also have higher rates of juvenile delinquency, conduct disorders, and adult criminal behavior. In fact, one of the better studies looks at 6,000 boys from their early teens and follows them until their early thirties and finds that, even after you control for things like race and income and family background, boys who are living without their fathers, either through divorce or unmarried childbearing, are two to three times more likely to commit a crime that leads them to end up in jail.

But let me pause and say—because no doubt there are some of you in this room who are children of divorce—that most children of divorce do not experience any one of these “social science” pathologies. The fact that your parents did not get and stay married is a risk factor, not a sentence of doom. But most children of divorce come to all the tasks of life with an additional level of difficulty that is not of their own making. Yes, children of divorce can and routinely do overcome difficulties and go on to live successful, satisfying lives. It is important to remember that. But we don’t ordinarily consider it to be the job of parents to burden their own children with additional difficulties and suffering on the grounds that the human spirit is resilient and able to overcome difficulties.

It is important to remember that, even when children of divorce don’t fall into one these social science pathologies (which the majority of children do not), they still do face an additional level of difficulty and suffering. Even among advantaged, middle class, white children of divorce, the majority of children raised outside of a marriage report as adults that they do not have a close, warm relationship with their father. They’re about twice as likely as other children to lose their dads.

Children of divorce are also only half as likely to have a close, warm relationship with their mother, by the way, which is probably due to the enormous additional stresses of single mothering. The mother-child bond is more durable, so the absolute levels of “mother-loss” are much lower.

So, if you want to turn the bad news into the good news, think of it this way: whereas before we had common sense, the wisdom of our religious traditions, and the experience of individual children, we now have the additional power of social science on our side to tell us that, yes, marriage really does matter and whether parents do this thing of getting and staying married for their children is extremely important.

III. CONSENSUS IN FAVOR OF THE INTACT MARRIED FAMILY STRUCTURE

On top of the actual social science evidence, we have other good news that was certainly not true when I started into this other marriage debate in the late 1980s and the early 1990s. We now have a broad consensus across ideological lines (putting aside the gay marriage debate) that marriage really does matter, that family structure matters, and that fathers and mothers are important for children.

Take, for example, the recent research brief by Child Trends, which is about as mainstream a child research organization as one can find. Child Trends summed up the social science evidence this way:

Research clearly demonstrates that family structure matters for children, and the family structure that helps the most is a family headed by two-biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and

children in stepfamilies or cohabiting relationships face higher risks of poor outcomes. . . . There is thus value for children in promoting strong, stable marriages between biological parents.³

Let me pause, because this goes to the heart of the public argument about same-sex marriage. When we talk about the benefits of marriage for children, it's important to realize that these marriage benefits are not conferred in any direct, immediate way by the legal status of marriage. The marriage benefits documented by social science are the indirect result of marriage's capacity to unite the child's own mother and father in a permanent, reasonably harmonious union.

I think that, as a direct result of the gay marriage debate, there has been a real misconception promoted about the idea of marriage benefits. Whereas ten years ago we understood there were significant marriage penalties in our tax and welfare structure, I think most Americans have been persuaded that there's something called benefits attached to marriage. And if one defines benefits in any way that's consistent with ordinary language, i.e. something that looks like a check or financial incentive and that exists for, if not for every single married couple, for at least one person in every single married couple—something that's never a penalty and is always a benefit for at least one person in the married couple—then there are almost no legal benefits to marriage.

The legal incidents of marriage are mostly responsibilities, not benefits. Even the ones that are commonly cited as marriage benefits, health insurance for example, are not universal. Marriage can bring a person access to his spouse's medical plan, but marriage can also cut off a person's access to a variety of government-sponsored health benefits.

