

## **What Marriage Is, by Ryan Anderson:**

As we head into the next session, it is my pleasure to introduce to you Ryan Anderson who is here to speak with us in the question what is marriage. Ryan is the William E. Simon Fellow at the Heritage Foundation in Washington DC. And he's also the founder and editor of the Public Discourse which is the online journal of the Witherspoon Institute in Princeton, New Jersey. And I'm just going to throw a little side here on his bio. Because I'm one of the people, I write for the Public Discourse sometimes and I just want to point out that Ryan is also somebody who, in addition to his academic study skills and his speaking skills, has really great editing skills; so he's been a pleasure to work with. He is the co-author of the book "What is Marriage-Man and Women A Defense", together with professor Robert George of Princeton University and Sherif Girgis who is here with us today, and who will be leading one of the breakout sessions in the afternoon. Ryan received his bachelor's degree from Princeton University and he graduated Phi Beta Kappa and Magna Cum Laude. He is a doctoral candidate right now in political philosophy at the University of Notre Dame and his research focuses on social justice issues. Ryan has, especially in the past few months, had a vast range of media experiences: more than I can list this morning. Piers Morgan Live, which some of you may have seen; CNN Fox News, MSNBC and his work has appeared in the New York Times and the Washington Post and Wall Street Journal and many more. So it's going to be my pleasure to turn the microphone over the Ryan and after Ryan's talk we will have time for Q/A and just a reminder we'd really like to focus that time on questions, I think, to take advantage of the opportunity we have with speakers who are here today. Thank you so much and please welcome Ryan Anderson.

Thank you. Thank you all for having me. I think the first place to start is by thanking Judy and Irene and all the students at Stanford who made this event possible. It's only because of them that we are here. And they really serve as role models for students on all campuses on how to make a conference like this take place even in the face of a hostile campus environment. It's good that we're having this meeting at a University. That means that I get to speak from a podium rather than a seat in the audience, frequently what happens on the cable TV shows. It's also good that we're at a University because it means that we're not going to engage in the type of name calling and empty sloganeering that also takes place on the TV talk shows. Too many people on both sides of this marriage debate resort to empty platitudes and empty sloganeering and to name calling in a way that's rather unhelpful and rather unbecoming of civility.

So with that let me say three things that I'm not going to say in the time that we have together this morning. I think Professor Budziszewski has already touched on most of things so I don't need to. I'm not going to say anything about morality, anything about theology, or anything about tradition. There are some people who talk about marriage and talk about the same sex marriage debate in terms of a moral argument, in terms of the theological argument, in terms of a traditional argument that a Burkean conservative might say because marriage has been this way, this is how it ought to be. None of those arguments will be one that I am making. I'll be making a philosophical argument with some appeal to social science, largely to get at a public policy purpose of marriage. The

question that I want to ask and then answer is, “What is marriage from a policy perspective? What is the state’s interest in marriage? How does the state define marriage? How should the state define marriage and why?”

Now I would image that everyone in this room is in favor of “marriage equality”. The other side uses the slogan and it’s a great slogan. It’s a wonderful piece of advertising. It fits on a bumper sticker. You can put an equal sign up as your Facebook icon. And yet it’s completely vacuous. Everyone in this room is for marriage; we all want the law to treat all marriages equally. What we may disagree with one another in this room about is what sort of relationship is a marriage? So the book that Sherif and Professor George and I co-authored is called “What is Marriage” because that’s the question that you have to answer before you can then get to considerations of equality. If you’re a lawyer, before you can get to considerations of equal protection of the law, you have to know it is that the law is trying to protect equally. So what is the marital relationship? Because even those who want to redefine marriage to include the same sex couple will draw certain lines draw certain lines between what sort of relationship is a marriage, what sort of a relationship is not a marriage. And if we’re going to draw lines that are based on principle, if we’re going to draw lines that reflect the truth, we have to know what sort of a relationship is a marriage and what sort of other consenting adult relationships are non-marital. So that’s what I’m going to get at in the time that we have here this morning.

Now when we were doing research for the article and then for the book, we tried to read the best philosophers and political theorists who were arguing in favor of redefining marriage. We wanted to see on their account of marriage, what is their definition. One of the philosophers we looked to is John Corvino; he has become a friend of Sherif and mine. and he was saying that what is distinctive about marriage is that it establishes your relationship with your number one person and what sets marriage apart from other relationships is the priority of the relationship. It’s your most important relationship, again because it’s your number one person that the marital relationship establishes. So what sets marriage apart from other relationships will be the intensity of the emotional bond, the priority of the emotional commitment.

My co-authors and I think this simply gets marriage wrong because it collapses marriage with companionship in general. it simply makes it the most important companionship relationship, the one that takes priority, the one that is most intense. So it cannot actually take into account any of the distinctive features of marriage requires nor can it explain why government should be in the intense companionship business. Why is government in the marriage business if this is what marriage is.

