

MARK REGNERUS

Professor of Sociology at the University of Texas at Austin

What Can and Cannot Change about Marriage

In this chapter I address the question of whether marriage between a man and a woman is a universal and unchangeable institution, or whether it is a project that is malleable and adaptable. Answering this, however, raises another question about the structure and function of marriage, namely whether same-sex couples display comparable situations to married men and women.

Since Poland is a uniform state, essential matters, including those regulated by the Family and Care Code, apply uniformly throughout Poland. Family law in the United States, on the other hand, reflects the nation's federal system and so tends to vary across states. In marriage law, this resulted in an explosion in legal cases since 2000, many of which culminated (and concluded) in the 2015 Supreme Court decision in *Obergefell v Hodges*. The process by which this occurred created a significant history of legal arguments that is worth reviewing. Alongside this process, there was a surge of interest in the social science of same-sex relationships, including but hardly limited to parent-child relationships and children's outcomes of having experienced life with different types of household structures. Given that more stably-intact same-sex households with children were not numerous until quite recently – and just how numerous remains an open question – this means that empirical data on the topic was long hamstrung by issues of data quality and representativeness. Some court decisions attended to empirical evidence from the social sciences. More did not, while others appear to have featured those findings the judge

or judges preferred to highlight. Nevertheless, 10 years later, scholars are in a much better position to assess some of the same questions.

Questions of meaning and of the good, questions about the human person, and about the purpose and significance of relationships are not, however, readily answerable with empirical data. No amount of high-quality science could settle them, though they can be informed by science. They nevertheless remain moral, political, religious, and legal in nature. In other words, science will not answer questions and settle debates that are of a fundamentally different type.

The most important question here that eventually comes before the world's courts is *not* the one I posed at the beginning – about whether marriage is a universal and unchangeable institution. The answer to that pair of questions is yes and no. Yes – marriage is a universal institution – but no, the institution is not unchangeable. Much about marriage has varied over millennia, centuries, even decades, including imperatives of consent, shifting age minimums and norms about marital timing, standards of marriageability, and how civic or financial benefits accrued to marriages, to name just a few. The most important question is *not* whether marriage may look differently across time and culture – it has and will continue to. The most important question, rather, is whether the core of marriage, its constitutive structure, is malleable or not. If it is malleable, then no particular trait of the institution is secure and its future likely one of a recession toward historical obscurity. But if the core of marriage is not malleable, then the most that any court or legislative body could ever do is alter its *de jure* status – in law.¹ Hence, the most important question facing judiciaries is not one in which they must adduce harm or reward a particular moral or popular position.² And since Poland allows for homosexual sex, this “rules out moral objections to homosexuality as legitimate grounds for discrimination” about which marriages

¹ See Daughtrey dissent in: *DeBoer v Snyder et al. Appeal*, Nos. 14–1341; 3057; 3464; 5291; 5297; 5818 (6th U.S. Circuit Court of Appeals, November 6, 2014), p. 43: “... they are committed same-sex couples, many of them heading up *de facto* families, who want to achieve equal status – *de jure* status, if you will – with their married neighbors, friends, and coworkers, to be accepted as contributing members of their social and religious communities...”

² *Ibidem*, pp. 25–26.

to recognize.³ Instead, it is about discerning what marriage is and ensuring the law reflects its reality.

Marriage's *de facto* structure, as the union of a man and woman, can be battered and bruised by civil or ecclesiastical neglect, cultural derision, and popular disregard for the reality of marriage and its obligations, but it cannot be destroyed, since the structure is robust and not actually malleable. Hence, while it may be conventional for legislatures and courts to tolerate particular alternative unions, it is irrational and short-sighted to undermine the archetype by endorsing *de jure* status for alternatives. This chapter details why, employing the empirical language of economics, sociology, psychology, and demography, together with an exploration of legal commentary from judicial decisions and opinions from significant Western court cases involving marriage, particularly where such commentary employed empirical claims.

What Has and Has Not Changed about Marriage

In much of the West, marriage must now compete more than ever with other life priorities.⁴ Demographers increasingly speak of the Second Demographic Transition (SDT).⁵ In developed societies – especially but not only those that have exhibited consistent economic prosperity – it is believed that men and women alike are losing the motivation to marry and have children, and so they increasingly delay or avoid one or both. Certainly both of those are occurring at historically-astounding rates. As an example, for every 100 marriages in Poland, there are now 36 divorces.⁶ In 1960, during the heart of the

³ *Baskin v Bogan*, No. 14-2386 (7th U.S. Circuit Court of Appeals, September 4, 2014), p. 35.

⁴ Various claims, arguments, and examples in this chapter are borrowed, liberally at times, from two published books of mine. They are: M. Regnerus, *Cheap Sex: The Transformation of Men, Marriage, and Monogamy*, Oxford University Press, New York, NY, 2017 and *The Future of Christian Marriage*, Oxford University Press, New York, NY, 2020. The content appearing herein, however, is not about Christian marriage in particular, but rather marriage in general.