California has just moved to a full civil-unions regime where same-sex couples get all the state's legal incidents of marriage if they sign up to be registered partners. And as always happens when this happens, there are suddenly stories in the press about nice young gay couples who are considering de-registering because they fear their medical or other benefits may be reduced as a result of marriage:

But Randy Cupp of San Francisco has decided not to register with his partner: "If you're going to give us the responsibilities, you need to give us the benefits as well," said Cupp. Cupp and his partner Jeff Tarvin are both HIV positive and on disability. If the law were to treat them like a married couple, they would risk losing their Medi-Cal health insurance and/or lose income from California's disability

³ Kristin Anderson Moore, et al., *Marriage from a Child's Perspective: How Does Family Structure Affect Children and What Can We Do About It?*, Child Trends (2002), at 1, available at <http://www.childtrends.org/PDF/MarriageRB602.pdf>. This research brief on family structure does not compare outcomes for children in same-sex couple households to children in other types of families. *Id.*

income program because their combined incomes and assets would be used to determine their eligibility for government benefits.⁴

When a couple marries, their income and assets become treated jointly by the law; the couple usually gets tossed up into a higher income bracket, and with their new higher joint income and assets, they may easily be taxed at higher rates and also disqualified for many government benefits as a result, including state Medicaid and disability benefits.

There certainly are individual cases in which a couple would be better-off financially because of some legal consequences of marriage. But overall, let's put it this way: if you're thinking of getting married because you imagine that the government is going to send you something that feels like a check as a result, think again and do something else. It just isn't there.

Which is not to say that the law doesn't play an important role in sustaining marriage, because I believe it does, just like the law plays an important role in sustaining the telecommunications industry, even though it doesn't create the telecommunications industry by offering financial incentives to enter it. Getting the law of economics right matters a lot because a market-based society needs the right legal structure in order to function well. The same is true of marriage.

Nonetheless, the benefits of marriage that have been documented from social science are not a consequence of the legal structure of marriage in a direct way. Otherwise, children in remarried families would benefit just as much. The way the law helps benefit children and the way marriage benefits children is by holding together the two people who make the baby into one family system where they love each other and the baby, too. That's the heart of how marriage benefits children.

IV. THE UNIVERSALITY OF MARRIAGE AS A SOCIAL INSTITUTION

The third reason to be optimistic about the future of marriage is that marriage is a virtually universal human social institution. Let me say that again. *Marriage is a virtually universal social institution.* There are really not that many human universals.

Now, I have to pause and say that marriage as a universal social institution doesn't look very much like our own marriage tradition, which is deeply rooted in Jewish, Christian, and I think Roman ideas about marriage. But everywhere, in wildly disconnected societies, people have something called marriage. And it's always about bringing together a man and a woman into a public, not just a private, sexual union so that the socially valued children of these unions have both a mother and a

⁴ Rona Marech, *Gays Cautious About New Partners Law: Some Opt Out, Fearing Legal or Financial Troubles*, S.F. CHRON., Sept. 20, 2004, at A1.

father, so that the rights and responsibilities of the mother and the father towards each other and their children are publicly and not just privately or personally defined.

Now, I'm not arguing that just because marriage has always been this way, it cannot be changed; that would be un-American. What I want to say is something different: there aren't very many human universals. So one has to ask oneself, why is it in all these wildly different societies, small tribal mountain societies and jungle societies and desert societies, and across human history in cultures completely disconnected from each other, why does this idea of marriage arise again and again?

I think the answer is rooted in three ideas that together form the heart of marriage as a universal human idea. The first is that sex between men and women makes babies. Every society has to have a social institution that grapples with sexual relationships between men and women, that tries to discourage childbearing in contexts where children are likely to be harmed.

The second reason is that a society can't just be antinatalist. Societies need babies. Every society needs to wrestle not only with discouraging babies in contexts where they are unlikely to flourish, they need a place where men and women can be encouraged to come together to make the future happen, to make the next generation. A culture that doesn't attempt this, in some form, is simply unlikely to survive over the long-term, or compete with societies that do. The second reason that marriage is a universal human idea is that societies need babies.

The third is that those babies need their father as well as their mother. They need them both. They have the right to the love, care, and attention of both their mother and their father. Marriage is the word for the institution that attempts to link sexual love between men and women with the love between children and parents. The third reason marriage is a universal human institution is that children need mothers and fathers.

