

the most important people in the world to him, and we do not take that as a reason to do experiments on strangers, or eat them, or steal their organs. Something more must be said to explain the precedence that we give to ourselves.

But mainly I think we should ask ourselves, on what grounds do we ourselves claim to be valuable in the way that we claim to be – ends in ourselves, never to be used as a mere means to someone else's ends? Is it really because we have the capacity for rational choice, or is it also more simply because we have a welfare of our own? If it is the latter, simple consistency demands that, as far as we possibly can, we should treat the other animals as ends in themselves. The other animals lack normative self-government, and in that sense they are not persons; but we need not accept the idea that the world is divided into persons and property, or persons and things. Without reclassifying them as persons, we may still regard all animals as ends in themselves, and, as such, the proper subjects of rights against human mistreatment.

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LIBERAL AND CONSERVATIVE VIEWS OF MARRIAGE Matthew Carey Jordan

This essay is about liberal and conservative views of marriage. I'll begin by mentioning that I would really, really like to avoid use of the terms 'liberal' and 'conservative', but when push comes to shove, I know of no better labels for the positions that will be discussed in what follows. I would like to avoid these labels for a simple reason: many people strongly self-identify as liberals or as conservatives, and this can undermine our ability to investigate the topic in a sane, rational way. Politics, at least in the contemporary English-speaking world, functions a lot like the world of sports. Many people have a particular team to which their allegiance has been pledged, and the team's successes and failures on the field are shared in the hearts and minds of its loyal followers. In my own case – and here, I ask for your pity – I am a fan of the National Football League's Cleveland Browns. As much as I might wish things were otherwise, I rejoice in the Browns' (rare) triumphs and suffer when they lose (which happens frequently). I do not wait to see what happens in the game before I decide which team to cheer for, if it's an NFL game, and I see orange and brown, I know where my allegiance lies. Furthermore, I identify with my fellow Browns fans in a way that I cannot identify with followers of, say, the Pittsburgh Steelers. Clevelanders are my people. We share something, and what we share unites us in opposition to Steeler Nation. Their victories are our defeats. It is a zero-sum game: for one of us to win, the other must lose.

Sports, of course, can be all in good fun. I have a number of friends who are Pittsburgh fans, and I am pleased to say that there are things which unite us that run far deeper than enthusiasm for a football team. Sadly,

some people are not like that. There are some persons whose identities are wrapped up so deeply in a particular sports team that it becomes almost impossible for them to be friends with fans of rival teams. This dynamic is more common in politics than in sports, and for understandable reasons. One's political sensibilities are usually tied to one's conception of things like justice and goodness: a view of what life is all about, of what an ideal society would look like. It is only natural that such conceptions would be associated with a person's sense of self. *Who I am* may be constituted, in some significant measure, by *what I value* and *what I believe*. Insofar as our political allegiances are expressions of our own identities, it is no wonder that many of us are inclined to pick sides. We want to win, because when our side wins, we feel validated. (This need not be the whole story; I am merely suggesting that it is part of it.) Likewise, frankly, we may want to see our opponents lose — not merely because we think they're wrong, but because their commitment to ideals we reject is easy to interpret as a threat toward or an attack on us.

I bring all of this up because I assume that most people reading this essay are among those who already think of themselves as liberals or as conservatives. I am not keen to talk about 'the liberal view of marriage' versus 'the conservative view of marriage', because, as much as possible, I would like to encourage the reader to think through these issues without choosing a side in advance. The risk of labels, of course, is that they lead us to think something along the lines of, 'Well, I'm a liberal, so I'm going to agree with the liberal view *no matter what the conservatives have to say*' and, of course, vice-versa. It seems to me that this way of approaching the issue gets things backwards. Let us not worry about what the positions are called. Let us begin by acknowledging that there is a liberal view of marriage and there is a conservative view of marriage, and that it is quite possible for someone to be, say, a conservative *in general* but a liberal with respect to marriage (and, again, vice-versa). Let us acknowledge that the topic of

marriage is a hotly contested one at our time and place in history, and that we need to decide what our laws will say about it. Let us resolve, collectively and as individuals, to do our best to think carefully and to think well about the salient issues.

The sad fact of the matter is that there are many conservatives whose opposition to same-sex marriage is motivated completely by a non-rational, visceral disgust. Such persons are angered — outraged, even — at the very idea of two men holding hands in public, let alone engaging in sexual relations or joining together in a voluntary, monogamous, joyful union. These opponents either claim no justification for their views, or they offer spurious *ad hoc* and *post hoc* rationales.

On the other side of the issue, there are many liberals who are uninformed and uninterested in thinking with any care at all about marriage. They are persons who naturally follow the path of least resistance and would go along with virtually any direction in which the cultural winds happened to be blowing. In today's largely individualistic, hedonistic, morally skeptical, *laissez-faire* culture, those winds are moving in the direction of greater support for same-sex marriage. There are many persons whose enthusiasm for this cause is explained entirely by their susceptibility to the influence of culture and a desire to be coolly progressive.