⁵ See R. Lesthaeghe, *The Second Demographic Transition: A Concise Overview of Its Development*, "Proceedings of the National Academy of Sciences" 2014, No. 111, pp. 18112–18115.

⁶ *Marriage and Divorce Statistics*, Eurostat Statistics Explained, http://ec.europa.eu/eurostat/statistics-explained/index.php/Marriage_and_divorce_statistics. For U.S. measures,

Communist era, there were only six divorces for every 100 weddings. Even as recently as 2010, the ratio was only 27 per 100.

Marriage in one's twenties has receded dramatically in the West. The free fall in marriage rates is obvious over a few decades – the blink of an eye in the history of marriage. Marriage during the most fertile years of a woman's lifespan (i.e., 20–29) has rapidly shifted from expected to less common. In Poland, just under 62 percent of women had ever been married by age 30 (in 2011), a figure nevertheless well above other European countries. But a swift and linear decline is still obvious – a 28 percent drop in just twenty years (between 1991 and 2011). Finally, the Polish fertility rate stands at just below 1.5, having sunk below replacement level beginning in 1989. Some blame secularization, which is certainly a plausible force. While weekly church attendance in Poland hovers just above 40 percent of the population, young adults pull down that average.⁷ Only 26 percent of under-30s attend regularly, compared with 55 percent of Poles over age 40. However, the fertility rate began declining well in advance of the evidence for secularization.

The institution of marriage appears to be changing in Poland and throughout the West. Marriage is widely thought to be decreasingly important for human survival, family formation, and cultural and sexual legitimacy – a casualty of the second demographic transition (SDT) in which men and women in developed societies exhibiting lengthy economic prosperity begin to lose the motivation to marry and have children, hence delaying or avoiding one or both of these.⁸ The role and number of children in marriage in turn recedes. The generalized esteem that marriage long held is in retreat, signaling marriage's shrunken social status, a process that not even organized religion can restrain. This is occurring at the same time as a wider appreciation of the rights of minorities is emerging. What therefore was once thought unimaginable – marriage between two men or two women – now seems not only thinkable but just and right, in the eyes of many Western governments and electorates.

see *Marriage and Divorce*, National Center for Health Statistics, <https://www.cdc.gov/nchs/fastats/marriage-divorce.htm>.

⁷ Pew Research Center, *Religious Belief and National Belonging in Central and Eastern Europe*, 2017, May 10, <http://assets.pewresearch.org/wp-content/uploads/sites/11/2017/05/15120244/CEUP-FULL-REPORT.pdf>.

⁸ See: R. Lesthaeghe, *op. cit.*

However, not everything about marriage has changed. Indeed, at least four hallmarks of marriage have not changed. First, marriage is generally understood as a comprehensive union. It involves a sharing of life together – a linking of minds, wills, actions, and resources. It means not holding back. Dietrich von Hildebrand aptly describes this trait in relation to the core of marriage: “The beloved person is the object of our thoughts, sentiments, will, hope, and longing. She becomes the center of our life (as far as created goods are concerned).”⁹ Philosopher Edith Stein characterized it as follows: “Man and woman are destined to live one life with one another like a single being.”¹⁰ We don’t simply live with our beloved, but for them. It is why prenuptial agreements will continue to prompt misgivings. Such arrangements suggest a debt or an asset that one spouse brings to a marriage ought not be the concern of the other spouse. It’s “holding back.” Moreover, many civil authorities treat “sham” marriages, those entered into for the purposes of gaining a particular material benefit (like immigration rights), as not only deceitful but illegal. Families, friends, and communities do not celebrate them, because such marriages imply a calculated, utilitarian agreement – not a comprehensive union.

Second, most marrying couples anticipate having children (if they are able to). This is the case even though contraception is widely practiced. Couples differ on how many children they hope to have, and when – and that number is certainly diminishing. Yet even intentionally childless couples (of reproductive age) tend to revisit the conversation, so entrenched is the notion and consistent with the fruitfulness of self-giving love. Couples struggling with infertility commonly consider the matter a source of profound sadness and disappointment.

Third, people expect marriage to be permanent – a lifelong union. Talk of short-term, “rolling” contracts, in which a marrying couple must opt in to remain married, are widely ridiculed.¹¹ Divorce, on the other hand, is widely

⁹ D. von Hildebrand, *Marriage: The Mystery of Faithful Love*, Sophia Institute Press, Manchester, NH, 1997. The quote comes from pages 10–11.

¹⁰ E. Stein, *Essays on Women*, ICS Publications, Washington, D.C., 2010.