Now, it's interesting that all of these core marriage ideas are now contested in the public square. There are many, many people who will tell you that, because we have contraception and/or abortion, it's no longer true that sex makes babies. I sometimes wonder about my intellectual career. I spend my time grinding out in great detail the social science evidence for things that everybody used to know.

And I can tell you, in the last twenty years I've attended numerous conferences where men with Ph.D's who were formerly middle-aged, but now that I'm middle-aged must be getting pretty old, have announced that we've separated sex from reproduction. And, yet, my experience as somebody who came of age in Yale's class of '82, at the height of the post-Roe, post-Pill sexual revolution, is that girls just keep getting pregnant anyway. The men with Ph.D's keep announcing we've separated sex from

reproduction, but the pregnancies just keep on happening. And, in fact, if one goes to the social science literature, one finds the enormous confirmation of this basic truth.

For example, *Family Planning Perspectives*, which is one of the premier journals, published a study analyzing rates of contraceptive failure and found shocking news that unintended pregnancy is not rare; in fact, it is extremely common. Consider these statistics from an analysis of the 1995 National Survey of Family Growth, based on a nationally representative sample of 10,847 women between the ages of fifteen and forty-four: almost a third of all births between 1990 and 1995 were unintended. Three-fourths of births to unmarried couples were unintended by at least one of the parents.⁵ By their late thirties, according to another study, 60% of American women had had at least one unintended pregnancy. Almost four in ten women aged 40-44 had had at least one unplanned birth.⁶

Another analysis of the 1995 National Survey of Family Growth concluded:

The risk of failure during typical use of reversible contraceptives in the United States is not low—overall, 9 percent of women become pregnant within one year of starting use. The typical woman who uses reversible methods of contraception continuously from her 15th to her 45th birthday will experience 1.8 contraceptive failures.⁷

Now, it's certainly true that contraceptive technology has reduced the likelihood that any given act of sex will result in a baby. But people who engage in extended non-marital sexual careers frequently get pregnant. And that means, to put it back in the perspective of the marriage debate, that it is perfectly rational for society to prefer the marital unions between men and women to other kinds, because virtually every child that is conceived by a married couple will begin its life with a mother and father already committed to caring for it, and the vast majority of children born to other sexual unions will not.

V. SOCIETIES NEED BABIES TO SURVIVE

Does society still need babies? At the same time that we had a sexual revolution, we experienced enormous fears of a population explosion. And it's taken a while for the news to settle in that, among the

⁵ J. Abma et al., *Fertility, Family Planning, and Women's Health: New Data From the 1995 National Survey of Family Growth*, Nat'l Ctr. for Health Statistics, VITAL HEALTH STAT. 23(19) (1997).

⁶ Stanley K. Henshaw, *Unintended Pregnancies in the United States*, 30 FAM. PLAN. PERSP. 24 (1998).

⁷ James Trussell & Barbara Vaughan, *Contraceptive Failure, Method-Related Discontinuation and Resumption of Use: Results from the 1995 National Survey of Family Growth*, 31 FAM. PLAN. PERSP. 64, 71 (1999).

developed world, the real problem we now face is the threat of depopulation.

This is not true in America, interestingly enough. We are the only developed democracy that has replacement level birth rates, with the exception I think of Israel, and perhaps Ireland. The European Union as a whole now has birth rates of 1.42 children per woman; 2.1 is the birthrate needed to replace the population in modern economic conditions. The United Nations defines very low fertility as less than 1.5 children per woman. So, Europe as an average has very low fertility, and many of the nation states are towards a low one child per woman, which implies cutting a country's population in half with every generation. And a number of them, Spain, Italy, Portugal, and Greece, are already very close to one child per woman, 1.2 or 1.3 children per woman.

There is now a booming literature among scholars of the consequences of very low fertility for the military, for the economy, and for the creation of the welfare state.⁸ The Japanese health minister two years ago issued a warning that, if things don't change there, the Japanese people are going to become extinct. It's pretty clear that, although making the case that higher birth rates are always better than lower birth rates may be difficult, every society needs to reproduce if it's going to survive. And the fact that child bearing is now more optional provides, I think, a stronger argument for the need for a social institution which actively encourages childbearing.

