

## Beyond Gay Marriage

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AFTER GAY MARRIAGE, what will become of marriage itself? Will same-sex matrimony extend marriage's stabilizing effects to homosexuals? Will gay marriage undermine family life? A lot is riding on the answers to these questions. But the media's reflexive labeling of doubts about gay marriage as homophobia has made it almost impossible to debate the social effects of this reform. Now with the Supreme Court's ringing affirmation of sexual liberty in *Lawrence v. Texas*, that debate is unavoidable.

Among the likeliest effects of gay marriage is to take us down a slippery slope to legalized polygamy and "polyamory" (group marriage). Marriage will be transformed into a variety of relationship contracts, linking two, three, or more individuals (however weakly and temporarily) in every conceivable combination of male and female. A scare scenario? Hardly. The bottom of this slope is visible from where we stand. Advocacy of legalized polygamy is growing. A network of grass-roots organizations seeking legal recognition for group marriage already exists. The cause of legalized group marriage is championed by a powerful faction of family law specialists. Influential legal bodies in both the United States and Canada have presented radical programs of marital reform. Some of these quasi-governmental proposals go so far as to suggest the abolition of marriage. The ideas behind this movement have already achieved surprising influence with a prominent American politician.

None of this is well known. Both the media and public spokesmen for the gay marriage movement treat the issue as an unproblematic advance for civil rights. True, a small number of relatively conservative gay spokesmen do consider the social effects of gay matrimony, insisting that they will be beneficent, that homosexual unions will become more stable. Yet another faction of gay rights advocates actually favors gay marriage as a step toward the abolition of marriage itself. This group agrees that there is a slippery slope, and wants to hasten the slide down.

To consider what comes after gay marriage is not to say that gay marriage itself poses no danger to the institution of marriage. Quite apart from the likelihood that it will usher in legalized polygamy and polyamory, gay marriage will almost certainly weaken the belief that monogamy lies at the heart of marriage. But to see why this is so, we will first need to reconnoiter the slippery slope.

### Promoting polygamy

DURING THE 1996 congressional debate on the Defense of Marriage Act, which affirmed the ability of the states and the federal government to withhold recognition from same-sex marriages, gay marriage advocates were put on the defensive by the polygamy question. If gays had a right to marry, why not polygamists? Andrew Sullivan, one of gay marriage's most intelligent defenders, labeled the question fear-mongering--akin to the discredited belief that interracial marriage would lead to birth defects. "To the best of my knowledge," said Sullivan, "there is no polygamists' rights organization poised to exploit same-sex marriage and return the republic to polygamous abandon." Actually, there are now many such organizations. And their strategy--even their existence--owes much to the movement for gay marriage.

Scoffing at the polygamy prospect as ludicrous has been the strategy of choice for gay marriage advocates. In 2000, following Vermont's enactment of civil unions, Matt Coles, director of the American Civil Liberties Union's Lesbian and Gay Rights Project, said, "I think the idea that there is some kind of slippery slope [to polygamy or group marriage] is silly." As proof, Coles said that America had legalized interracial marriage, while also forcing Utah to ban polygamy before admission to the union. That dichotomy, said Coles, shows that Americans are

capable of distinguishing between better and worse proposals for reforming marriage.

Are we? When Tom Green was put on trial in Utah for polygamy in 2001, it played like a dress rehearsal for the coming movement to legalize polygamy. True, Green was convicted for violating what he called Utah's "don't ask, don't tell" policy on polygamy. Pointedly refusing to "hide in the closet," he touted polygamy on the Sally Jessy Raphael, Queen Latifah, Geraldo Rivera, and Jerry Springer shows, and on "Dateline NBC" and "48 Hours." But the Green trial was not just a cable spectacle. It brought out a surprising number of mainstream defenses of polygamy. And most of the defenders went to bat for polygamy by drawing direct comparisons to gay marriage.

Writing in the Village Voice, gay leftist Richard Goldstein equated the drive for state-sanctioned polygamy with the movement for gay marriage. The political reluctance of gays to embrace polygamists was understandable, said Goldstein, "but our fates are entwined in fundamental ways." Libertarian Jacob Sullum defended polygamy, along with all other consensual domestic arrangements, in the Washington Times. Syndicated liberal columnist Ellen Goodman took up the cause of polygamy with a direct comparison to gay marriage. Steve Chapman, a member of the Chicago Tribune editorial board, defended polygamy in the Tribune and in Slate. The New York Times published a Week in Review article juxtaposing photos of Tom Green's family with sociobiological arguments about the naturalness of polygamy and promiscuity.