So let me say a few words about that, and I’ll place a challenge to the people in the audience. When we get to the Q and A I invite you to give an answer to these questions. If you want to redefine marriage to include the same sex couple, why would marriage, how you understand it, require that that relationship be permanent, monogamous and exclusive, and be the type of relationship that a government takes interest in? Because on this account of marriage, where marriage is an intense, emotional union of consenting adults, something that can be formed by consenting informed adults, this is something

that can be formed by more than two people. there is nothing about intense emotional unions as such that says it has to be between two and only two. Threesomes and foursomes can just as easily form an intense emotional, an intense romantic, an intense care-giving relationship. There is nothing in principle that would require twos.

Likewise there is nothing about that union that would say that it has to be sexually exclusive. Some people might argue that you can actually have an enhanced emotional union, an enhanced care-giving relationship if spouses were free to seek sexual satisfaction outside of marriage. And lastly, there would be no reason in principle why the sexual union should be permanent, since emotions come and go, love waxes and wanes. So what would demand the pledge of permanency? But lastly, why would government even be in the marriage business on this definition of what marriage is? If marriage is just about the love lives of consenting adults, why can't we take the state out of the bedroom? And yet those who would redefine marriage want to put the government into more bedrooms. Why? So that's the question. Answer? The title question of our book, "What is Marriage?" in a way that can account for the distinctive marital norms, and can explain why marriage is a distinct public policy issue in the first place.

So having said that, having said a little bit about why we think the opposing view fails, let me construct our argument about marriage and I am going to do this in three steps:

First I'm going to say what we think marriage is from a philosophical perspective. Next I'll say why we think marriage matters from a policy perspective and then lastly I'll say three things about likely consequences of redefining marriage. So those will be the three broad points, the outline of the talk:

- What is marriage?
- Why does marriage matter?
- What are the consequences of redefining marriage?

We take our bearings from Aristotle in our article and in our book and how to analyze any sort of a community. Aristotle tells us that you can analyze any community by looking at the actions that the community engages in, the goods that the community seeks, and in the norms of commitment that shape that community's common life together. So to take a non-controversial example, let's take a university community. A university community—the members of the community—engage in academic action.

What sort of things are academic actions? Your professors will research and write academic articles and academic books, they will then put these in the syllabi not just to get their commission from having you buy their overpriced text books but also so that you can then read the benefit of all the hours of research that they put in while writing their dissertation and researching for their next scholarly publication. So students read articles and read books. Professors then deliver lectures, students attend lectures and take notes, students then write term papers, professors then grade term papers, students come to office hours and discuss their papers with their professors. These are the sorts of activities that constitute an academic community as an academic community. Beer pong and football games are nice additions but they don't go to the heart of what makes a university a university. What goes to the heart are these intellectual activities.

Now what are these intellectual activities ultimately seeking? What is the good that these are oriented towards? They're oriented towards the good of the truth. They are oriented towards the good of knowledge. All of the exercises that your professors make you engage in, the homework assignments, the term papers, the research projects, all of the work that they themselves do in writing those books and papers and delivering those lectures, is all about eliminating ignorance from our lives and coming to a better appropriation of the truth of the matter so that we can have a better understanding of what is really true so that we're not living in ignorance, we're not living in superstition, we're not living with just preconceived opinions. That's what all these actions are oriented towards. They're oriented towards the good of knowledge, the good of the truth.

So then lastly, what kind of commitments does this require of a university community?

This is where all the commitments for academic integrity and academic freedom and the honor code come into play. This is why you can't plagiarize your term paper. This is why you have to cite all of your sources. This is why if you're a scientist, you want to cite all of the data, not just the data that might support your hypothesis. You want to cite all of the data, including the data that might call it into question, because if another researcher comes along and then writes a review of your paper, and says well here are some of the weak spots, here's an alternative way of analyzing the data, you don't view it as an attack, you view it actually as something liberating. They've corrected a mistake in your argument; they've helped you see the fullness of truth. They've helped you eliminate a piece of ignorance out of your life. This is why when your professors make comments on your papers, you shouldn't view it as an attack, you should view it as they're trying to help you to write better papers so that you can better understand the truth.

Okay, so that's how a university ought to exist. Unfortunately this isn't always true on college campuses. But we can use that same basic framework to analyze what makes the marital relationship marital. What makes marriage different than other forms of community? What makes the marriage community different than the football team and different than the university? And my colleges and I say that marriage is a comprehensive relationship. And it's comprehensive in exactly those three ways. It's comprehensive in the act that unites spouses, it's comprehensive in the goods that the spouses are inherently ordered towards, and it's comprehensive in the norms of commitment that it requires from the spouses. Let me say a few more words about each one of those three points. Professor Budziszewski did a wonderful job of explaining how we are mind/body unities. We are not ghosts and machines, we're not souls that are somehow inhabiting flesh and bones but we are a mind/body unity. So to unite with someone at a comprehensive way, we have to unite with them at all levels of their personhood. So this act that unites us comprehensively will be an act that unites us hearts, minds and bodies. And now the good that it orients us to won't be some particular singular good like the good of winning the next football game or the good of passing the next test. There will be a comprehensive good and we are good at that comprehensive good as professor Budziszewski mentioned as pro-creation understood as both the creation and then the rearing of whole new human organisms who are going to be raised

to participate in all of the forms of human goodness. It sets the trajectory of that marital relationship on this comprehensive plane. And then lastly, it calls for a comprehensive commitment; a commitment of both permanency and exclusivity. So that it's comprehensive throughout time and it's comprehensive at this moment of time by forsaking all others.