Let us also note, however, that there are intelligent, thoughtful persons on both sides of this issue. Let us take conservatives and liberals alike at their word when they claim to believe that their views are the most sensible ones, and let us not stoop to the level of so many bloggers and pundits who automatically dismiss conservatives as culturally backward, ignorant haters, or liberals as arrogant, amoral, elitist snobs. Instead, let us consider the ideas and arguments of both sides on their own merits. Let us assume that defenders as well as opponents of same-sex marriage are genuinely concerned about the common good, and let us do our best to hear what they have to say.

marriage. This could be the case for someone whose moral beliefs are based exclusively on the Christian Bible, but who thinks that the purpose of marriage, as a social institution, is to enhance individual freedom by making it easier for people to join their lives together with those whom they love. By the same token, one might be a liberal about sex, believing that it's just no big deal whom one sleeps with (as long as it's consensual), but a conservative about marriage, perhaps on the grounds that heterosexual marriage is the best institution we have for generating and raising new citizens, and therefore the state has a vested interest in heterosexual unions that it does not have in homosexual unions. Whatever the plausibility of such views, the only point I seek to make here is that the debate over same-sex marriage is not a debate about the morality of sex.

Another issue that needs to be clarified is a bit more complex, but I suspect that, in this context, we can sidestep the genuinely difficult aspects of the issue without undermining the discussion as a whole. That issue is the role of religion in the debate. Specifically, given present cultural circumstances, it is important for us to think about the proper role of religious faith in shaping public policy in pluralistic, democratic societies where freedom of religion is a core value. We do not all agree about whether God exists or what God requires of us. We do not have a state church that wields political authority. Many of us, however, are committed religious believers, and it seems unfair to ask such persons to simply 'check their religion at the door' when questions of public policy arise. To do so is, in effect, to ask these persons to act as though the beliefs and practices around which their lives are organized are false or irrelevant. By the same token, however, it hardly seems fair to ask a nonreligious person, or someone who rejects claims made by the dominant religious community, to submit to an authority whose validity she does not acknowledge. Yet we need laws, and those laws are supposed to reflect our views. So what do we do?

Clarifications and Confusions

In order to hear both sides clearly, we need to specify what, precisely, it is that we are talking about. There are a number of potential sources of confusion that need to be addressed. First and foremost, the debate over same-sex marriage is *not* about who is allowed to fall in love with whom. I teach ethics for a living, and students in my classes who support same-sex marriage will typically cite this as one of the reasons for their view. Their thinking goes like this: interpersonal love is an extremely important aspect of human life, as is sexual intimacy. Because these things are so important, the government would need exceedingly strong reasons to restrict persons' access to them, reasons which do not, in fact, exist. Furthermore, love and sex are especially *private* domains of human life. The government ought not to interfere with such things. The problem with this line of reasoning, of course, is that *no one* – to the best of my knowledge – advocates legal restrictions on who is allowed to fall in love with whom or whether you should be permitted to have sex with a person who is not your spouse in a heterosexual, monogamous marriage. Opponents of same-sex marriage deny that any homosexual union should be treated as a marriage under the law. This is not the same as saying that two men are not allowed to love each other.

In a similar vein, the debate over same-sex marriage is not a debate about the morality of sex. It is almost certainly true that persons with conservative beliefs about sex are more likely to oppose same-sex marriage. Likewise, persons with more permissive attitudes toward sex are presumably more likely to support same-sex marriage. But the issues are distinct. It would not be incoherent for someone to be a conservative about sex and a liberal about marriage. For example, someone might believe that it is *morally wrong* – even seriously morally wrong – for two men to have sex with each other, while also believing that the law should treat their union as an honest-to-goodness

need not read many of Dr. King's writings to see that religious conviction was very much at the heart of his work. In our own cultural setting, many of those who advocate for the rights of mentally disabled persons do so because they are convinced, on religious grounds, that every human being is 'made in the image of God'. It would be a terrible thing to censor this perspective from public policy discussions merely because it is, in some sense, 'religious'. Our public discourse is diminished, not enhanced, when we assume that religious conceptions of the world have nothing whatsoever to teach a secular society.

With respect to same-sex marriage, the two principles above have fairly obvious implications. Conservatives whose conservatism is based on religious conviction owe it to their fellow citizens to seek a rationale for their position that can be embraced by all. In the absence of such an attempt, they ought to refrain from seeking to codify the conservative position in law. Liberals, on the other hand, cannot dismiss arguments for the conservative view merely on the grounds that 'it's a religious doctrine' and therefore involves the untoward imposition of theological doctrines upon a secular society.

Of course, we should also acknowledge that the public debate about same-sex marriage is not inherently religious in character. For one thing, even though many people associate the conservative view with religion (Christianity in particular), there are many religious groups that *affirm* same-sex marriage as a matter of official policy. Merely within Christendom, one can point to the Episcopal Church and the United Church of Christ as bodies that have explicitly embraced same-sex marriage. Others, such as the Evangelical Lutheran Church and the Presbyterian Church (U.S.A.), lean toward the liberal view and/or take the issue to be open for discussion. The fact that someone self-identifies as a religious person or even as a Christian does not imply that he is a conservative about marriage.