The ACLU's Matt Coles may have derided the idea of a slippery slope from gay marriage to polygamy, but the ACLU itself stepped in to help Tom Green during his trial and declared its support for the repeal of all "laws prohibiting or penalizing the practice of plural marriage." There is of course a difference between repealing such laws and formal state recognition of polygamous marriages. Neither the ACLU nor, say, Ellen Goodman has directly advocated formal state recognition. Yet they give us no reason to suppose that, when the time is ripe, they will not do so. Stephen Clark, the legal director of the Utah ACLU, has said, "Talking to Utah's polygamists is like talking to gays and lesbians who really want the right to live their lives."

All this was in 2001, well before the prospect that legal gay marriage might create the cultural conditions for state-sanctioned polygamy. Can anyone doubt that greater public support will be forthcoming once gay marriage has become a reality? Surely the ACLU will lead the charge.

Why is state-sanctioned polygamy a problem? The deep reason is that it erodes the ethos of monogamous marriage. Despite the divorce revolution, Americans still take it for granted that marriage means monogamy. The ideal of fidelity may be breached in practice, yet adultery is clearly understood as a transgression against marriage. Legal polygamy would jeopardize that understanding, and that is why polygamy has historically been treated in the West as an offense against society itself.

In most non-Western cultures, marriage is not a union of freely choosing individuals, but an alliance of family groups. The emotional relationship between husband and wife is attenuated and subordinated to the economic and political interests of extended kin. But in our world of freely choosing individuals, extended families fall away, and love and companionship are the only surviving principles on which families can be built. From Thomas Aquinas through Richard Posner, almost every serious observer has granted the incompatibility between polygamy and Western companionate marriage.

Where polygamy works, it does so because the husband and his wives are emotionally distant. Even then, jealousy is a constant danger, averted only by strict rules of seniority or parity in the husband's economic support of his wives. Polygamy is more about those resources than about sex.

Yet in many polygamous societies, even though only 10 or 15 percent of men may actually have multiple wives, there is a widely held belief that men need multiple women. The result is that polygamists are often promiscuous--just not with their own wives. Anthropologist Philip Kilbride reports a Nigerian survey in which, among urban male polygamists, 44 percent said their most recent sexual partners were women other than their wives. For monogamous, married Nigerian men in urban areas, that figure rose to 67 percent. Even though polygamous marriage is less about sex than security, societies that permit polygamy tend to reject the idea of marital fidelity--for everyone, polygamists included.

Mormon polygamy has always been a complicated and evolving combination of Western mores and classic polygamous patterns. Like Western companionate marriage, Mormon polygamy condemns extramarital sex. Yet historically, like its non-Western counterparts, it de-emphasized romantic love. Even so, jealousy was always a problem. One study puts the rate of 19th-century polygamous divorce at triple the rate for monogamous families. Unlike their forebears, contemporary Mormon polygamists try to combine polygamy with companionate marriage--

and have a very tough time of it. We have no definitive figures, but divorce is frequent. Irwin Altman and Joseph Ginat, who've written the most detailed account of today's breakaway Mormon polygamist sects, highlight the special stresses put on families trying to combine modern notions of romantic love with polygamy. Strict religious rules of parity among wives make the effort to create a hybrid traditionalist/modern version of Mormon polygamy at least plausible, if very stressful. But polygamy let loose in modern secular America would destroy our understanding of marital fidelity, while putting nothing viable in its place. And postmodern polygamy is a lot closer than you think.

## Polyamory

AMERICA'S NEW, souped-up version of polygamy is called "polyamory." Polyamorists trace their descent from the anti-monogamy movements of the sixties and seventies--everything from hippie communes, to the support groups that grew up around Robert Rimmer's 1966 novel "The Harrad Experiment," to the cult of Bhagwan Shree Rajneesh. Polyamorists proselytize for "responsible non-monogamy"--open, loving, and stable sexual relationships among more than two people. The modern polyamory movement took off in the mid-nineties--partly because of the growth of the Internet (with its confidentiality), but also in parallel to, and inspired by, the rising gay marriage movement.