This is the most dense part of this morning's talk, so if you're having trouble, it will get much easier after this. It will get faster. It will be much more humorous and entertaining and enjoyable. I promise.

But let me say a few more words. Because this actually is getting to the bedrock of our argument. This gets to the core and it's something that are parents and grandparents and great grandparents just took for granted. So we are putting it into Aristotelian terminology, fleshing it out, requires some work from what used to be commonsense.

But let me say a little bit more. What is it? To do the analysis and the comprehensive act that spouses engage in? How is it that two people can unite comprehensively? We said that we want this to be an act that will unite us all levels of our personhood, so union of hearts, minds and bodies. Professor Budziszewski pointed out that with most respects, all respects except one, we're complete as individuals. With respect to locomotion, I can get up and walk across this platform on my own. With respect to digestion when we're done and we have lunch, I'm going to be able to eat my meal and digest it just fine as an individual. With respect to circulation, respiratory system—all those things were complete.

With respect to one biological function, we're radically incomplete. He mentioned it's the function of procreation. So that in that conjugal act, a man and a woman don't just rub up against each other or interlock as if I were to stick my finger in one of your ears.

They truly form a two-in-one flesh union. It's a single function, a single organism that's being formed by a mated pair. It's a single biological purpose that the twosome performs together as a unity. And so in the same way that you could say what is it about my body that makes me an individual? What is it about me that makes my muscles and my heart and my lungs and my stomach and my intestines not just a clump of cells, but makes them a unity—is that they're all coordinating with each other, they're interacting with each other towards a single unified biological end. The good of my continued existence.

In the same way that man and that woman, when they unite in the conjugal act, are coordinating towards a single unified biological purpose—that good of procreation. So the Hebrew scriptures when it describes them in an act as a two-in-one flesh union they're not just speaking poetically or metaphorically, they're revealing something true about human nature., and about what the sexual complementarity of a man and a woman allows for in terms of an act that can unite them. And now this act unites them so completely, that nine months later it frequently requires a name. The lovemaking act is also the life giving act. The act that unites a man and a woman as husband and wife is the same act that can make them mother and father. And so that begins to tell us something about what the marital relationship is ordered towards. You know what is the orientation, the orderedness, the good that the marital relationship seeks? In the same way that academic communities engage in academic actions that are ordered towards the

pursuit of truth and knowledge, in the marital relationship spouses engage in a marital act that is intrinsically ordered towards both their unity and the procreation and then the rearing and education of children. So it's a comprehensive action that unites them hearts, mind and bodies, that then orients them towards a comprehensive good, the procreation, the rearing, the education of raising of new human beings.

Then lastly, this can explain why marriage requires comprehensive commitments both exclusive and permanent. Now what sort of exclusivity does marriage call for? It's sexual exclusivity. You don't cheat on your spouse by attending a lecture with someone other than your spouse. You don't cheat on your spouse by playing football with someone other than yourself. But you do cheat on your spouse when you sleep with someone other than your spouse. In this view of what marriage is can explain why the type of exclusivity that marriage calls for is sexual exclusivity because it's the sexual act that transforms an ordinary friendship, a union of hearts and minds into the comprehensive domain of marriage. It transforms it into that comprehensive union of hearts, minds and bodies. So the conjugal act which is distinctive of marriage, which is why it is called the marital act, is the act that is exclusively reserved for the spouses. And that's the type of exclusivity that marriage requires. None of you are being unfaithful to your spouses by being at this lecture.

So then we could say what about the other comprehensive commitment. It's a comprehensive commitment that would require a permanent commitment. And I think again, Professor Budziszewski spoke very well about this—to give a total gift of the self requires that you don't hold anything back. If you have a sunset clause, if you have an escape date, if you have a way out then you're not really uniting comprehensively. To unite comprehensively requires an open ended commitment. So the type of comprehensive union that is being formed requires an exclusive, forsaking all others here and now but also into the future. Comprehensive throughout time and comprehensive at this moment in time.

This basic view of marriage that we run on Aristotelian grounds and using some Aristotelian jargon is something though that we find in the ancient thinkers, not just the Christians; but Socrates, Plato, Aristotle, Cicero, Musonius Rufus; it's something that we then find in the canon law, the common law, and the civil law of the church, common law of England, civil law of America. It's something that we see in thinkers like Augustine and Aquinas, Luther and Calvin but also enlightenment thinkers like Locke, Kant, Eastern thinkers like Gandhi. So what this suggests to my co-authors as well, everyone has a slightly different phraseology, a different way of putting the point. They have differences around the margins. Professor Budziszewski mentioned that for Locke, marriage indeed not require permanency. That after the children are grown, divorce may not in every case be immoral, but it still is an expectation for permanency for Locke. What this suggests to us is that there is something about the human good of marriage that different political, philosophical and theological communities have all been trying to articulate with greater or lesser success. And it's a bunch of different thinkers in different times and places have all been grappling with this same human reality of marriage. What is it about our nature as embodied males and females, the type of union we can form, the

type of good that that union can produce and the type of commitments that it requires. And that's what we're trying to articulate here and now so that our marriage policy can reflect that truth and to promote that truth.