We should also acknowledge that the most prominent defenders of the conservative position do not typically appeal

The way around this apparent impasse, in my opinion, is to embrace the following two principles,¹ one of which is aimed at the my-way-or-the-highway religious conservative, the other of which is aimed at the dyed-in-the-wool secular liberal:

The Seek Common Ground Principle: In supporting or opposing legislation that affects other people, one ought to seek grounds for that position of a kind that all parties can reasonably be expected to accept.

The Religion Can Be a Force for Good Principle: A person's (or group of people's) support for legislation L may be motivated primarily by religious conviction, and that person (or that group of people) may be the only person(s) in society advocating for L, and L may be a wise and just proposal that should be adopted.

The first principle is based on the assumption that we owe respect to our fellow citizens. I take it to be disrespectful, and rather obviously so, to seek to use the law to impose one's controversial views on others without at least attempting to find a rationale for those views that the others can accept. This seems like an obvious truth and a very minimal sort of requirement. On behalf of the second principle, we might note that it is no accident that persons who, as we say, speak truth to power, are often referred to as 'prophets'. Many great social reformers have been motivated by deeply held religious convictions. With respect to the role of religion in a pluralistic society, we need to ask ourselves: If, say, Martin Luther King Jr.'s reasons for demanding equality for all races were primarily or even entirely based in his religious views about God, the nature of humanity, and God's commands, would that have rendered him guilty of violating the proper separation of church and state? Should his views have been rejected as unsuitable grounds for public policy? This is no idle question; one

The Liberal View

With preliminary issues now out of the way, let us consider the case for the liberal view of marriage. The basic idea is quite straightforward: our laws ought to treat all persons equally. One's civil rights should not depend upon one's ethnicity, gender, or sexual orientation. To treat marriage as an exclusively heterosexual institution, however, is – practically speaking – to deny some citizens a particular civil right, and to do so on the basis of sexual orientation.³ The legal right to marry should be extended to same-sex couples as a matter of simple fairness.

Underlying the liberal view is a conception of marriage as a *social construct*. Very roughly, this means that marriage is something invented by human beings to serve their purposes. It also means that details concerning what kinds of arrangements *count* as a marriage are subject to change, as circumstances dictate. The rules of games serve as a useful illustration of this idea. Consider American football. An American football team in a standard game has four opportunities – four 'downs' – to gain ten yards. If a team fails to gain ten yards in four downs, then the other team gets the ball. That's the rule. This rule *could* be changed, though. If some governing body decided that football would be more fun if more points were scored, they could add a fifth down. If they wanted less scoring, they could take a down away for a total of three. As long as the people participating in the game understand and agree, this poses no serious problem. Indeed, such rule changes happen in reality quite frequently. I suspect that anyone who grew up playing football with kids in the neighborhood has witnessed many such changes to the rules with their very own eyes: a total of six downs to score, perhaps, or limiting the defense to one blitz per series. One reason we can make these changes while still calling the game 'football' is that, at some level, *it is up to us* to determine what football is. The rules of football are not timeless principles of human conduct written in the very fabric of the universe

to distinctively religious claims in support of their view. Thinkers like Robert George, Maggie Gallagher, and Francis Beckwith have all argued for a conservative view of marriage on the basis of what philosophers call *natural law theory*.² We will look at some of the details of their arguments later; for now, what is relevant is their shared natural law assumption that a cognitively normal, mature human being should be able to see the truth of their position, even if that person does not believe in God or rejects as fictional any and all claims to divine revelation. In short, although the religious dimension of this topic is important enough to warrant a five-paragraph discussion, at the end of the day I think it is something of a red herring. We do not need to appeal to overtly religious ideas in order to understand the issues at stake in the same-sex marriage debate, and the remainder of my discussion will proceed accordingly.

The last issue that needs to be clarified before we consider the arguments is the most central: *what are we talking about?* A related, and equally important, question is *what's the big deal?* What we're talking about, of course, is marriage. To be more precise, we are talking about the state's recognition of a relationship between persons as warranting a particular status. When persons are legally married, certain benefits are conferred on them. In countries like the United States, these include advantageous tax and inheritance laws, the ability to share benefits (e.g. health insurance) provided by one spouse's employer, hospital visitation rights in the event of serious injury or disease, and many others. In addition to such tangible benefits, the institution of marriage carries with it a certain cultural prestige. To identify a relationship as a 'marriage' is to set it apart as something special and important. The legal status of marriage concerns not merely tax law, but also whether we as a society affirm a particular kind of relationship as being worthy of special treatment. That, of course, is a main reason why marriage is a big deal.

heterosexual couple today chooses to become legally wed first and foremost because doing so is expected to bring them both great happiness. But if *that* – i.e., personal fulfillment, individual happiness – is what marriage is about, it is hard to see any reason why same-sex couples should not be allowed to be married as well. Indeed, it would seem to be nothing more than mere bigotry to exclude same-sex couples from marriage. Doing so amounts to denying such persons access to an important source of happiness for no reason at all.