Unlike classic polygamy, which features one man and several women, polyamory comprises a bewildering variety of sexual combinations. There are triads of one woman and two men; heterosexual group marriages; groups in which some or all members are bisexual; lesbian groups, and so forth. (For details, see Deborah Anapol's "Polyamory: The New Love Without Limits," one of the movement's authoritative guides, or Google the word polyamory.)

Supposedly, polyamory is not a synonym for promiscuity. In practice, though, there is a continuum between polyamory and "swinging." Swinging couples dally with multiple sexual partners while intentionally avoiding emotional entanglements. Polyamorists, in contrast, try to establish stable emotional ties among a sexually connected group. Although the subcultures of swinging and polyamory are recognizably different, many individuals move freely between them. And since polyamorous group marriages can be sexually closed or open, it's often tough to draw a line between polyamory and swinging. Here, then, is the modern American version of Nigeria's extramarital polygamous promiscuity. Once the principles of monogamous companionate marriage are breached, even for supposedly stable and committed sexual groups, the slide toward full-fledged promiscuity is difficult to halt.

Polyamorists are enthusiastic proponents of same-sex marriage. Obviously, any attempt to restrict marriage to a single man and woman would prevent the legalization of polyamory. After passage of the Defense of Marriage Act in 1996, an article appeared in *Loving More*, the flagship magazine of the polyamory movement, calling for the creation of a polyamorist rights movement modeled on the movement for gay rights. The piece was published under the pen name Joy Singer, identified as the graduate of a "top ten law school" and a political organizer and public official in California for the previous two decades.

Taking a leaf from the gay marriage movement, Singer suggested starting small. A campaign for hospital visitation rights for polyamorous spouses would be the way to begin. Full marriage and adoption rights would come later. Again using the gay marriage movement as a model, Singer called for careful selection of acceptable public spokesmen (i.e., people from longstanding poly families with children). Singer even published a speech by Iowa state legislator Ed Fallon on behalf of gay marriage, arguing that the goal would be to get a congressman to give exactly the same speech as Fallon, but substituting the word "poly" for "gay" throughout. Try telling polyamorists that the link between gay marriage and group marriage is a mirage.

The flexible, egalitarian, and altogether postmodern polyamorists are more likely to influence the larger society than Mormon polygamists. The polyamorists go after monogamy in a way that resonates with America's secular, post-sixties culture. Yet the fundamental drawback is the same for Mormons and polyamorists alike. Polyamory websites are filled with chatter about jealousy, the problem that will not go away. Inevitably, group marriages based on modern principles of companionate love, without religious rules and restraints, are unstable. Like the short-lived hippie communes, group marriages will be broken on the contradiction between companionate love and group solidarity. And children will pay the price. The harms of state-sanctioned polyamorous marriage would extend well beyond the polyamorists themselves. Once monogamy is defined out of marriage, it will be next to impossible to educate a new generation in what it takes to keep companionate marriage intact. State-sanctioned polyamory would spell the effective end of marriage. And that is precisely what polyamory's new--and surprisingly influential--defenders are aiming for.

The family law radicals

STATE-SANCTIONED polyamory is now the cutting-edge issue among scholars of family law. The preeminent school of thought in academic family law has its origins in the arguments of radical gay activists who once opposed same-sex marriage. In the early nineties, radicals like longtime National Gay and Lesbian Task Force policy director Paula Ettelbrick spoke out against making legal marriage a priority for the gay rights movement. Marriage, Ettelbrick reminded her fellow activists, "has long been the focus of radical feminist revulsion." Encouraging gays to marry, said Ettelbrick, would only force gay "assimilation" to American norms, when the real object of the gay rights movement ought to be getting Americans to accept gay difference. "Being queer," said Ettelbrick, "means pushing the parameters of sex and family, and in the process transforming the very fabric of society."

Promoting polyamory is the ideal way to "radically reorder society's view of the family," and Ettelbrick, who has since formally signed on as a supporter of gay marriage (and is frequently quoted by the press), is now part of a movement that hopes to use gay marriage as an opening to press for state-sanctioned polyamory. Ettelbrick teaches law at the University of Michigan, New York University, Barnard, and Columbia. She has a lot of company.