¹¹ “Til 2013 Do Us Part? Mexico Mulls 2-Year Marriage,” 2011, September 29, Reuters, <https://www.reuters.com/article/us-mexico-marriage/til-2013-do-us-part-mexico-mulls-2-year-marriage-idUSTRE78S6TX20110929>.

held to be lamentable. They are not celebrated. Even when the separation brings relief, there remains a sense of the loss of what could have been. In sum, couples who marry intend to stay married.

Finally, sexual exclusivity/fidelity is expected in marriage.¹² This is not merely a religious norm. Some may balk at this notion and suggest instead that such an expectation is a social or cultural artifact of paternity risk that both could have been different and is now out-of-date in an era of mass contraceptive use.¹³ Observing marriages, however, tells a timeless story: infidelity may be experienced, but only as an exception – that is, a violation of the norm, and a signal of something well short of the comprehensive union that was sought. Sexual exclusivity is not a *flexible* trait of a lifelong, happy marriage.

Even in an era wherein marriage is entered into years later than previously, and fewer marry at all, these four remain reliable expectations, not simply social constructions. Perhaps, then, marriage itself has not *changed* so much as it has *receded*. A strong argument can be made that what has changed, rather, is what people emotionally expect of marriage – what it should look and feel like, and what marriage should help them accomplish. To be married today is to expect to be contented. As expectations depart from longstanding realities, marriage not only declines in popularity, but becomes increasingly prone to civil and legal alterations, revealing a struggle over the very core of marriage.

At its core, marriage demonstrates an exchange relationship between a man and woman. Love as an emotion is not the core of marriage. Couples do not marry in order to experience love; they marry because they love already and they wish to add to that love what marriage *is*. **There are seasons in marriage when love is more difficult, as most who have experienced marriage can attest. If one or both spouses believes that sentiments of love are at the core of marriage, their union is apt to be a fragile one.**

Instead, a marriage is a relationship of interdependence and is meant to be a load-bearing structure, strong enough to withstand internal and

¹² In addition to this, von Hildebrand sensibly pits the comprehensive nature of the union against violations of fidelity: “The characteristics of complete, mutual self-giving, and of being exclusively turned toward the beloved, as well as the fact that the two partners form a couple, exclude in themselves the possibility that this love can be directed simultaneously to more than one person.” See p. 20 of von Hildebrand, *op. cit.*

¹³ J. Stacey, *Unhitched: Love, Marriage, and Family Values from West Hollywood to Western China*, New York University Press, NY, 2012.

external difficulties. Part of marriage is, of course, the sexual union intended to reflect and recreate love (as well as generate children).¹⁴ But sex is also not its organizing principle. Marriage, at its core, has to do with mutual interdependence – the creation and transfer of desired resources between husband and wife. A healthy sexual relationship exemplifies this exchange by its very nature of mutual giving, but this is hardly the sole manner in which exchange occurs (e.g., security, care, recreation, social support and encouragement, household management, income, children, etc.).

While couples may feel the weight of socialized sex roles and expectations here, none are absolute. Instead, couples develop their own internal culture built upon shared preferences and worked-out agreements. They learn how to be (and stay) married to each other. Hence, the core of marriage exhibits sexual difference, without defining, determining, or delineating the nature of those differences.¹⁵ That is, the differences between men and women are not fixed or rigid, but nor are they mythic and arbitrary. They tend to build on nature.¹⁶

¹⁴ A forerunner of social network analysis, Georg Simmel asserted that marriage is anchored in sexual intercourse, an act that is “alone ... common to all historically known forms of marriage, while perhaps no other characteristic can be found without exceptions.” Like Simmel, recall that Hegel held it is unacceptable to equate marriage with love, because love is “too contingent.” Love is not meant to be transient in Bauman’s “liquid” or Giddens’s “confluent” sense. Marriage is not merely a sexual relationship. It is also not simply a civil contract, a notion Hegel labels “crude.” See K.H. Wolff, *The Sociology of Georg Simmel*, Simon and Schuster, New York 1950, p. 131 (note 10); Z. Bauman, *Liquid Love*, Polity Press, Cambridge 2003; A. Giddens, *The Transformation of Intimacy*, Stanford University Press, Stanford, CA, 1992. Even Erich Fromm, the famous German social psychologist, psychoanalyst, and socialist humanist, was far more skeptical about what the results of sexual attraction without sustained love would accomplish than are most moderns. The latter are delusional, Fromm would say. See E. Fromm, *The Art of Loving*, Harper, New York 1956.

¹⁵ *Orlandi and Others v Italy*, Nos. 26431/12; 26742/12; 44057/12; 60088/12, (European Court of Human Rights, December 14, 2017), p. 17: “The difference in sex of the spouses to be was the first condition for the validity of a marriage according to the relevant articles of the civil code, and in line with the long cultural and legal tradition of the institution of marriage. It followed that same-sex marriage was devoid of one of the essential elements enabling it to produce any legal effect in the Italian legal order.”