As was mentioned in the previous section, we need to be careful here. Opponents of same-sex marriage do not typically hold that same-sex couples should be forbidden from *falling in love* or from *sharing their lives together*. Nevertheless, it is plausible to say that excluding same-sex couples from marriage denies them access to an important source of happiness. For one thing, the benefits of marriage (also mentioned in the previous section) are not insignificant. Some of these – the tangible benefits like coverage under a partner's health insurance policy – could be made available through civil unions, or by granting some other kind of legal status to same-sex couples. Others, however, cannot. Many of those who support same-sex marriage find civil unions and other 'marriage life' alternatives unsatisfactory because they end up treating same-sex couples as second-class citizens. For the law to say that John and Sally, who enter a union together because they love each other, are *married* but that John and Sal, who also enter a union together because they love each other, are *not* married, merely because both of them are men, is for the law to make an arbitrary distinction where none exists in reality. It is to treat equals unequally: the very definition of injustice.

On an even deeper level, some people argue that the refusal to extend marriage benefits to same-sex couples is an oppressive attack on them as persons. Here, the concern is that there are many individuals whose sense of self – their understanding of who they are and what their

itself. They are things we create and which we may change as we see fit.

On the liberal view, marriage is a social construct akin to football. It is invented by human beings to serve our purposes. As our circumstances and/or our purposes change, marriage may change too. Indeed, marriage *has* changed through the years. In some cultures, polygamous relationships, in which one man has multiple wives, have been considered marriages. Consent has not always been necessary for marriage; an honest-to-goodness marriage could be arranged by persons other than the bride and groom. In our own history, there have been those who refused to recognize as marriage a union between persons of different races. Admittedly, a liberal might concede, marriage has historically been understood as a heterosexual union, but this is irrelevant. We live at a time and place in which it makes sense to extend the benefits of marriage to same-sex couples. This is due in no small part to the fact that our reasons for entering into marriage have changed. Where marriage might once have existed primarily for the purpose of producing and rearing children, this is no longer the case. The widespread embrace of contraception, hand-in-hand with changing sexual mores, has resulted in a culture where the link between sex and procreation is mostly broken. Sex is widely thought of merely as a pleasurable activity, connected to procreation only (or hopefully only) when the persons involved desire it to be so connected. New reproductive technologies have made it possible for human beings to reproduce asexually, further undermining the idea that sex and parenthood are somehow inextricably linked. And, of course, greater equality for women with respect to educational and professional opportunities means that contemporary young adult women are less likely than their grandmothers might have been to see marriage as an important source of economic stability. For these and other reasons, we have largely come to see marriage as being primarily about the personal fulfillment of the persons who choose to get married. A typical

lives are about — is deeply connected to their sexual orientation. If my very identity as a human being is tied to my understanding of myself as a gay man, then if society refuses to treat my relationship with my partner as being on a par with a heterosexual couple's relationship, I am not *merely* being treated unjustly. I am being told by society that I am of less worth than a heterosexual. This is bigotry, plain and simple. It must not be codified in law.

The Conservative View⁴

In light of these considerations, one might wonder how any morally sane person could be a conservative about marriage. In a frequently cited decision by the Supreme Court of the United States, *Lawrence v. Texas* (2003), a state law against sodomy was struck down for being nothing more than an expression of 'irrational animus'. Opposition to same-sex marriage might appear dismissible on the very same grounds. Appearances can be deceiving, though. My own view is that — even if we ultimately conclude that we ought to be liberals about marriage — the conservative position cannot fairly be described as mere bigotry. As I mentioned earlier, some conservatives certainly are bigots. Likewise, however, some liberals are uninformed and just going along with the flow. The shallowness of those liberals does not weaken the case for the liberal view, and the bigotry of some conservatives does not undermine the conservative case either.

What, then, is the conservative case? In order to understand it, we need to see that the fundamental question for conservatives is not *should same-sex couples have the right to marry?* but rather *what is marriage?* This might sound like an awfully subtle distinction, but it is quite important. At a foundational level, what conservatives reject is the social construct view of marriage. Their claim is that marriage is not merely a human invention. At its core, the institution of heterosexual marriage is an objective reality that is *discovered*, not made. It is not up to us to shape it

according to current fashions; rather, we (and our laws) ought to acknowledge it as the reality it is.

The problem with the social construct view, according to conservatives, is that *by definition* it places no boundaries on what kinds of relationships can properly be described as 'marriages'. If we decide that the purpose of marriage is personal fulfillment for the people involved, then yes, we certainly should allow same-sex couples to marry. But why stop there? There is nothing obviously special about couples that licenses restricting marriage to groups of two. It would seem that if three people find joy and meaning in an intimate relationship with each other, then the same kinds of considerations outlined earlier would require us to grant them the right to marry too. If three people can marry, of course, it is hard to see why four cannot. If four can marry, five can as well. And so on. One might also wonder why marriages are thought of as *sexual* relationships. On the social construct view, there seem to be no grounds for insisting that two adult men who live together as sexual partners can be married, but two adult men who live together platonically cannot. Finally, because no contemporary discussion of marriage is complete without a reference to bestiality, if I am romantically involved with a consenting sheep, what rational grounds are there, on the social construct view, for denying legal recognition of our relationship as a marriage?