Nancy Polikoff is a professor at American University's law school. In 1993, Polikoff published a powerful and radical critique of gay marriage. Polikoff stressed that during the height of the lesbian feminist movement of the seventies, even many heterosexual feminists refused to marry because they believed marriage to be an inherently patriarchal and oppressive institution. A movement for gay marriage, warned Polikoff, would surely promote marriage as a social good, trotting out monogamous couples as spokesmen in a way that would marginalize non-monogamous gays and would fail to challenge the legitimacy of marriage itself. Like Ettelbrick, Polikoff now supports the right of gays to marry. And like Ettelbrick, Polikoff is part of a movement whose larger goal is to use legal gay marriage to push for state-sanctioned polyamory--the ultimate subversion of marriage itself. Polikoff and Ettelbrick represent what is arguably now the dominant perspective within the discipline of family law.

Cornell University law professor Martha Fineman is another key figure in the field of family law. In her 1995 book "The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies," she argued for the abolition of marriage as a legal category. Fineman's book begins with her recollection of an experience from the late seventies in politically radical Madison, Wisconsin. To her frustration, she could not convince even the most progressive members of Madison's Equal Opportunities Commission to recognize "plural sexual groupings" as marriages. That failure helped energize Fineman's lifelong drive to abolish marriage.

But it's University of Utah law professor Martha Ertman who stands on the cutting edge of family law. Building on Fineman's proposals for the abolition of legal marriage, Ertman has offered a legal template for a sweeping relationship contract system modeled on corporate law. (See the Harvard Civil Rights and Civil Liberties Law Review, Winter 2001.) Ertman wants state-sanctioned polyamory, legally organized on the model of limited liability companies.

In arguing for the replacement of marriage with a contract system that accommodates polyamory, Ertman notes that legal and social hostility to polygamy and polyamory are decreasing. She goes on astutely to imply that the increased openness of homosexual partnerships is slowly collapsing the taboo against polygamy and polyamory. And Ertman is frank about the purpose of her proposed reform--to render the distinction between traditional marriage and polyamory "morally neutral."

A sociologist rather than a professor of law, Judith Stacey, the Barbra Streisand Professor in Contemporary Gender Studies at USC, is another key member of this group. Stacey has long championed alternative family forms. Her current research is on gay families consisting of more than two adults, whose several members consider themselves either married or contractually bound.

In 1996, in the Michigan Law Review, David Chambers, a professor of law at the University of Michigan and another prominent member of this group, explained why radical opponents of marriage ought to support gay marriage. Rather than reinforcing a two-person definition of marriage, argued Chambers, gay marriage would make society more accepting of further legal changes. "By ceasing to conceive of marriage as a partnership composed of one person of each sex, the state may become more receptive to units of three or more."

Gradual transition from gay marriage to state-sanctioned polyamory, and the eventual abolition of marriage itself as a legal category, is now the most influential paradigm within academic family law. As Chambers put it, "All desirable changes in family law need not be made at once."

Finally, Martha Minow of Harvard Law School deserves mention. Minow has not advocated state-sanctioned polygamy or polyamory, but the principles she champions pave the way for both. Minow argues that families need

to be radically redefined, putting blood ties and traditional legal arrangements aside and attending instead to the functional realities of new family configurations.

Ettelbrick, Polikoff, Fineman, Ertman, Stacey, Chambers, and Minow are among the most prominent family law theorists in the country. They have plenty of followers and hold much of the power and initiative within their field. There may be other approaches to academic family law, but none exceed the radicals in influence. In the last couple of years, there have been a number of conferences on family law dominated by the views of this school. The conferences have names like "Marriage Law: Obsolete or Cutting Edge?" and "Assimilation & Resistance: Emerging Issues in Law & Sexuality." The titles turn on the paradox of using marriage, seemingly a conservative path toward assimilation, as a tool of radical cultural "resistance."

One of the most important recent family law meetings was the March 2003 Hofstra conference on "Marriage, Democracy, and Families." The radicals were out in full force. On a panel entitled "Intimate Affiliation and Democracy: Beyond Marriage?" Fineman, Ertman, and Stacey held forth on polyamory, the legal abolition of marriage, and related issues. Although there were more moderate scholars present, there was barely a challenge to the radicals' suggestion that it was time to move "beyond marriage." The few traditionalists in family law are relatively isolated. Many, maybe most, of the prominent figures in family law count themselves as advocates for lesbian and gay rights. Yet family law today is as influenced by the hostility to marriage of seventies feminism as it is by advocacy for gay rights. It is this confluence of radical feminism and gay rights that now shapes the field.