¹⁶ J.R. Udry, *Biological Limits of Gender Construction*, “American Sociological Review” 2000, No. 65, pp. 443–457; Sutton: “It is not society’s laws or for that matter any one religion’s laws, but nature’s laws (that men and women complement each other biologically), that created the [marriage] policy imperative.” *DeBoer v Snyder*, *op. cit.*, p. 20.

Insofar as marriage concerns the transfer of diverse resources between spouses in an interdependent union, marriage rates should remain stable. But if marriage begins to have less to do with the movement of desirable and distinctive resources *between* spouses and more to do with meeting expectations within the joint consumption of resources, the social practice of marriage should recede. Where spouses are functionally interchangeable and basically independent, they simply do not need the marriage. (The two may wed and remain together, perhaps even happily so, but this scenario is serendipitous – a product of privilege, not scarcity. It is not the substance of marriage.) Most marriages reveal observable differences and interdependence, even if only over time.

Not a few scholars vociferously object to this argument, and claim instead that marriage has profoundly evolved. “All in all, if the basis of marriage is specialization and exchange,” wrote the late UCLA demographer Valerie Oppenheimer, “then marriage seems an increasingly anachronistic social form.”¹⁷ Oppenheimer is, ironically, correct. Such a marriage is coming to seem anachronistic, and declining marriage rates reinforce her point. But marriage is what it is. Its core and key attributes are not *changing*. But since fewer people appreciate and desire these in an era of increasing technology, gender equality, and secularization, marriage is in turn *receding*. Fewer people want what marriage is and what it does.¹⁸ But this does not mean a new kind of marriage will ultimately successfully succeed it, if only legislatures or judiciaries would enact it. In a misguided attempt at discerning the legal meaning of marriage, University of Arizona law professor Barbara Atwood writes that “the declining marriage rate in the United States reflects the

¹⁷ V.K. Oppenheimer, *Women's Rising Employment and the Future of the Family in Industrial Societies*, “Population and Development Review” 1994, No. 20, pp. 293–342. The quote is from p. 333.

¹⁸ In a popular essay, writer Mandy Len Cantron observed, “When my partner, Mark, and I talk about whether or not we want to get married, friends tend to assume that we are trying to decide whether or not we are ‘serious’ about our relationship. But I’m not expressing doubts about my relationship; I’m doubting the institution itself.” This is accurate. Cantron is observing the thing itself and wondering aloud whether she wants it or not. The quote comes from paragraph 4 of M.L. Cantron, *What You Lose When You Gain a Spouse*, “The Atlantic Monthly” 2019, July 2, <https://www.theatlantic.com/family/archive/2019/07/case-against-marriage/591973/>.

changing nature of the institution.”¹⁹ A more accurate statement would be that the declining marriage rate in the United States – and elsewhere – reflects changing *interest* in the nature of the institution. Its nature – that is, its core structure and expectations – has not changed. **Marriage, rather, is receding in popularity, as well as pushed to later in the life course.**

Does Marriage Evolve?

Some who have sued for access to marriage over the past 20 years have done so by appealing to the purported “evolution” of marriage away from the long-standing supposition that marriage is closely associated with “procreation and education of children,” a notion that the plaintiffs in *Schalk and Kopf v Austria* (2010) claimed “no longer formed an integral part of marriage.”²⁰ According to the plaintiffs, only a sense of comprehensiveness and stability still remains central: “In present-day perception, marriage was rather a permanent union encompassing all aspects of life.”²¹ Given the biological impossibility of reproduction within the same-sex relationship represented in the case, it is no surprise to witness claims of marital “evolution.” Sexual fidelity, long connected to reproduction, is also increasingly absent from the discourse of marital “evolutionists.” But if you observe the average marriage throughout the West, all four hallmarks remain evident.²²

Justice Jeffrey Sutton, author of the 2-1 decision in the U.S. Sixth Circuit Court’s 2014 case *DeBoer v Snyder*, remarked, “If it is constitutionally irrational

¹⁹ B. Atwood, *Marital Contracts and the Meaning of Marriage*, “Arizona Law Review” 2012, No. 54, pp. 11–42. The quote appears on page 19. Atwood is hardly alone. Many scholars, politicians, and observers presume that marriage’s *raison d’être* is entirely socially constructed and hence quite malleable.

²⁰ *Schalk and Kopf v Austria*, No. 30141/04 (European Court of Human Rights, June 24, 2010), p. 3, repeated on p. 10.

²¹ *Ibidem*, p. 3.