The key point here is easy to misread. Critics of the conservative position often lampoon it as the view that same-sex marriage will lead us quickly and inexorably to interspecies marriage. This is not what conservatives claim. Rather, their thinking goes like this: *If we embrace the social construct view of marriage, and decide that what marriage is for us is an arrangement oriented toward the happiness and personal fulfillment of the persons involved, then there are no principled grounds for asserting that a marriage must be between exactly two human beings.* Insofar as supporters of same-sex marriage think of marriage as a two-person affair, this presents a problem for the liberal view.

heterosexual sex is a uniquely *unifying* activity. Ideally, the thinking goes, this unity would be holistic: occurring not merely at the bodily level, but also emotionally, spiritually, and so on. Two *lives* would be united as one. Reality often falls short of the ideal, however, and the principal respect in which two persons are united in sexual intercourse is through their bodily actions. The unity achieved is *unique* by virtue of facts about human nature, specifically our reproductive capacities. One might think that two persons 'unite' sexually merely by virtue of being extremely close together or by achieving some kind of physical co-location, in which case a variety of sex acts (including anal and oral sex) might count as unitive. The conservative is saying something different from this, however. Heterosexual vaginal intercourse unites two persons as one in a unique way because *it is a kind of bodily act that is objectively oriented toward a natural human end, specifically, the biological goal of procreation.*

There is a lot in that sentence, and we should take a moment to unpack it. The first thing to notice is that the conservative, now squarely operating within the philosophical tradition known as natural law theory, is concerned with a *kind*, or a *type* of action. Any particular instance of heterosexual intercourse counts as 'procreative', even if it fails to result in procreation (and even if the participants seek to avoid procreation via contraception or by having sex when the woman is infertile). The act's procreative character is grounded in human nature: the biological purpose of sex is procreation, and it has that characteristic purpose whether conception occurs or not. Sheriff Girgis and his co-authors make an analogy to a baseball team that tries hard but never wins: its purpose is to achieve victory, and it has that purpose (and counts as an honest-to-goodness baseball team) even if it always loses.⁷ The second thing to notice is that the orientation of sex toward procreation is *objective*, in the sense that it exists whether we acknowledge it or not.⁸

This talk of the purpose of sex is important, because conservatives believe that it is this shared biological purpose

Furthermore, conservatives typically argue, other norms that we associate with marriage no longer make sense on such a view. From a cultural perspective, even though we are extremely tolerant of divorce (something which many conservatives take to be a mistake), we nevertheless think of marriage as being for the long haul. Any particular marriage may turn out not to be a permanent arrangement, but the default assumption is that two persons marry intending that their relationship last 'til death do them part. This social norm of lifelong commitment seems threatened by the liberal view, for there is no guarantee that a marriage which brings two persons happiness when they are twenty-five will continue to do so when they are thirty, or forty, or seventy, or, for that matter, twenty-five and a half.⁵

Another traditional marriage norm that seems difficult to justify on the liberal conception of marriage is fidelity. Some couples may choose sexual exclusivity, if they are so inclined, but other couples may want to stipulate that their relationships will include the possibility of additional sexual 'outlets'. There is nothing about marriage itself, on the liberal view, which makes this stipulation illegitimate. John and Sally may agree prior to their wedding that they will 'see other people', and if this is an arrangement that they believe will bring them great individual happiness, then it is a perfectly rational agreement for them to make. The problem, according to conservatives, is that such an arrangement is not something we would normally countenance as a *marriage*. J. Budziszewski puts the conservative idea this way: 'A promise to remain in an affectionate relationship *with outlets*, and for just as long as it *shall last*, is a promise of exactly nothing. There is no remaining ground for distinguishing marital from nonmarital...relationships. The redefinition of marriage turns out to be the destruction of marriage.'⁶

The first part of the conservative case, then, is a rejection of the social construct view of marriage. The second part is an argument for monogamous, heterosexual marriage as an objective reality grounded in human nature. This argument itself has two parts. First, the conservative argues that

be produced by natural means: the sexual union of one human male with one human female. Consider what happens in that process. Two people have sex, resulting in the creation of a new human organism that is the unique genetic offspring of those persons. That organism is wholly dependent on others for its survival from the moment of conception through several years into its development. Even after a child is mature enough to survive on her own, her well-being is greatly enhanced if she has adults in his life who love and care for her.¹¹

We need to notice the connections between heterosexual intercourse, conception, human development, and parenthood. Conservatives maintain that a whole web of familiar relationships – parent/child, brother/sister, husband/wife – are not merely cultural inventions that happen to have appealed to our ancestors. Rather, they are objective realities grounded in facts about what we are and how we flourish. Marriage should be understood, conservatives argue, not primarily as an avenue for personal fulfillment and individual happiness, but as an institution that exists first and foremost for the creation and well-being of children. Understood this way, all of the features of marriage that posed problems for the social construct view in the previous section can be accommodated:

- Marriage is a *sexual* relationship because sex leads to children.
- Marriage is between *exactly two human beings* because every human being is the genetic offspring of exactly two human beings.¹²
- Marriage is *permanent* and *exclusive* because of (i) the unifying character of heterosexual intercourse and (ii) the importance of parents in their children's lives.