### Beyond conjugality

YOU MIGHT THINK the radicals who dominate the discipline of family law are just a bunch of eccentric and irrelevant academics. You would be wrong. For one thing, there is already a thriving non-profit organization, the Alternatives to Marriage Project, that advances the radicals' goals. When controversies over the family hit the news, experts provided by the Alternatives to Marriage Project are often quoted in mainstream media outlets. While the Alternatives to Marriage Project endorses gay marriage, its longer-term goal is to replace marriage with a system that recognizes "the full range" of family types.

That includes polyamorous families. The Alternatives to Marriage Project's statement of purpose--its "Affirmation of Family Diversity"--is signed not only by Ettelbrick, Polikoff, and Stacey but by several polyamorists as well. On a list of signatories that includes academic luminaries like Yale historian Nancy Cott, you can find Barry Northrup of *Loving More* magazine. The Alternatives to Marriage Project, along with Martha Ertman's pioneering legal proposals, has given polyamory a foothold on respectability.

The first real public triumph of the family law radicals has come in Canada. In 1997, the Canadian Parliament established the Law Commission of Canada to serve Parliament and the Justice Ministry as a kind of advisory board on legal reform. In December 2001, the commission submitted a report to Parliament called "Beyond Conjugality," which stops just short of recommending the abolition of marriage in Canada.

"Beyond Conjugality" contains three basic recommendations. First, judges are directed to concentrate on whether the individuals before them are "functionally interdependent," regardless of their actual marital status. On that theory, a household consisting of an adult child still living with his mother might be treated as the functional equivalent of a married couple. In so disregarding marital status, "Beyond Conjugality" is clearly drawing on the work of Minow, whose writings are listed in the bibliography.

"Beyond Conjugality"'s second key recommendation is that a legal structure be established allowing people to register their personal relationships with the government. Not only could heterosexual couples register as official partners, so could gay couples, adult children living with parents, and siblings or friends sharing a house. Although the authors of "Beyond Conjugality" are politic enough to relegate the point to footnotes, they state that they see no reason, in principle, to limit registered partnerships to two people.

The final recommendation of "Beyond Conjugality"--legalization of same-sex marriage--drew the most publicity when the report was released. Yet for the Law Commission of Canada, same-sex marriage is clearly just one part of the larger project of doing away with marriage itself. "Beyond Conjugality" stops short of recommending the abolition of legal marriage. The authors glumly note that, for the moment, the public is unlikely to accept such a step.

The text of "Beyond Conjugality," its bibliography, and the Law Commission of Canada's other publications unmistakably reveal the influence of the radical theorists who now dominate the discipline of family law. While

Canada's parliament has postponed action on "Beyond Conjuality," the report has already begun to shape the culture. The decision by the Canadian government in June 2003 not to contest court rulings legalizing gay marriage is only the beginning of the changes that Canada's judges and legal bureaucrats have in mind. The simultaneity of the many reforms is striking. Gay marriage is being pressed, but in tandem with a registration system that will sanction polyamorous unions, and eventually replace marriage itself. Empirically, the radicals' hopes are being validated. Gay marriage is not strengthening marriage but has instead become part of a larger unraveling of traditional marriage laws.

Ah, but that's Canada, you say. Yet America has its rough equivalent of the Law Commission of Canada--the American Law Institute (ALI), an organization of legal scholars whose recommendations commonly shape important legal reforms. In 2000, ALI promulgated a report called "Principles of the Law of Family Dissolution" recommending that judges effectively disregard the distinction between married couples and longtime cohabitators. While the ALI principles do not go so far as to set up a system of partnership registration to replace marriage, the report's framework for recognizing a wide variety of cohabiting partnerships puts it on the same path as "Beyond Conjuality."

Collapsing the distinction between cohabitation and marriage is a proposal especially damaging to children, who are decidedly better off when born to married parents. (This aspect of the ALI report has been persuasively criticized by Kay Hymowitz, in the March 2003 issue of *Commentary*.) But a more disturbing aspect of the ALI report is its evasion of the polygamy and polyamory issues.

Prior to publication of the ALI Principles, the report's authors were pressed (at the 2000 annual meeting of the American Law Institute) about the question of polygamy. The authors put off the controversy by defining legal cohabitators as couples. Yet the ALI report offers no principled way of excluding polyamorous or polygamous cohabitators from recognition. The report's reforms are said to be based on the need to recognize "statistically growing" patterns of relationship. By this standard, the growth of polyamorous cohabitation will soon require the legal recognition of polyamory.