²² Judge Sutton remarks in the U.S. Sixth Circuit Court’s 2014 decision in *DeBoer v Snyder* about the state’s “awareness of the biological reality that couples of the same sex do not have children in the same way as couples of opposite sexes and that couples of the same sex do not run the risk of unintended offspring. That explanation, still relevant today, suffices to allow the States to retain authority over an issue they have regulated from the beginning.” *DeBoer v Snyder*, *op. cit.* The quote is from p. 21.

to stand by the man-woman definition of marriage, it must be constitutionally irrational to stand by the monogamous definition of marriage.”²³ In her dissent, Sutton’s colleague Justice Martha Daughtrey argued that monogamy is no standard for marriage, claiming that, “Even today, polygynous marriages outnumber monogamous ones...”²⁴ Daughtrey’s remark is empirically untrue. As recently as 2019, polygamous households characterized only two percent of the global population, and in many countries, the practice is forbidden.²⁵ Moreover, the United Nations Human Rights Committee maintains that polygamous practices “violate the dignity of women.”²⁶

The matter raises an uncomfortable question, however. Is monogamy a problem for gay marriages? Using nationally-representative data on couples’ behavior collected in 2017, Stanford University demographer Michael Rosenfeld notes that among (civilly) married gay men in the United States, fully 21 percent reported at least one other romantic or sexual relationship *in the past year*, a rate six times higher than was reported among men married to women (3.4 percent), seven times higher than married lesbians (3 percent), and 13 times higher than was reported by women married to men (1.6 percent).²⁷ Moreover, among this 21 percent of married gay men, the mean (or average) number of sexual partners in the past year was 2.6. In a 12-year-long longitudinal comparative study of couples whose original civil union commenced in Vermont between 2000 and 2001, researchers observed that 62 percent of respondents in same-sex male relationships reported sex outside of the relationship at some point prior to 2014, a figure well eclipsing the 15 percent of heterosexual respondents and 8 percent of those in same-sex

²³ *Ibidem*, p. 23.

²⁴ *Ibidem*, p. 57.

²⁵ S. Kramer, *Polygamy is Rare around the World and Mostly Confined to a Few Regions* 2020, December 7, Pew Research Center, <https://www.pewresearch.org/fact-tank/2020/12/07/polygamy-is-rare-around-the-world-and-mostly-confined-to-a-few-regions/>.

²⁶ United Nations Human Rights Committee, *General Comment 28, Equality of Rights between Men and Women (Article 3)*, United Nations 2000, U.N. Doc. CCPR/C/21/Rev.1/Add.10. Available at: <http://hrlibrary.umn.edu/gencomm/hrcom28.htm>.

²⁷ M.J. Rosenfeld, *Are Tinder and Dating Apps Changing Dating and Mating in the U.S.?*, [in:] *Families and Technology*, eds. J. Van Hook, S.M. McHale, V. King, Springer, Switzerland 2018, pp. 103–117.

female relationships who reported the same.²⁸ (To be fair, at the time of data collection, many of these were not same-sex civil marriages.)

Gay men have a different perspective on the meaning of fidelity, we are told. In her qualitative study of gay, lesbian, and straight couples, Debra Umberson observed that “[m]en partnered with men were more likely ... to indicate that such (extradyadic) sexual encounters posed minimal threat to their long-term relationship, as long as emotional intimacy was absent.”²⁹ This means that gay unions, including civil marriages, are not often held to the same standard of monogamy as relationships that involve women. Rosenfeld concurs: “For gay men ... being married appears to be uncorrelated with monogamy.”³⁰ The difference is so pronounced that explanations are thought necessary to account for the discrepancy.³¹

In his 2015 book *Just Married*, Princeton professor Stephen Macedo worried that gay men’s penchant for nonmonogamy would undermine the general norm of sexual fidelity in marriage.³² I doubt we will widely observe what Macedo fears. Instead, should nonmonogamy become privileged within relationships more widely, marriage will simply recede, since fidelity is a longstanding expectation that is close to the core of marriage. At bottom, this signals a fundamentally *different type* of relationship than that widely anticipated by marriages exhibiting sexual difference.

²⁸ K.F. Balsam, E.D. Rothblum, R.E. Wickham, *Longitudinal Predictors of Relationship Dissolution among Same-Sex and Heterosexual Couples*, “Couple and Family Psychology” 2017, No. 5, pp. 247–257. Monogamy, the authors unwittingly observe, remains tightly connected with permanence – another key hallmark of marriage. Study participants that reported engaging in sex outside of their relationship revealed a 204 percent increase in the odds of dissolution (p. 252).

²⁹ See D. Umberson, M.B. Thomeer, A.C. Lodge, *Intimacy and Emotion Work in Lesbian, Gay, and Heterosexual Relationships*, “Journal of Marriage and Family” 2015, No. 77, pp. 542–556. The quote here is from p. 551.

³⁰ M.J. Rosenfeld, *op. cit.*, p. 110.

³¹ See M. Oppenheimer, *Married, with Infidelities*, “New York Times” 2011, June 30, paragraph 41, <http://www.nytimes.com/2011/07/03/magazine/infidelity-will-keep-us-together.html>.