Conservatives maintain that legal marriage should be understood as an exclusively heterosexual union not *merely* because this is what it, in fact, is, but also because it is best

that unites two persons – in a literal sense – as one entity. Consider this question: what makes it the case that my lungs, heart, brain, and skin are united as parts of one distinct organism? More importantly, what accounts for the fact that my lungs, heart, brain, and skin enjoy a real unity, but my liver, socks, chair, and coffee cup do not? According to conservatives like Girgis *et al.*, the answer is that the former share a 'common biological purpose', viz. my biological life.⁹ Sexual union differs from any other bodily activity, the conservative argues, by virtue of uniting two organisms as one. It does this by making a new biological goal – reproduction – possible. An individual human organism cannot reproduce on its own, even when functioning in perfect health. Human nature is such that, technological interventions aside, another organism is required.¹⁰ Sexual intercourse has an intelligible, natural, biological goal that unites the two persons as one entity in the same way that the shared biological goal of my organs unites them into one coherent, unified, and ontologically real organism. In short, the conservative claims, heterosexual intercourse is essentially different in kind from other forms of intimacy.

Now, even if we accept this claim, its relevance to marriage is not immediately obvious. Mere difference in kind does not seem sufficient to warrant a difference in legal status. There must be something morally significant about that difference if we are to be justified in making distinctions about legal benefits on that basis. For the conservative, the difference is indeed morally significant. One reason, which I will mention but not discuss, is the belief that the uniquely unifying character of heterosexual sex makes it intrinsically valuable in a way that other forms of sexual expression are not. More central to the marriage debate, however, are the rather obvious connections between sex, procreation, and the existence of children.

Until fairly recently, all human beings came into existence by way of sexual reproduction. Even now, in an age of sophisticated reproductive technologies, we can expect that the vast majority of children will, for the foreseeable future,

for children that we do so. To elaborate, the conservative position in its most plausible form does not seek to define marriage as a 'non-homosexual' institution. The point of defining marriage as being between one man and one woman is not to *exclude* anybody from being able to participate in it. Rather, the conservative position claims to recognize an important reality that exists whether we acknowledge it or not. This reality is that heterosexual couples as such are able to form a unique kind of union that is of considerable importance for persons other than themselves: *viz.* the children who come into existence as a result of that union. It is for their sake – and thus, for the sake of society at large – that we ought to treat heterosexual marriage as a special kind of relationship. The liberal view, by virtue of denying the objective reality of marriage and inviting us to shape it as we see fit, undermines the societal consensus needed for stable, healthy, long-term marriages to be the norm. By treating marriage as an institution that exists *for the sake of married persons*, the liberal position contributes to a cultural milieu in which marriage itself is seen as no big deal, a temporary arrangement that can be created or dissolved on a whim. That attitude is bad for kids and bad for society.

Before moving on, let us note two things. First, whatever the merits of these arguments, it is clear that they cannot plausibly be dismissed as mere 'animus' or bigotry. In its most plausible form, the conservative position does not rest on dislike of gay people, but on reflection about what kinds of interpersonal relationships could actually be marriages. Second, the conservative view is open to criticism on several fronts. Since my main purpose in this essay is merely to lay out the issues, I will mention three important challenges but not comment on them:

- Objection #1: Because of its emphasis on the connection between sex and procreation, the conservative view implies that infertile heterosexual couples should not be allowed to marry. Since everyone (conservative or liberal)

agrees that infertile heterosexual couples should be allowed to marry, the conservative position is incoherent.

- Objection #2: Because of its emphasis on the permanence of the marriage relationship, the conservative view implies that divorce should not be permitted. Sometimes divorce is the right option, however, so the conservative position must be rejected.
- Objection #3: Because the social construct view is inherently malleable, it is possible for us to accommodate conservatives' main worries without abandoning the liberal view of marriage. Instead of emphasizing 'personal-fulfillment', we can embrace a conception of marriage as a special, usually permanent relationship between two people who desire to have a family together.

Anyone who wishes to develop a complete and coherent view of marriage must think through these objections and decide whether they are or are not decisive. One natural way to proceed, therefore, would be to present them more fully and attempt to evaluate their merits. In the closing portion of this essay, however, I would like to move in a different direction and – on the assumption that the same-sex marriage debate is unlikely to reach a resolution in the near future – consider some possible areas of agreement between liberals and conservatives.

Common Ground?

By my lights, there are at least four issues relevant to the preceding discussion where we may hope to find genuine agreement between people who disagree about the nature of marriage and/or who disagree about marriage policy. These are listed below. Whether these claims are plausible, I leave to the reader to decide.