Although America's ALI Principles do not follow Canada's "Beyond Conjuality" in proposing either state-sanctioned polyamory or the outright end of marriage, the University of Utah's Martha Ertman has suggested (in the Spring/Summer 2001 *Duke Journal of Gender Law and Policy*) that the American Law Institute is intentionally holding back on more radical proposals for pragmatic political reasons. Certainly, the ALI Principles' authors take Canadian law as the model for the report's most radical provisions.

Further confirmation, if any were needed, of the mainstream influence of the family law radicals came with Al and Tipper Gore's 2002 book "Joined at the Heart," in which they define a family as those who are "joined at the heart" (rather than by blood or by law). The notion that a family is any group "joined at the heart" comes straight from Harvard's Martha Minow, who worked with the Gores. In fact, the Minow article from which the Gores take their definition of family is also the article in which Minow tentatively floats the idea of substituting domestic partnership registries for traditional marriage. ("Redefining Families: Who's In and Who's Out?" *University of Colorado Law Review*, Volume 62, Number 2, 1991.) So one of the guiding spirits of Canada's "Beyond Conjuality" report almost had a friend in the White House.

### Triple parenting

POLYGAMY, POLYAMORY, and the abolition of marriage are bad ideas. But what has that got to do with gay marriage? The reason these ideas are connected is that gay marriage is increasingly being treated as a civil rights issue. Once we say that gay couples have a right to have their commitments recognized by the state, it becomes next to impossible to deny that same right to polygamists, polyamorists, or even cohabiting relatives and friends. And once everyone's relationship is recognized, marriage is gone, and only a system of flexible relationship contracts is left. The only way to stop gay marriage from launching a slide down this slope is if there is a compelling state interest in blocking polygamy or polyamory that does not also apply to gay marriage. Many would agree that the state has a compelling interest in preventing polygamy and polyamory from undermining the ethos of monogamy at the core of marriage. The trouble is, gay marriage itself threatens the ethos of monogamy.

The "conservative" case for gay marriage holds that state-sanctioned marriage will reduce gay male promiscuity. But what if the effect works in reverse? What if, instead of marriage reducing gay promiscuity, sexually open gay couples help redefine marriage as a non-monogamous institution? There is evidence that this is exactly what will happen.

Consider sociologist Gretchen Stiers's 1998 study "From this Day Forward" (Stiers favors gay marriage, and calls herself a lesbian "queer theorist"). "From this Day Forward" reports that while exceedingly few of even the most committed gay and lesbian couples surveyed believe that marriage will strengthen and stabilize their personal relationships, nearly half of the surveyed couples who actually disdain traditional marriage (and even gay commitment ceremonies) will nonetheless get married. Why? For the financial and legal benefits of marriage. And Stiers's study suggests that many radical gays and lesbians who yearn to see marriage abolished (and multiple sexual unions legitimized) intend to marry, not only as a way of securing benefits but as part of a self-conscious attempt to subvert the institution of marriage. Stiers's study suggests that the "subversive" intentions of the radical legal theorists are shared by a significant portion of the gay community itself.

Stiers's study was focused on the most committed gay couples. Yet even in a sample with a disproportionate number of male couples who had gone through a commitment ceremony (and Stiers had to go out of her research protocol just to find enough male couples to balance the committed lesbian couples) nearly 20 percent of the men questioned did not practice monogamy. In a representative sample of gay male couples, that number would be vastly higher. More significantly, a mere 10 percent of even this skewed sample of gay men mentioned monogamy as an important aspect of commitment (meaning that even many of those men who had undergone "union ceremonies" failed to identify fidelity with commitment). And these, the very most committed gay male couples, are the ones who will be trailblazing marital norms for their peers, and exemplifying gay marriage for the nation. So concerns about the effects of gay marriage on the social ideal of marital monogamy seem justified.