And so that leads us into the 2<sup>nd</sup> part of my talk this morning. Why does marriage matter? Because you could say; alright Ryan that's fine and good, you, Sherif and Robby have articulated a distinctive type of human good. This comprehensive good that you call marriage. Why should anyone care? Why should the state in particular care? Why should the State of California? Why should the nation state? Why should politics care about this form of friendship, this form of relationship, this form of community? So let me say a few words about that. I work at a public policy think tank so this is where I do spend a bit of my time and attention. I think from a policy advantage point, marriage exists to unite a man and a woman as husband and wife so then they're then equipped to be mother and father to any children that that unity produces. It's based on an anthropological truth that men and women are distinct and complementary. It's based on the biological fact that reproduction requires a man and a woman. It's based on the social reality that children deserve both a mother and a father. Whenever a child is born, a mother will be close by. She's normally in the same room. That's a fact of biology. The question for culture and so therefore the question for policy is will a father be close by and if so, for how long? And marriage is the institution that different societies throughout time and across the globe have devised to maximize the likelihood that that man commits to that woman, permanently and exclusively, and then the two of them committed to one another, take responsibility to raise that child. Because when this doesn't happen social costs both for the spouses and for the child and for all of the community run high.

But before getting to the cost, let me say one more thing about why that union matters. One of the things we know from the social scientists is that there is no such thing as parenting. No such thing as parenting in the abstract. There is mothering and fathering. Men and women bring different gifts to the parenting enterprise. So in our book we quote David Popino a sociologist at Rutgers University in New Jersey. He says "The burden of social science evidence supports the idea that gender differentiated parenting is important for human development and that the contribution of fathers to child rearing is unique and irreplaceable." He then concluded; and this was in a literature review of all of this social science. At that point he says "We should disavow the notion that mommies can make good daddies; just as we should disavow the popular notion that daddies can make good mommies. The two sexes are different to the core and each is necessary culturally and biologically for the optimal development of a human being." And now, a sociology professor, a social scientist like this is always speaking in terms of one average for the most part. Social science laws are not like physical laws, the law of gravity. I can guarantee you that if I let go of this water bottle, in every time and place it's going to fall to the ground. Social science doesn't work that tightly. So this isn't to say, I think this would get to Professor Lopez' question earlier to Professor Budziszewski that there will be instances in which two moms or two dads or a single mother or a single father or a divorce and cohabiting relationship; all sorts of other arrangements, a child could turn out just fine. No one is denying that possibility. But it is to say that on average and for the

most part children who grow up without their married mother and father have a tougher road to hoe—that there are distinct challenges for a child in that situation. But let me say a word more about the parenting. What was Professor Copino trying to get at when he says “that we should disavow the notion that mommies can make good daddies and that daddies can make good mommies.” Let’s do this with a thought experiment. If I told you it’s Saturday morning and instead of being at an academic conference at Stanford; a five year old boy is at home in the living room wrestling with one of his parents. And this parent is teaching the five year old to be masculine without being violent. That’s it okay to put people in head locks but not to pull hair or bite or to gouge out eyes. Which parent is most likely on average and for the most part in the living room? Yeah, the laughter suggests that you know where I’m going with this. On average and for the most part that’s going to be the father. And it’s not because we have a gender stereotype that only fathers can wrestle on living room floors, it’s because this is what comes naturally to dads. It’s something that on average and for the most part fathers enjoy doing with their five year old sons in a way that mothers don’t. And it’s not to say that mothers can’t wrestle on living room floors but it’s on average for the most part they’d rather not. In the same way you could see it, it’s normally the father that’s throwing the baby up in the air while the mother is saying ‘Honey, not so high’. And I think this gets at exactly what Professor Budziszewski said. Mothers tend to be the more nurturing, the more protecting, the caregiving relationship in the marital relationship. The mother tends to be that more nurturing one. And it’s not to say that fathers can’t be nurturing but men tend not to be very sensitive. On average and for the most part that’s the way these things break down.