Possible Agreement #1: The same-sex marriage debate has implications for how we think of the family. This claim has long been a staple of the conservative case; it now seems to be increasingly acknowledged by liberals as well.¹³ Kate Bolick, for example, writes, 'the rise of gay marriage has helped heterosexuals think more creatively about their own conventions', including not merely marriage norms like exclusivity and permanence, but also ideals associated with parenting and family life.¹⁴ She quotes with approval anthropologist Christopher Ryan, who says that 'We are not designed, as a species, to raise children in nuclear families,'¹⁵ and encourages us 'to study, and to endorse, alternative family arrangements that might provide strength and stability to children as they grow up'.¹⁶ Obviously, whether these evolving conceptions of the family are to be welcomed or discouraged is another matter, and not one where widespread agreement between liberals and conservatives is to be expected. It is no small thing, however, for both sides to acknowledge that same-sex marriage has cultural implications that go well beyond questions about marriage itself.

Possible Agreement #2: Sexual fulfillment is not the *sine qua non* of a well-lived human life. It is virtually impossible to talk about marriage without also talking about sex, but when this is conjoined with a discussion of the value of marriage, it can lead us to overestimate the importance of sex in human life. The all-too-common idea that we *must* have sexual intimacy in order to flourish is worrisome in at least three related respects. First, the idea is dehumanizing. It misleadingly portrays us as slaves and victims of our own desires. At our best, we are in control of our desires, not vice-versa, and we are often able to live well even when we must say 'no' to our appetites (either because of our circumstances or because we have morally compelling reasons to abstain; e.g., fasting from an occasional meal in order to free up resources to help people in need). Second, this idea blinds us to the existence of other important goods. Friendship is perhaps the most prominent of these.

The person who is overly concerned with satisfaction of her sexual desires runs the danger of being insufficiently concerned about the quality of her nonsexual relationships. Third, and last, the idea that we require sex in order to flourish diminishes the value of the lives of persons who do not have sex (either by choice or because it is not an option for them). Any sane person will agree — or should agree — that people can live good and meaningful lives without having sex. We must not lose sight of this fact.

Possible Agreement #3: Allowing same-sex couples to form legally recognized civil unions, while reserving the term 'marriage' for heterosexual couples, would accommodate many central concerns of both liberals and conservatives. Persons on both sides, of course, would be dissatisfied with such an arrangement; some liberals, because of the approach's perceived discrimination against gays; some conservatives, because it might seem to be a mere stepping stone to legally recognized same-sex marriage. Nevertheless, in a pluralistic democratic society, there may be something to be said for outcomes in which both sides get something they want and no one gets everything. This is not always the case — if some liberals are correct that justice requires us to affirm the equal merits of same-sex unions, then a compromise solution is not truly satisfactory (because it would be inherently unjust). Everything that has been said so far, however, suggests that this is not the case. Neither support for nor opposition to same-sex marriage is inherently irrational or bigoted, and since it is possible for persons of genuine good will to disagree on the issue, it seems implausible to insist that justice requires a societal embrace of the liberal position *in toto*. Legally recognized same-sex unions would provide same-sex couples with all of the legal benefits and rights enjoyed by married couples, including, presumably, the right to adopt children. Limiting same-sex couples to civil unions, however, would also leave 'cultural space' for marriage as a genuinely unique social institution oriented toward procreation, child-rearing, and long-term commitment. Civil

individual citizen, regardless of sexual orientation, would have the right to marry someone of the opposite sex if he or she wanted to do so (and if the other party consented). This, of course, is small consolation for the person who loves and wants to marry someone of the same sex.

⁴ Many of the ideas in this section can be found in Girgis *et al.* (*supra*).

⁵ Witness Kim Kardashian, who is in the news as I write this essay, divorcing her husband after just seventy-two days of wedded bliss. Many marriage liberals have expressed the sentiment of George Takei, who sarcastically tweeted on October 31, 2011, 'Kim Kardashian files for divorce after 72 days. Another example of how same-sex marriage is destroying the sanctity of the very institution.' This is an unfair criticism of the conservative view (at least in its strongest form), which takes 72-day marriages to be both (i) a serious problem and (ii) a natural consequence of the social construct view of marriage that underlies the liberal position.

⁶ J. Budziszewski, 'The Illusion of Gay Marriage', *Philosophia Christi*, vol. 7, no. 1 (2005), 52.

⁷ Girgis *et al.*, 256.

⁸ In this respect, the analogy to a baseball team fails, for we can imagine a genuine baseball team whose purpose is merely to entertain, and to do so by always losing — sort of a Washington-Generals-meets-the-Bad-News-Bears kind of thing.

⁹ Girgis *et al.*, 254.

¹⁰ One might think that the existence of asexual reproductive technologies, such as somatic cell nuclear transfer, are devastating for these conservative claims, but that is not the case. The conservative is making a metaphysical claim about what makes it the case that two persons become one entity in intercourse. This does not imply a denial of other methods being sufficient for the creation of a new human organism.