A recent survey of gay couples in civil unions by University of Vermont psychologists Esther Rothblum and Sondra Solomon confirms what Stiers's study suggests--that married gay male couples will be far less likely than married heterosexual couples to identify marriage with monogamy. Rothblum and Solomon contacted all 2,300 couples who entered civil unions in Vermont between June 1, 2000, and June 30, 2001. More than 300 civil union couples residing in and out of the state responded. Rothblum and Solomon then compared the gay couples in civil unions with heterosexual couples and gay couples outside of civil unions. Among married heterosexual men, 79 percent felt that marriage demanded monogamy, 50 percent of men in gay civil unions insisted on monogamy, while only 34 percent of gay men outside of civil unions affirmed monogamy.

While gay men in civil unions were more likely to affirm monogamy than gays outside of civil unions, gay men in civil unions were far less supportive of monogamy than heterosexual married men. That discrepancy may well be significantly greater under gay marriage than under civil unions. That's because of the effect identified by Stiers--the likelihood that many gays who do not value the traditional monogamous ethos of marriage will marry anyway for the financial benefits that marriage can bring. (A full 86 percent of the civil unions couples who responded to the Rothblum-Solomon survey live outside Vermont, and therefore receive no financial benefits from their new legal status.) The Rothblum-Solomon study may also undercount heterosexual married male acceptance of monogamy, since one member of all the married heterosexual couples in the survey was the sibling of a gay man in a civil union, and thus more likely to be socially liberal than most heterosexuals.

Even moderate gay advocates of same-sex marriage grant that, at present, gay male relationships are far less monogamous than heterosexual relationships. And there is a persuasive literature on this subject: Gabriel Rotello's "Sexual Ecology," for example, offers a documented and powerful account of the behavioral and ideological barriers to monogamy among gay men. The moderate advocates say marriage will change this reality. But they ignore, or downplay, the possibility that gay marriage will change marriage more than it changes the men who marry. Married gay couples will begin to redefine the meaning of marriage for the culture as a whole, in part by removing monogamy as an essential component of marriage. No doubt, the process will be pushed along by cutting-edge movies and TV shows that tout the new "open" marriages being pioneered by gay spouses. In fact, author and gay marriage advocate Richard Mohr has long expressed the hope and expectation that legal gay marriage will succeed in defining monogamy out of marriage.

Lesbians, for their part, do value monogamy. Over 82 percent of the women in the Rothblum-Solomon study, for example, insisted on monogamy, regardless of sexual orientation or marital status. Yet lesbian marriage will undermine the connection between marriage and monogamy in a different way. Lesbians who bear children with sperm donors sometimes set up de facto three-parent families. Typically, these families include a sexually bound lesbian couple, and a male biological father who is close to the couple but not sexually involved. Once lesbian couples can marry, there will be a powerful legal case for extending parental recognition to triumvirates. It will be difficult to question the parental credentials of a sperm donor, or of a married, lesbian non-birth mother spouse who helps to raise a child from birth. And just as the argument for gay marriage has been built upon the right to gay adoption, legally recognized triple parenting will eventually usher in state-sanctioned triple (and therefore group)

marriage.

This year, there was a triple parenting case in Canada involving a lesbian couple and a sperm donor. The judge made it clear that he wanted to assign parental status to all three adults but held back because he said he lacked jurisdiction. On this issue, the United States is already in "advance" of Canada. Martha Ertman is now pointing to a 2000 Minnesota case (*La Chapelle v. Mitten*) in which a court did grant parental rights to lesbian partners and a sperm donor. Ertman argues that this case creates a legal precedent for state-sanctioned polyamory.

#### Gay marriages of convenience

IRONICALLY, the form of gay matrimony that may pose the greatest threat to the institution of marriage involves heterosexuals. A Brigham Young University professor, Alan J. Hawkins, suggests an all-too-likely scenario in which two heterosexuals of the same sex might marry as a way of obtaining financial benefits. Consider the plight of an underemployed and uninsured single mother in her early 30s who sees little real prospect of marriage (to a man) in her future. Suppose she has a good friend, also female and heterosexual, who is single and childless but employed with good spousal benefits. Sooner or later, friends like this are going to start contracting same-sex marriages of convenience. The single mom will get medical and governmental benefits, will share her friend's paycheck, and will gain an additional caretaker for the kids besides. Her friend will gain companionship and a family life. The marriage would obviously be sexually open. And if lightning struck and the right man came along for one of the women, they could always divorce and marry heterosexually.