³² S. Macedo, *Just Married: Same-Sex Couples, Monogamy, and the Future of Marriage*, Princeton University Press, Princeton, NJ, 2015. See also A.L. Wax, *Experiments in Matrimony*, “First Things” 2017, February, <https://www.firstthings.com/article/2017/02/experiments-in-matrimony>.

A different challenge confronts same-sex relationships between women. U.S. District Court Judge Bernhard Friedman described – in his 2014 decision overruling the 2004 Michigan Marriage Amendment and affirming the right of same-sex couples to marry – Rosenfeld’s expert witness testimony that “same-sex couples in legally recognized unions exhibit the same couple stability rates as their heterosexual married counterparts.”³³ Friedman praised the testimony as “highly credible,” but is Rosenfeld’s own claim accurate?

In a study published in 2014 using earlier data from his How Couples Meet and Stay Together (HCMST) project, Rosenfeld had noted that even after controlling for a host of other measures, lesbian respondents were more likely to break up than straight or gay respondents.³⁴ Moreover, in an earlier version of the same study, presented at the 2012 annual meeting of the American Sociological Association, Rosenfeld observed an interaction effect indicating that same-sex relationships were ironically *more* apt to break up when the social support of the respondents’ own parents for their union was greater.

Subsequent analyses of HCMST data have found that while same-sex cohabitational unions were more stable than opposite-sex cohabitants, same-sex marriages were less stable than their opposite-sex ones.³⁵ Just over 23 percent of same-sex marriages in the data had been dissolved by Wave 5 of data collection, compared with 11 percent of opposite-sex marriages. Male-male unions were notably less likely (39 percent) to become a “formalized” union (a marriage, civil union, or domestic partnership) than either female-female unions (53 percent) or male-female unions (89 percent). Stability, however, was lowest for female-female formalized unions, with nearly 6 out of every 10 unions dissolved within 20 years – a figure well above either male-male or male-female unions. (Despite this, the authors note that demand for same-sex marriage has become increasingly female-dominated).

Although not nationally-representative data like HCMST, a study tracking American couples over a 12-year period observed that women in same-sex relationships were more likely to dissolve their relationship than were men

³³ *DeBoer v Snyder*, *op. cit.*, p. 6.

³⁴ M.J. Rosenfeld, *Couple Longevity in the Era of Same-Sex Marriage in the United States*, “Journal of Marriage and Family” 2014, No. 76, pp. 905–918.

³⁵ E. Ketcham, N.G. Bennett, *Comparative Couple Stability: Same-Sex and Male-Female Unions in the United States*, “Socius” 2019, No. 5, pp. 1–15.

in same-sex relationships and heterosexual married couples.³⁶ A 17-year-long analysis of same-sex relationships in Sweden revealed that women in same-sex unions exhibit a divorce rate that is nearly twice as high as other unions, a pattern that is stable over time, suggesting it is no short-term fluke.³⁷ Despite wide and increasing social acceptance of such unions, the pattern is discernible in Norway, Denmark, Belgium, the Netherlands, Spain, England, Wales, Colombia, and the United States.³⁸

None of this came as a surprise to earlier scholars – typically supporters of same-sex marriage – who had predicted it. British social theorist Anthony Giddens, a leading public intellectual and one of the most famous living sociologists, observed this pattern in his 1992 book *The Transformation of Intimacy*. “Most lesbian women may be in a long-term relationship,” he wrote, “but they have difficulty in gaining a sense of security in them.”³⁹ Other studies of varying quality had already revealed the same. The pattern was noted in the 12-year-long comparative study of couples noted above. In fact, while declining relationship quality predicted women’s same-sex relationship dissolution, it was entirely unassociated with the dissolution of heterosexual and men’s same-sex relationships.⁴⁰ Twice as many women’s same-sex relationships (compared to men’s) ended. One pair of sociologists attributed the longstanding pattern to lesbian couples’ “high standards of equality.”⁴¹

³⁶ K.F. Balsam, E.D. Rothblum, R.E. Wickham, *op. cit.* Comparable to the HCMST conclusion, there were no differences in dissolution rates between same-sex couples who had (or had not) legalized their relationship.

³⁷ M. Kolk, G. Andersson, *Two Decades of Same-Sex Marriage in Sweden: A Demographic Account of Developments in Marriage, Childbearing, and Divorce*, “Demography” 2020, No. 57, pp. 147–169. The trend has diminished a bit: “For a few years, women in same-sex unions had divorce rates that were more than three times as high as those for people in opposite-sex unions. These differences declined somewhat over time, but female same-sex marriages still are more likely to end in divorce than male same-sex and opposite-sex marriages.” The quote is from p. 162.

³⁸ References *Ibidem*, p. 164. See also: F. Ruiz-Vallejo, D. Boertien, *Do Same-Sex Unions Dissolve More Often than Different-Sex Unions? Methodological Insights from Colombian Data on Sexual Behavior*, “Demographic Research” 2021, No. 44, pp. 1149–1164.