So then if that’s the kind of thought experiment about Saturday morning on the living room floor, we can step back and just analyze the social science. What we know from the social science is that Saturday morning wrestling session and then five years later playing catch in the backyard, and then five years after that, discussing how to go to your first high school dance. That that matters and the father is doing something for his son. Because boys who grow up without their fathers much more likely to commit crime and to end up in jail. What’s taking place with the father wrestling on the living room floor with his son is exactly channeling of those masculine aggressions that sometimes can take a destructive turn. If you don’t learn how to be physical without biting and pulling hair and eye gouging when your five, when your fifteen those same temptations might take you in a direction that ends up being criminal. And that’s one of the things that father’s distinctively do for their boys. Now fathers do something distinctive and complementary for their daughters. It tends to be the father who scares away the bad boyfriend. And this isn’t because mothers can’t scare away bad boyfriends; but the father tends to be a little bit larger than the mother, his voice tends to be a little bit deeper than the mother’s and he also was once a boy himself and he knows what the wrong sort of young man might be looking for in his daughter. So he tends to be a little more sensitive about not letting his daughter go out with the wrong sort of boy. And like Professor Budziszewski mentioned, the father who’s married to his daughter’s mother is also modeling what a good male/female relationship looks like. And so he’s modeling for his daughter which she should be looking for in the right sort of boyfriend who could become the right sort of husband. That’s one of the things that a father who is married to

his daughter's mother does for his daughter. So then when we take a step back and we look to social science, girls who grow up without their fathers are more likely to suffer or to experience an out of wedlock pregnancy because that father is the one who is more often than not policing her sexual relationships.

So alright, you could say that's fine and good, you've given us these thought experiments and you've told us a little bit about the consequences. Do you have any hard data? Let me read you a quote and then I'll ask you to tell me who spoke this quote. "We know the statistics, that children who grow up without a father are five times more likely to live in poverty and to commit crime, nine times more likely to drop out of school and twenty times more likely to end up in prison. They are more likely to have behavioral problems or run away from home or become teenage parents themselves. And the foundations of our community are weaker because of it." Who spoke that? President Obama. Peirs Morgan was a good second guess. President Obama. Now President Obama will be the first to tell you that growing up without a father doesn't mean that you're somehow destined and doomed for failure in life. He seems to be doing pretty well for himself.

But he would also be the first to tell you that his road was tougher, he had a steeper hill to climb. And this is one of the reasons why he's spoken out on the importance of fathers, because he's seen what it has done to so many children who grow up without their dad. It is why he has spoken about being, how important it is for him to be a good father to his two daughters. He's experienced firsthand the importance of fathers and it inspires him to be a good father. And I don't think in any way that this is to suggest that single mothers are somehow anything less than heroic. Frequently single mothers are the most heroic members of our society. When the father who abandoned the mother and abandoned the child, left them, they were the ones left to take responsibility and they do a heroic job in raising their kids. And frequently they would also be the first to tell you that they wish that man would have manned up, committed to them and committed to the child. And so I don't want to suggest in any way that this is to criticize other people but it is to say that marriage matters. And that the state has an interest in promoting marriage precisely to maximize the likelihood that every child is given the gift of being raised by a married mother and father. And at one point in American history this happened. We had out of wedlock child bearing rates in single digits up until the 1960s. More or less every child was born into and raised by their married mother and father. And in the past 50 years we see those numbers progressively decline. So that today 40% of all Americans, 50% of Hispanics and 70% of African Americans are born outside of marriage. And these children have done nothing wrong but they will have a much tougher chance in life.

Because what we know is that marriage is the institution—that when it's stable it protects children from poverty. It increases the likelihood of those children will experience social mobility. It protects children from committing crime and it prevents the state from having to pick up the pieces in a form of a welfare program or a police program. So more or less everything that you could care about, if you care about social justice and you care about limited government. If you care about the poor and you care about freedom, is better served by having a healthy marriage culture, a civil society institution that takes care of raising that next generation, than by having the government try to pick up the pieces of a broken marriage culture. That's why marriage matters.

So now to the 3<sup>rd</sup> and final part of this morning's presentation: What are the consequences of redefining marriage? Because you could say alright, I'm tracking with you. This is what marriage is, it's a comprehensive union, spouses engage in a comprehensive act or towards a comprehensive good. They commit to comprehensive commitments. It matters because that union of a man and a woman can produce a child. Children deserve a mother and a father fine and good. But how does allowing Adam and Steve get married impact any of this? How would redefining marriage to include same sex couples in any way take away from the public purpose of marriage? It's a good question; it's the next logical question. And let me say three things in response. In all three of my comments here we'll follow the general rubric of ideas have consequences, and bad ideas have bad consequences. And so for the first consequence I'll say is that if you were to redefine marriage to eliminate the norm of sexual complementarity, there would be no institution left in civil society and in public life that upheld even as an ideal that every child deserves both a mother and a father. The message that redefining marriage to make it a generalist institution would send is that men and women are interchangeable, that mothers and fathers are substitutionable and that two moms or two dads is the same thing as a married mom and dad. So the law would be teaching something about marriage and it would be teaching that marriage is much more about the desires of adults than about the needs of children. It recenters the marital relationship around adult romance, adult emotion, as I mentioned at the beginning, the priority of the intense emotional union of adults, rather than about the type of institution that can create new life and then unite that new life with the man and the woman that gave him or her new life. And if you doubt that the law has the power to teach like this, think about how we redefined marriage the first time, with the introduction of no fault divorce. In the common law tradition, marriage had a strong presumption of permanency. But on certain, under certain conditions, you could receive a bill of divorce. In the common law there were the three As of abuse, abandonment and adultery. Serious reasons for declaring your marriage to have to end, to have to cease. My spouse is abusing me, my spouse has abandoned me, my spouse has committed adultery on me. Those are the types of reasons that would take a marital relationship that was expected to be permanent till death do us part and declare it over. With the interruption of no fault divorce, a spouse could now abandon his or her spouse for any reason or for no reason at all. That's the idea behind no fault divorce; you don't have to site fault. And what we saw was that divorce, nearly, actually more than doubled—they've since lowered just a little bit. Because the law taught something. The law taught that marriage need not even aspire to be permanent. That you can get out of a marriage for trivial reasons. You can get out of a marriage for no reason. And the law shapes our culture, than shapes our beliefs and then our beliefs than shape our actions. This is a pedagogical function of law. The law functions as a teacher. And so what the law would be teaching here is that marriage is mainly about adult romance, not about stable family life for creating and raising children; and if you think about the statistics I mentioned just a moment ago; 40% of all Americans, 50% of Hispanics, 70% of African Americans born to single mothers and then all of the social costs that come with that in terms of child poverty, decreased social mobility, increased crime, decreased, or, umm, increased welfare study. It suggests to me that the most pressing social problem in America right now is the problem with absentee fathers. But how will we insist that fathers are essential when the law is teaching that fathers are optional? That's the