VI. THE DANGER OF SAME-SEX MARRIAGE

I'm not worried that 200 years from now we'll see all around the globe, in the progressive vision, a regime of gay marriage, because I think it's inconsistent with human nature and with what is necessary for human civilizations to perpetuate and transmit themselves. I'm a little more worried about the legal and social consequences for religious groups that try to hang onto, and transmit to the next generation, their marriage traditions under a legal same-sex marriage regime. But speaking as a Roman Catholic, I know that God has promised the Church will survive.

I can't be similarly sure that American civilization is going to end up, despite all its other virtues, being one of those civilizations that is still around, still transmitting itself 200 years from now. I'm pretty sure that, unless we win this marriage debate and strengthen marriage as a social institution, it won't be. Let me tell you why.

⁸ For a review of this literature, see, for example, Maggie Gallagher, *Does Sex Make Babies? Legal Justification for the Regulation of Intimacy in a Post-Lawrence World*, 23 QUINNIPIAC L. REV. 447 (2004).

What does it mean to go to same-sex marriage? What does it mean for marriage as a legal, public, shared institution? What does it mean to do it in particular on the grounds that restricting marriage to opposite sex couples is a violation of the civil rights of people who want to have same-sex couple relationships? I don't run away from that argument anymore; I really pull it out because I think it's really important. What it means is that people like me who think that children need mothers and fathers are like bigots, like the people who used to be opposed to interracial marriages. That's what it means.

How are we going to transmit to the next generation the idea that it's really important for boys to be raised to be good family men? How are we going to tell our daughters that it's really important to value a man and to look for good fathers for their children in a culture in which the idea that children need mothers and fathers is now privatized? Clearly, if we have gay marriage, I can't go into a room and say "children need mothers and fathers and marriage is how we get there," because the laws of the state are going to tell us, at a minimum, that marriage has nothing to do with that particular mission.

So this conjugal view of marriage is certainly going to be privatized under same-sex marriage legal regimes. But if we do move to gay marriage as part of the civil rights campaign, this conjugal view of marriage is also going to be *stigmatized* by the state. I think the *Loving v. Virginia*⁹ analogy, if one thinks through what it really means for civil society, is not very comforting. Because of *Loving v. Virginia*, we now don't allow bigots who oppose interracial marriage to have radio broadcasting licenses. The law does not allow such bigots to obtain tax-exempt status for their organizations. We don't allow schools that teach this kind of bigotry to accredit professionals, counselors, or teachers.

So, if as advocates say, opposition to gay marriage represents a similar kind of bigotry, at a minimum, the soft power of the state is going to be used to repress people who disagree. And, again, I don't understand how we are going to create a shared public culture committed to the idea that children need moms and dads if the law is actively stigmatizing this idea. I think you will find it takes relatively little legal pressure to get religious organizations to downplay the marriage message because religious organizations have broad multiple missions that can be put at risk.

Groups like Focus on the Family in Canada are facing a delicate balancing act. If they stand up on these issues and speak clearly on them, a whole bunch of other ministries are going to be in danger, right? So, good people in that situation find it hard to make a case for inviting legal persecution and the shutting down of the other good work they do.

⁹ *Loving v. Virginia*, 388 U.S. 1 (1967).

On the other hand, back to the positive side of the register. One of the most hopeful signs to me as someone who believes that intellect matters, that ideas matter a great deal, is that in the last year when I've been taking this strong marriage argument for our marriage laws to colleges, to law schools, to major media, to political figures, and to private scholars meetings, what I've found is there has been virtually no serious response to this argument by the advocates of same-sex marriage. It's an argument they have to ignore, sweep under the rug, or refuse to take seriously, and I think that's a sign of ultimate success.