³⁹ A. Giddens, *op. cit.*, p. 35.

⁴⁰ K.F. Balsam, E.D. Rothblum, R.E. Wickham, *op. cit.*

⁴¹ T.J. Biblarz, J. Stacey, *How Does the Gender of Parents Matter?*, “Journal of Marriage and Family” 2010, No. 72, pp. 3–22. The quote is from p. 17. H.M.W. Bos, N.K. Gartrell, F. van Balen, H. Peyser, T.G.M. Sandfort, *Children in Planned Lesbian Families: A Cross-Cultural Comparison between the United States and the Netherlands*, “American Journal of Orthopsychiatry”

There is no theoretical reason to think that lesbians in particular have distinctively high standards of emotional and relational satisfaction. Rather, women in general exhibit higher expectations of this nature. Indeed, men and women tend to conduct their relationships differently and exhibit distinctive preferences in their relationships. But when the union diverges from one of sexual difference – that is, a man and woman in relationship – longstanding sex-typed preferences become consolidated and exacerbated rather than moderated. This means, ironically, that same-sex couples are more subject to deep-rooted gendered relationship patterns and habits, their stated egalitarian attitudes aside. There is nothing political about this; it is just the empirical reality. If marriage was a social construction, utterly malleable, we should see little stable distinction in what men and women prioritize about marriage and how they act within it. But we see all of that.

The core of marriage and its four key supporting expectations may be socially reinforced, but they are not arbitrary. Noted social theorist Georg Simmel wrote extensively about the nature of the dyad, including the structure of marriage, and observed this very thing:

“Although each of the two spouses is confronted by only the other, at least partially he also feels as he does when confronted by a collectivity; as the mere bearer of a super-individual structure whose nature and norms are independent of him, although he is an organic part of it.”⁴²

Although it would be anachronistic to suggest what Simmel would have thought about the institution of marriage today, he wrote over a century ago that “marriage, essentially, allows only acceptance or rejection, but not

2008, No. 78, pp. 211–219; W.D. Manning, S.L. Brown, J.B. Sykes, *Same-Sex and Different-Sex Cohabiting Couple Relationship Stability*, “Demography” 2016, No. 53, pp. 937–953. I have located two studies, one based on British data and the other on a small N American sample of same-sex couples, that suggested a lower break-up rate for female than male same-sex couples: C.Q. Lau, *The Stability of Same-Sex Cohabitation, Different-Sex Cohabitation, and Marriage*, “Journal of Marriage and Family” 2012, No. 74, pp. 973–988; K. Joyner, W. Manning, R. Bogle, *Gender and the Stability of Same-Sex and Different-Sex Relationships among Young Adults*, “Demography” 2017, No. 54, pp. 2351–2374.

⁴² K.H. Wolff, *op. cit.* The quote is from p. 130.

modification.”⁴³ To be sure, aberrant “marital” behavior can be sparingly tolerated so long as it is recognized and understood as such. An intentionally childless union or sexually “open” marriage can be accommodated, like the occasional scofflaw driver who doesn’t obey stop signs. But these are enabled to do so only by the institutionalized actions of the vast majority. Alternate visions of marriage may be buttressed for a time – decades even – but the energy and resources it takes to prop up public opinion (that marriage is something other than what it is) will wane eventually.

Are the Dynamics of Same-Sex Unions Comparable to Opposite-Sex Unions?

There is an obvious sense in the research literature that the wider LGBT movement wants global access to civil marriage, and hopes to benefit from the arrangement (e.g., better health, less stress, etc.), all the while harboring deep concerns about central normative behaviors – monogamy, permanence, children – long identified with marriage. Sociologist Corinne Reczek reviews a decade (2010–2020) of research on sexual and gender minority (SGM) families, and concludes that while a variety of the benefits that accrue to heterosexual spouses – health outcomes in particular – also do so to LGBT marriages, numerous domains display differences.⁴⁴ Younger SGM adults, she and others note, “are less likely to value faithfulness and lifelong commitment than heterosexual young adults,” in no small part because – as another study argues – such norms are considered “boring, sexist, monogamous, and confining...”⁴⁵ Surprisingly, having at least two children in the households is connected with weaker rather than stronger beliefs in the value of monogamy.⁴⁶ Marriage access does, however, help foster more traditional

⁴³ *Ibidem*, p. 130.

⁴⁴ C. Reczek, *Sexual- and Gender-Minority Families: A 2010 to 2020 Decade in Review*, “Journal of Marriage and Family” 2020, No. 82, pp. 300–325.

⁴⁵ *Ibidem*, p. 305. See: E. Lamont, “We Can Write the Scripts Ourselves”: Queer Challenges to Heteronormative Courtship Practices, “Gender & Society” 2017, No. 31(5), pp. 624–646.