question for President Obama after he evolved on marriage. When you read back to him that quote about the importance of fathers, how can he insist and have the law send that message that fathers are essential when he now supports redefining marriage to make fathers optional? So that's the first consequence of redefining marriage. It changes the meaning of marriage and it changes what the law will teach about marriage which will in turn change what people believe about marriage which will in turn shape how people live out marriage.

The second consequence is that there is no reason to think that redefining marriage would stop here. And in fact, we now have three new words that describe the ways in which marriage activists would like to see marriage further redefined. And here, just think back, twenty years ago, maybe on this campus maybe it wouldn't have been unthinkable; but in most America, twenty years ago, the phrase "same sex marriage" was an oxymoron. If it's same sex, it's not marriage. So twenty years ago most Americans didn't really think that a same sex marriage was even an ontological possibility. In the same way now we have three new words that have been coined in prominent liberal publications and to me there is no logical reason once you get rid of the male/female aspect, for why these further redefinitions don't simply follow like night follows day. So let me run through these briefly. The first is a term "throuple". A "throuple" is a three person couple. You chop off the 'c' and you add on a 'thr'; "throuple". And my co-authors and I came across this term in New York Magazine. New York Magazine is a fairly standard issue magazine of thought for New Yorkers. It's a left leaning publication. And what is standard in New York today will become standard in the rest of America twenty years from now. And the argument here is that this is not a polygamous relationship. A polygamous relationship would be one man with this woman in a conjugal relationship, the same man with a different woman in a conjugal relationship, the same man with a 3<sup>rd</sup> woman in a conjugal relationship. Here it's a group marriage. This is a polyamory; many loves. And the idea here is that in a "throuple"; all three partners are married to each other. And polyamory can come in different sizes and shapes. You could have a foursome where they are all married to one another. Whereas the foursome I just mentioned, it's one man with three different women in three different conjugal relationships. The polyamorist relationship will just be a group marriage. And the general idea is if marriage is just about an intense emotional union where spouses have romantic feelings for each other and then pledge to take care of each other, they commingle assets, they live together, they enjoy economies of scale and they love one another so the other convenient but empty slogan is that love equals love. Why isn't the "throuple" in the same exact situation as the couple? And so if you go to court, and say we are suing for our marriage equality rights for the same sex couple, on what basis would you deny marriage equality to the same sex "throuple" or the opposite sex quartet. Because the way that we arrive at monogamy in western law and culture is that it's one man and one woman who can unite in the comprehensive act that produces new life and every new life has one mother and one father. And marriage is about uniting those people into a stable family life. But once you say the male/female aspect of marriage is irrational and arbitrary and bigoted, what is magical about the number two? What is the principled reason for denying marriage equality to threes and fours and more? So that's the "throuple".