I think 2003 may end up being the high-water mark of support for gay marriage. Advocates for gay marriage spent twenty-five years working out highly sophisticated arguments that ordinary people have found hard to rebut. Custom and tradition is always less articulate than novelty, at least at first. But as we've begun to put the marriage argument forward more strongly in the public square, what I have found among intellectual elites is either silence or an increased intensity of name-calling, which is a real sign of inability to engage in a rational argument. I think that's a very good sign.

VII. THE NEXT GENERATION

Reason number six to be optimistic about marriage—and, again, I'm going to be countertype here—is the next generation. The most powerful argument gay marriage advocates now make is that same-sex marriage is inevitable because the young people are for it: if necessary, all we have to do is wait for you old fogies to die off and then we win.

I wish Josh Baker, who is going to be on the panel tomorrow, was here, because he's just completed a very careful analysis of next generation opinions on gay marriage.¹⁰ We find that among the young adults, the most neutrally worded polls suggest the majority are currently opposed to same-sex marriage. I suspect that, even among these young adults, as more of them move through the life-cycle, getting married and having children, their opinion will continue to shift in more "traditional" directions.

Finally, I think the best news about the next generation has gone utterly unreported. It's what's happening to the "next" next generation, which is teenagers, thirteen to seventeen-year-olds. Since about 2000, there's been a sharp increase, a sharp and steady trend of increasing opposition to same-sex marriage among the next generation to the point where currently sixty-three percent of teenagers oppose same-sex marriage. That's about the same as the population as a whole.

¹⁰ Maggie Gallagher & Joshua K. Baker, *Same-Sex Marriage: What Does the Next Generation Think?*, iMAPP (Nov. 23, 2004), available at <http://www.marriedebate.com>.

Now, I'd be happier if that opposition to same-sex marriage were the same as the levels opposition to polygamy and adultery is, which is around the ninety percent level, but it's a good start. It shows you what happens when people begin to seriously engage the marriage issue and also what will fail to happen if we fail to seriously engage the issue.

VIII. THE OPPORTUNITY TO WIN THE MARRIAGE DEBATE

Finally, reason number seven to be optimistic about marriage. Fundamentally, this is what I believe about the gay marriage debate. There's only one way to win it, and that is to win the larger marriage debate about the meaning and purpose of marriage in our society. Winning the marriage debate requires reconnecting up marriage to its great historic task of channeling the desires of people attracted to the opposite sex into the kinds of unions that aren't damaging to themselves or to their children.

So the bad news represents as well a great historic opportunity. The short-term outlook is, I think, still seriously grave, by which I mean that it's quite possible that, in two years, a third of the country will be living under a gay marriage regime (for example if New Jersey, New York, and California join Massachusetts in judicially-imposed gay marriage regimes).

As serious as the risks of the same-sex marriage debate are, there is also an immense new opportunity here in bringing to the fore, to the burning front and center, this question of what marriage is, what it's for, and why we care about it.

We can win this marriage debate ultimately, but we cannot win it if we are only *against* something. The only way to win the marriage debate is for the same churches, parents, families, and community groups who are frantically organizing against same-sex marriage to exhibit through this process the same commitment to strengthening marriage as a whole, as a social institution, so that more and more children, not fewer of them, are raised by their own mother and father united in a decent, good enough, average, loving marriage.

Thank you.

QUESTIONS AND ANSWERS

UNIDENTIFIED SPEAKER: I teach in high school, and one thing I do see is that if we don't control the indoctrination of sex to our children, those children will be taught any kind of sexual immorality. Even the State of Virginia, which is a red state, has "comprehensive" sex education. I just moved to Virginia from Maryland, and the county that I moved from requires all incoming freshmen to put condoms on models. A lot of Christian families and other families send their kids to public

school, but if we don't separate sex and the State, we're still going to have problems down the road.

MS. GALLAGHER: There are a lot of sources of problems, and I think that schools are one of them. I think probably the worst problem with the schools is the way they tend to demoralize parents and clergy. I actually believe that parents are more influential than any other person and that actual people are more influential than the media, not that I wouldn't do something about the media if I could, too. But the worst problem is when we have these global problems that we need to solve and we end up demoralizing people from doing the things that they actively need to do.