In a narrow sense, the women and children in this arrangement would be better off. Yet the larger effects of such unions on the institution of marriage would be devastating. At a stroke, marriage would be severed not only from the complementarity of the sexes but also from its connection to romance and sexual exclusivity--and even from the hope of permanence. In Hawkins's words, the proliferation of such arrangements "would turn marriage into the moral equivalent of a Social Security benefit." The effect would be to further diminish the sense that a woman ought to be married to the father of her children. In the aggregate, what we now call out-of-wedlock births would increase. And the connection between marriage and sexual fidelity would be nonexistent.

Hawkins thinks gay marriages of convenience would be contracted in significant numbers--certainly enough to draw the attention of a media eager to tout such unions as the hip, postmodern marriages of the moment. Hawkins also believes that these unions of convenience could begin to undermine marriage's institutional foundations fairly quickly. He may be right. The gay marriage movement took more than a decade to catch fire. A movement for state-sanctioned polygamy-polyamory could take as long. And the effects of sexually open gay marriages on the ethos of monogamy will similarly occur over time. But any degree of publicity for same-sex marriages of convenience could have dramatic effects. Without further legal ado, same-sex marriages of convenience will realize the radicals' fondest hopes. Marriage will have been severed from monogamy, from sexuality, and even from the dream of permanence. Which would bring us virtually to the bottom of the slippery slope.

WE ARE FAR CLOSER to that day than anyone realizes. Does the Supreme Court's defense of sexual liberty last month in the *Lawrence v. Texas* sodomy case mean that, short of a constitutional amendment, gay marriage is inevitable? Perhaps not. Justice Scalia was surely correct to warn in his dissent that *Lawrence* greatly weakens the legal barriers to gay marriage. Sodomy laws, although rarely enforced, did provide a public policy basis on which a state could refuse to recognize a gay marriage performed in another state. Now the grounds for that "public policy exception" have been eroded. And as Scalia warned, *Lawrence*'s sweeping guarantees of personal autonomy in matters of sex could easily be extended to the question of who a person might choose to marry.

So it is true that, given *Lawrence*, the legal barriers to gay marriage are now hanging by a thread. Nonetheless, in an important respect, Scalia underestimated the resources for a successful legal argument against gay marriage. True, *Lawrence* eliminates moral disapprobation as an acceptable, rational basis for public policy distinctions between homosexuality and heterosexuality. But that doesn't mean there is no rational basis for blocking either same-sex marriage or polygamy.

There is a rational basis for blocking both gay marriage and polygamy, and it does not depend upon a vague or religiously based disapproval of homosexuality or polygamy. Children need the stable family environment provided by marriage. In our individualist Western society, marriage must be companionate--and therefore monogamous. Monogamy will be undermined by gay marriage itself, and by gay marriage's ushering in of polygamy and polyamory.

This argument ought to be sufficient to pass the test of rational scrutiny set by the Supreme Court in *Lawrence v.*



Texas. Certainly, the slippery slope argument was at the center of the legislative debate on the federal Defense of Marriage Act, and so should protect that act from being voided on the same grounds as Texas's sodomy law. But of course, given the majority's sweeping declarations in Lawrence, and the hostility of the legal elite to traditional marriage, it may well be foolish to rely on the Supreme Court to uphold either state or federal Defense of Marriage Acts.

This is the case, in a nutshell, for something like the proposed Federal Marriage Amendment to the Constitution, which would define marriage as the union of a man and a woman. At a stroke, such an amendment would block gay marriage, polygamy, polyamory, and the replacement of marriage by a contract system. Whatever the courts might make of the slippery slope argument, the broader public will take it seriously. Since Lawrence, we have already heard from Jon Carroll in the San Francisco Chronicle calling for legalized polygamy. Judith Levine in the Village Voice has made a plea for group marriage. And Michael Kinsley--no queer theorist but a completely mainstream journalist--has publicly called for the legal abolition of marriage. So the most radical proposal of all has now moved out of the law schools and legal commissions, and onto the front burner of public discussion.

Fair-minded people differ on the matter of homosexuality. I happen to think that sodomy laws should have been repealed (although legislatively). I also believe that our increased social tolerance for homosexuality is generally a good thing. But the core issue here is not homosexuality; it is marriage. Marriage is a critical social institution. Stable families depend on it. Society depends on stable families. Up to now, with all the changes in marriage, the one thing we've been sure of is that marriage means monogamy. Gay marriage will break that connection. It will do this by itself, and by leading to polygamy and polyamory. What lies beyond gay marriage is no marriage at all.

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