The next term we came across was the term “monogomish” and this was in the New York Times in the Sunday Magazine. There’s probably no publication more prominent in terms of mainstream liberal thought than the New York Times Sunday Magazine. And this was in a profile of the Gay Rights Activist Dan Savage. And in a portion of that profile, the question was asked “What do you think straight couples will learn from gay couples once there is same sex marriage?” So how will gay marriage actually help traditional marriage? And he says “Well, what it will teach and what straight couples can learn is the virtue of the ‘monogomish’ relationship.” The term ‘monogomish’ is a play on the word monogamous. So Savage seems to be inclined to want to keep the twosome requirement, but he wants to get rid of the sexual exclusive requirement. He thinks that sexual exclusivity is outdated and inhumane. It’s an unrealistic expectation to think that you could have all of your sexual needs fulfilled by one person for the rest of your life and that this is what’s wrong with heterosexual marriage and that this is one of the things that heterosexuals could learn from homosexuals is the virtue of ‘monogomish’. And so he says that provided it’s an open and honest discussion where the spouses agree to it, there’s no coercion and there’s no deceit; spouses should be free to have a sexually open relationship. And he says that frequently this will actually enhance their emotional bond. That one of the reasons that lead to divorces are that spouses are not having their sexual needs fulfilled inside a marriage and so they seek sexual outlets outside of marriage and because they had this unrealistic expectation of sexual exclusivity, when the other spouse finds out about it their heart is broken. This is adultery, and then they file for divorce. He says it’s much better that we link adultery to sexual exclusivity. So long as you’re open and honest about it, no one’s heart will be broken if you said it’s okay to seek out a sexual relationship outside of marriage. That’s the “monogomish” relationship.

And the final term that we came across was the term ‘wedlease’. Wedlease is a play on the word wedlock. Wedlock suggests something that is strong and sturdy and permanent. Wedlease stands for the exact opposite. And this was a term that was introduced in the Washington Post. The Washington Post op-ed page is probably the most moderate of liberal publications. And it was published the month after the Supreme Court ruled on the Defense of Marriage Act case. So the timing was convenient. It was a lawyer writing and he was saying— just like you can lease a car or you can lease a house, you should be able legally to lease a spouse. And the argument here is that he might want to keep the twosome requirement, he might even want to keep the sexual exclusive requirement; he thought the permanent requirement was unrealistic and inhumane. The reason that divorce caused so much heartbreak and so much disruption is that spouses had an unrealistic expectation that they were going to live and love one other person for the rest of their life. And when this proved to be impossible, that’s when it causes the trouble. But if you only signed up for a ‘wedlease’ in the first place, if you signed up for a five or a ten year marriage license, which could then be renewed on good behavior, but if it wasn’t going well, it would have a natural sunset clause. You know, if after five years no harm, no foul. We only signed up for a ‘wedlease’. That’s the idea. And again, you see how this, like the ‘monogomish’ relationship, like the ‘throuple’ are all logical entailments of viewing marriage as just about consenting adult romance. Because consenting adult romance can come in as many sizes and shapes as adults can consent to.

And if love equals love, there would be no reason for public policy to treat certain sizes and shapes of consenting adult love differently than other sizes and shapes. To do so would be to deny marriage equality to those relationships that are 'throuples' or 'monogamish' or 'wedleases'.

Now I said I wasn't going to say anything about morality or theology or tradition as far as my argument goes in this lecture; but think about the public policy consequence of this.

And again remember the reason that the government is in the marriage business is not because it's a sucker for romance. The government is not in the marriage because it cares about my love life. Government is in the marriage because the sexual union of a man and a woman can produce a child and that child deserves a mother and a father and when this doesn't happen, social costs run high. So the government is trying to vindicate and protect the rights of children and minimize harm to community as a whole. But the 'throuple' and the 'wedlease' and the 'monogamish' relationship make it more likely that a man has multiple sexual partners in short lived relationships. That's what a 'throuple' with a 'wedlease' with a 'monogamish' condition attached to it would entail. And so it directly undercuts the public policy purpose of marriage in the first place. And yet all of those further redefinitions follow logically from getting rid of the male/female aspect of marriage. If you say that marriage has nothing to do with the union of a man and a woman and the procreative potential and capacity of that act and of that relationship, then what are you left with for saying that it should be a union permanent and exclusive of twosomes? It seems like you are left with a house of cards. So that's the second consequence. And the primary victim I should add onto that second consequence will be children. And so it's interesting that in the 'monogamish' discussion, the 'wedlease' discussion and the 'throuple' discussion, the authors themselves, when describing these three definitions, only spoke about the consenting adults and their love and their union.

They never spoke about what this would mean as a whole if society adopted these practices for orderly childrearing. That was an afterthought.

So the last consequence. The last consequence is the one that I actually think we are experiencing first. But I mention it last because I think that the other two are actually the more serious reasons for thinking about public policy in a marriage. But the last consequence is the one that we are experiencing first and this is the consequence for religious liberty. We've already seen in the state of Massachusetts, the state of Illinois and the District of Columbia that evangelical and catholic adoption agencies and foster care providers have had to shut down because the government said they had to place children with same sex couples on an equal footing as they did with a married mother and father. Now these agencies said we were not trying to get in the way of a same sex couple adopting from a different agency; they are free to adopt from the state agency, they are free to adopt from a secular humanist agency. We just want to be free to run our agency in a way that's in accordance with our beliefs. We think that children deserve to have a mother and a father and we want to run our agency in a way that we can look for married moms and dads for the children who have been entrusted to our care. These agencies say we have social science evidence that suggests that children do best with a mother and a father and we have the first amendment which protects our right to run our agency in accordance with our religious convictions about marriage. And in all three

jurisdictions the government said no. And in the state of Massachusetts it was particularly clear that this had nothing to do with funding, it only had to do with licensing. It's illegal to run an adoption agency without an adoption license and the state said we will not give you an adoption agency license unless you agree to place children with same sex couples on an equal footing as you do married moms and dads. Because if you don't you will be violating our non-discrimination statute. And discrimination is illegal in Massachusetts and you can't run an adoption agency that discriminates. So these agencies were forced to shut down. This does absolutely nothing to help orphans. It does nothing to help children who are in foster care. All this does is score a point for political correctness in an adult culture war. So one of the first victims again would be innocent children.