My favorite study on this looked at abstinence among children who most of us would say have hardly a shot, the parents that you think would be least influential, mostly poor, single mothers in Philadelphia, mostly black. And this study found that there were three variables that influenced whether the teenagers were virgins: one was having a close, warm relationship with their mother, the second was having the teenager being clearly aware that the mother disapproved of sexual activity, and the third is not discussing contraceptives.

And each of these individually doubled the likelihood that these poor black teenagers would be virgins. If you had all three of them, you had a close, warm relationship with a mother who strongly communicated that she expected her child not have sex and did not discuss contraceptives, they were twelve times more likely to be virgins.

So even if parents do everything they can do, there are going to be a lot of problems left. But part of solving the problems means getting everyone who can do something to do it. That means schools need to do their part, that means parents need to do their part, that means clergy I think need to be standing up a lot stronger, that means that public policy has to do its part, because I think there's a role for all those things.

UNIDENTIFIED SPEAKER: Do you find in your study a difference between single mother families as opposed to the remarriage kind of family where there's a stepparent?

MS. GALLAGHER: Children in remarried families have higher family income, but they do not do any better on average than children raised by single mothers. And I suspect this reflects an averaging, you know. If you think about the problem with remarriage, sometimes it adds another adult who's committed and helpful, but it can also do a lot of other things. It can pull the mother away from the child, it can create loyalty conflicts in the child, either between the mother and stepparent or stepparent and original father.

In remarriage, the child is often placed into an additional cycle. There's the step-siblings, which, again, is just kind of weird. Your

mother falls in love with someone and all of a sudden you have new family members appearing out of nowhere.

Sometimes people make it work and it's a benefit for the child, but particularly I think if it incites loyalty conflicts with the child or pulls the mother away from her relationship with the child, then it's a detriment. There is some evidence that single mothers who do not cohabit or marry do reasonably well. –But, basically you're asking a lot of a mother to really have no social life for eighteen years while she raises her children. One of the advantages of marriage is it combines romantic life and your family life in a way that makes them kind of reinforcing to one another, whereas, if outside of an intact marriage, these things pull apart and they cause potential damage.

UNIDENTIFIED SPEAKER: Is there a relationship between strengthening individual marriages by making each marriage a profound commitment, and strengthening marriage as an institution by having many marriages? Is there a strategy in harmonizing or somehow working with that which seems to make a relationship?

MS. GALLAGHER: Well, I think that it is an interesting question. I think the answer is ultimately no. I think that the importance of increasing commitment and support in society for the commitment warps any effect of finding exactly the right partner to marry, but there are limits to this. One of the advantages of marriage for children is that it introduces certain selection effects into who has children with whom at what point in their life. And this is not to be joked. I mean, having a child with someone that you've picked out as a keeper for the rest of your life and who's promised to stay with you is a better sort of thing than someone who you thought was attractive enough for Saturday night, or even to live with on a temporary basis but you're not sure if he's a keeper. So, I think that's important.

But we have a higher than ever age of first marriages, unprecedented since we've been keeping records. My impression is people know each other for longer, particularly because they've often been living together.

None of this appears to be very significant for divorce, again, with reason. I mean, there's pretty strong evidence that teenage marriages are really too fragile to be a good idea, which means you have the social problem of getting people to abstain from sex longer than in some points in history. But the research suggests that there's no advantage, in terms of reducing your divorce risk, to postponing marriage past your early twenties if you're a woman or around twenty-five if you're a man. And even in the early twenties, the majority of those marriages appear to last.

So I really put a lot of emphasis on marriage education. I spoke to Kings College recently in New York, a small Bible evangelical college

associated with Campus Crusade for Christ. And the question was, "How do you avoid divorce?" And they said, "you just don't go down to the divorce court."

In research that I did with a group of scholars on people who were unhappily married that didn't divorce, and what turned their marriage around, one of the big answers which we didn't really expect but which people just told us in these focus groups was, "we just kept putting one foot in front of another. After a while, the kids got older, he made more money, and I got tired of being mad all the time so I gave it up." If you're really committed to permanence, you work things out because there isn't a good alternative to loving each other well.