¹¹ No one, so far as I am aware, disagrees with this claim, though the details are somewhat contentious. Conservatives often claim that studies have shown that children do best when raised by both of their biological parents (Cf. Girgis *et al.*, 257–59), but this seems misleading. What is uncontroversial is that, on average, it is better for children to be raised by both of their parents than to be raised in a single-parent home or placed in foster care. Compared to children raised by loving same-sex couples, however, some current research indicates that the children of heterosexual parents are no better off. (See, for example, N. Gartrell and H. Bos, 'US National

unions may be our best hope for satisfying as many persons' legitimate interests as possible.

Possible Agreement #4: Whatever changes are or are not made to marriage laws must respect the well-being of children as an issue of central importance. I take this to be so obvious that it might well be labeled 'actual agreement #1'. For liberals, this means taking very seriously the idea that widespread embrace of the social construct view of marriage may ultimately harm children by contributing to a culture of parental (especially fatherly) neglect. For conservatives, it means acknowledging data from the social sciences that children raised by same-sex couples do quite well, and not manipulating or suppressing such data in order to protect a favored agenda.¹⁷

Again, I leave it to the reader to decide whether any of these four proposed agreements are actually plausible. My view is that they are. A substantive defense of this claim, however, is not something I will attempt to offer here.

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Notes

¹ For an excellent discussion of the issues surrounding these principles, see C. Eberle's 'Religion and Liberal Democracy' in *The Blackwell Guide to Social and Political Philosophy*, ed. Robert L. Simon (Malden, MA: Blackwell, 2002), 292–318.

² See Sherif Girgis, Robert P. George, and Ryan T. Anderson, 'What Is Marriage?', *Harvard Journal of Law and Public Policy*, vol. 34, no. 1 (2010), 245–87; Maggie Gallagher, 'What Is Marriage For? The Public Purposes of Marriage Law', *Louisiana Law Review*, vol. 62 (April 2002), 773–91; and Beckwith's contributions to 'The Same-Sex Marriage Debate' *Philosophia Christi*, vol. 7, no. 1 (2005), respectively.

³ I say 'practically speaking' because an opponent of same-sex marriage would be technically correct in saying that homosexuals would still have the right to marry, even if marriage is defined so as to exclude same-sex couples, because every

Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents', *Pediatrics*, vol. 126, no. 1 (2010), 28–36. For criticism of these claims, see Mark Regnerus, 'How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study', *Social Science Research*, vol. 41, no. 4 (July 2012), 752–77, which appeared in print while the present essay was under review.) But I am getting ahead of myself.

¹² This is another point that might seem to be easily falsified by reproductive technologies, but it is not. A clone of me, for example, would be the genetic offspring of my mother and father.

¹³ Cf. Girgis et al., 276–79.

¹⁴ 'All the Single Ladies', *The Atlantic* (November 2011), 133.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 136.

¹⁷ Readers interested in data from the social sciences are referred to the essays cited in n. 11. The Regnerus essay has generated considerable controversy since its publication; for critical discussion, see William Saletan's 'Back in the Gay' [available online at <http://www.slate.com/articles/health_and_science/human_nature/2012/06/new_family_structures_study_is_gay_parenthood_bad_or_is_gay_marriage_good.html>], and 'A Liberal War on Science?' [available online at <http://www.slate.com/articles/health_and_science/human_nature/2012/06/don_t_let_criticism_of_the_new_gay_parents_study_become_a_war_on_science.html>]; as well as Ana Samuel, 'The Kids Aren't All Right: New Family Structures and the "No Differences" Claim' [available online at <<http://www.thepublicdiscourse.com/2012/06/5640>>]. (All hyperlinks accessed 06 July 2012.)

A SHORT ARGUMENT AGAINST ABORTION RIGHTS Jack Mulder Jr.

In this paper I will put forward a brief argument against abortion rights. The argument concerns itself with the two main ways in which defenders of abortion rights develop their position. The first strategy through which they tend to do this is by arguing against the personhood of the fetus. The second strategy, made famous by Judith Jarvis Thomson, is to argue that, even if the fetus were a person, its right to life would not entail the right to draw upon the resources of the woman in pregnancy, and so the pregnancy can be terminated (even if the fetus loses its life in the process). My argument will provide reasons to suspect that attacks on fetal personhood are based on a questionable notion of personhood, and that the most common attempts to show that the fetus does not have the right to draw on the resources of the woman in pregnancy also have considerable problems. This will buttress the case for the view that the fetus is a person and that it has the right to draw on the resources of the woman in pregnancy.

Fetal personhood

David Boonin's excellent book, *A Defense of Abortion* (Cambridge University Press, 2003), argues that the most telling reason to reject the personhood of the fetus (at least up to the time in fetal development prior to which the vast majority of abortions take place) is that organized cortical brain activity, which is thought necessary for the development of consciousness, is not yet present. According to Boonin, it seems best to conclude that this develops at around 25–32 weeks after fertilization (127).