We've then seen cases of photographers and florists and bakers and innkeepers; more or less every professional that intersects with the wedding industry has now been hauled into court, brought up on charges of discriminating against a same sex couple. And what's worth pointing out here is not a single one of these cases, not a single case that has been brought to media attention that I know of and I try to follow the stuff pretty carefully; has been the case of a baker, a photographer, a florist and an innkeeper saying we don't serve gays or lesbians. There's not a single case of that that we know of. Each and every time it was only about same sex marriage. The photographer has no problem taking pictures at a birthday party for someone who is gay or lesbian. The baker has no problem baking the birthday cake for a gay or lesbian couple that's having a birthday party. The florist has no problem making a bouquet of flowers "Get Well Soon" if the person who is buying the flower happens to be gay or lesbian. The only objection they had was to using their artistic skills and talents to celebrate a same sex relationship as a wedding. Because that was a message that they didn't believe in and that they couldn't help celebrate. They said, We don't want to use God given talents to celebrate a relationship that we think tells a lie about God's intentions for marriage." And they simply asked to be left free to run their business in accord with their values. In all of the cases that have been cited, the same sex couple found someone else to bake the cake, to take the pictures, to make the floral arrangements. It's not as if conservative Catholics and Evangelicals have monopoly on wedding, photography and cake baking. You know it's not like we're in a situation where unless you make Elaine Photography take these wedding photos no one will be taking wedding photos. We're split on this issue. Half the country roughly is in favor of same sex marriage and of those people there are plenty of wedding vendors who are more than happy to make money providing their services for same sex weddings. And so there's really no need to have the government coerce the Evangelical photographer or the Catholic baker or the Mormon florist. We see it as time and time again that's what is happening. So the best know case is the case of Elaine Huguenin and Elaine is an evangelical photographer. In 2006 she politely declined to be the wedding photographer for a same sex commitment ceremony. As an evangelical, she said I can't do this because it would have me tell a lie about marriage. Wedding photography is a very involved process where the wedding photographer is really telling the story of the couple's love, telling the story of the couple's ceremony, telling the story of the celebration after the ceremony. She said that's a story I can't tell. And so the same sex couple went to a different photographer who actually charged them less money.

So they actually got a break here, but then they sued her shortly thereafter. And in 2008 the New Mexico Commission on Human Rights ruled against Elaine Huguenin saying that she had violated the human rights of the same sex couple and they ordered her to pay a fine of nearly \$7000. It was \$6900 and something dollars. She then appealed this to the New Mexico Supreme Court, the State Supreme Court. And she was represented by Alliance Defending Freedom—who we have some representatives of that organization with us here today. One of their lawyers spoke last night at the opening dinner. And what they are argued before the Mexican Supreme Court was that Elaine's not trying in any way to infringe the rights of the same sex couple. They're free to get married in the church of their choice or in the banquet hall of their choice, they can have a photographer, baker or a florist do it if they want to. But freedom is a two way street. We live in a live and let live society. Don't force Elaine to do this. And oddly enough, so the court decided against Elaine, the court sided with the same sex couple. And in one of the concurring opinions; one of the judges wrote that the price of citizenship is that Elaine has to take these pictures. And when I got to that part of his opinion I actually had to stop and reread it a couple of times. Because I thought I was misreading it, there was a missing comma or something. Because I thought he was going to say the price of citizenship is that the same sex couple should just go to a different photographer. But that's how in America live and let live, how we harmonize pluralism and competing values would play itself out. We don't coerce people into violating their consciences. But no, the judge says the price of citizenship is that Elaine has to leave her religious commitments at the door and take these pictures. And this is part of a larger trend that we've seen in general of people arguing that religious liberty just means freedom to worship. This is what's been at the heart of the Hobby Lobby in the Conestoga Wood case; the HHS Mandate cases. And it's that you have freedom to worship, what you do on Sunday morning, no one is going to interfere with, but once you step out into the marketplace Monday through Saturday, you have to leave your faith at the door. That if you're on Main Street or on Wall Street, you can't live out your faith in your profession. That's not what the free exercise of religion is about, that's what freedom of worship is about. The free exercise of religion as the founders intended it was that the state wouldn't coerce people into violating their consciences. But that will be one of the first consequences that we see with the redefinition of marriage coupled with the sexual orientation and gender identity non-discrimination statutes. Is that they will use the law to coerce people into celebrating and treating same sex relationship as if it's a marriage even when it violates their consciences. So with that, it looks like we have about half an hour for questions and I'd be happy to provide answers if you can provide questions.