UNIDENTIFIED SPEAKER: Some people suggest that, since there is adoption among homosexual couples, they should be allowed to marry each other because there's no reason for them not to have marriages, and heterosexual people have children in or outside of marriage. How do you answer that?

MS. GALLAGHER: I know exactly what you mean. Let me answer in two ways. The first question is whether ideas matter. I think you have to take seriously the idea that the law embodies certain social norms. Moreover, the advocates of same-sex marriage know this because that's precisely what they want. The argument about benefits is really a side effect, and the firm rejection of the offer of civil unions shows that advocates of gay marriage are highly aware of the symbolic educational importance of the law.

Most intimate personal relationships are totally unregulated by law, right? The more intimate, the more personal, the more intrinsically valued, the less likely the law is to have anything to do with that relationship. The question to be explained is, why is marriage the great exception among adult relationships? And I think the answer is that sex makes babies, that society needs babies, and children need mothers and fathers. In every society, people who are attracted to the opposite sex need a social institution that is directed at managing this phenomenon, which you can call procreativity.

But everything is different between sex with men and women making babies on an irregular basis. The moral nature of the sexual act changes and the social consequences of the sexual act change. I gave a version of this in a Boston Federalist Society meeting on a panel with Mary Bonauto, who is a very impressive speaker, by the way. I was very impressed by her. She stood up and said, "children need mothers and fathers and I'm sure we have lots of ways to accomplish that." I looked at her and I said, "no, no, this is it. If marriage is not the social institution directed towards this end, what is?" And the answer is, "there isn't any." So, that's the longer argument.

The second argument is a reprise, which is to say, what does it mean to say there's going to be something called gay marriage that affects gay people and then something else called straight marriage or traditional marriage that affects straight people. I don't believe this. Evan Wolfson doesn't believe this. There's going to be one thing called marriage, and it's going to be something different. It will no longer be related to the idea that children need mothers and fathers or creating the next generation. Now, how do I know that? I know it because of the logic of language; in fact, ideas do have consequences and you have to make them take responsibility for the idea they're advocating, which is that there's no difference between two men or two women raising children and a husband and wife.

If there's no difference between two fathers and two mothers, and they're all just as good, distinguishing between these is an act of discrimination. If you have the law and society committed to this norm, it's going to have consequences. And it's going to particularly have consequences because the long arm of the law is going to be used. We're making a promise to gay couples that their marriages are going to be treated to the extent of the law just like anyone else's marriage. And since the vast majority of the American people do not believe this, the law is going to have to work really hard to re-educate Americans through its institutions in order to deliver on this promise to same-sex couples.

It won't happen all at once. It took many years, twenty or thirty, before *Loving v. Virginia*¹¹ led Oral Roberts University to end its ban on interracial dating, which it did primarily because of the tax-exempt status. It didn't take an actual case. You've got a whole functioning university and that one totally immoral rule; you don't threaten your whole big enterprise in defense of this one rule. So, the law will be very affected on this idea.

The third reason I know it's true is: what do you have to do to get to same-sex marriage? Every court decision that gets to it first says marriage doesn't have anything to do with procreation, and then says that the law doesn't care about family structure.

Now, one of the ways they say that is the other issue you raised of adoption, and I think this is just a simple category error. Marriage is about trying to manage this phenomenon of opposite sex attraction towards a social ideal. Adoption is one of the ways you cope with the fact that life isn't always ideal. In adoption, you have a child who not only doesn't have two parents committed to caring for it, the child doesn't even have one parent committed to caring for it. And the state may make a variety of judgments about what's the best for that child because it's obligated to act in the best interest of that individual child. And if the

¹¹ *Loving v. Virginia*, 388 U.S. 1 (1967).

state decides it's better for a child to have a gay parent than to be in a foster home, you or I may disagree, but to make that statement has nothing to do with undermining the idea that there's a special importance on marriage. And that's why it's really the only adult relationship—intimate relationship—that has this kind of special status.