⁴⁶ G. Potârcă, M. Mills, W. Neberich, *Relationship Preferences among Gay and Lesbian Online Daters: Individual and Contextual Influences*, “Journal of Marriage and Family” 2015, No. 77(2), pp. 523–541.

beliefs and behaviors among SGMs. Just how much is difficult to discern. Even in an era of same-sex marriage access, many SGMs remain ambivalent about the institution, claiming its “patriarchal” and “homonormative” nature “reinforces hegemonic notions of gender and sexuality” and thwart queer and feminist principles.⁴⁷ Predictably, such unions display greater egalitarianism and express similar housework preferences and parenting styles, to be expected given the absence of sexual difference. Gays and lesbians appear to value parenthood equally, but are notably less likely to want children than heterosexuals.⁴⁸

Studies of the internal dynamics of same-sex relationships reveals predictable sex-typed behaviors; that is, distinctions (like caregiving, monitoring, etc.) that are consonant with what might be expected from women, whether in relationship with a man or another woman.⁴⁹ Sexual orientation, that is, seems unrelated to how men and women relate to each other. Evident differences appear to arise more from the consolidation – that is, the doubling – of sex-typed styles of relating. In other words, the patterns studies reveal are more often about being male or female rather than about being gay or straight. Sex preferences, then, predict obvious distinctions in how people conduct their unions. As a result, three types of marriage (rather than two) begin to be discernible, each with their distinctive patterns and norms: two men, two women, and one man and one woman.

⁴⁷ C. Reczek, *op. cit.*, p. 305; K. Kimport, *Queering Marriage? Challenging Family Formation in the United States*, Rutgers University Press, New Brunswick, NJ, 2013.

⁴⁸ R.G. Riskind, C.J. Patterson, *Parenting Intentions and Desires among Childless Lesbian, Gay, and Heterosexual Individuals*, “Journal of Family Psychology” 2010, No. 24(1), pp. 78–81; C. Reczek *op. cit.*

⁴⁹ For examples, see R. Behler, R. Donnelly, D. Umberson, *Psychological Distress Transmission in Same-sex and Different-sex Marriages*, “Journal of Health and Social Behavior” 2019, No. 60, pp. 18–35; D. Umberson, R. Donnelly, A. Pollitt, *Marriage, Social Control, and Health Behavior: A Dyadic Analysis of Same-sex and Different-sex Couples*, “Journal of Health and Social Behavior” 2018, No. 59, pp. 429–446.

Malleable Marriage but Immutable Sexuality?

How can it be that marriage has a *de facto* core structure – paired sexual difference – even while *de jure* alternatives, now decades old, would seem to constitute evidence that the core of marriage is malleable? The central historical reason for the emergence of questions about the malleability of marriage is actually a technological one. Anthony Giddens offered a prescient look at the consequences for heterosexual relationships posed by shifting sexual norms in *The Transformation of Intimacy*.⁵⁰ The wide uptake of effective contraception, Giddens explained,

*“... meant more than an increased capability of limiting pregnancy. In combination with the other influences affecting family size ... it signaled a deep transition in personal life. For women – and, in a partly different sense, for men also – sexuality became malleable, open to being shaped in diverse ways, and a potential “property” of the individual. Sexuality came into being as part of a progressive differentiation of sex from the exigencies of reproduction. With the further elaboration of reproductive technologies, that differentiation has today become complete. Now that conception can be artificially produced, rather than only artificially inhibited, sexuality is at last fully autonomous.”*⁵¹

By “fully autonomous” Giddens recognized that sexuality could be (and eventually was, in hindsight) not only separated from its long-standing association with marriage and fertility but free from even being embedded in relationships. Sexuality became understood as a malleable property of the individual.

Indeed, scholars increasingly suggest that sexuality and desire can be “cultivated.” Immutability, which has long been a foundation for legal decisions in favor of LGBT rights, has not enjoyed wide scholarly support for years. Why? Because immutability does not adequately capture the complexity of sexuality or give credit to the social directedness of desire, particularly among women. Jane Ward, a sociologist of sex, gender, and queer politics at the University

⁵⁰ A. Giddens, *op. cit.*

⁵¹ *Ibidem*, p. 27.

of California –Riverside, captures the dilemma that survey self-report data pose to the idea of immutability:

“(I) f we all really believed that sexual orientation was congenital – or present at birth – then no one would ever worry that social influences could have an effect on our sexual orientation. But I think that in reality, we all know that sexual desire is deeply subject to social, cultural, and historical forces.”⁵²

Others agree.⁵³ Moreover, the share of American women self-identifying as bisexual has quadrupled, from 1.5 percent to 6 percent, in just 10 years.⁵⁴ In polling conducted in 2020, Gallup observed that just under 16 percent of young adults (ages 18–23) in the United States self-identify as LGBT, the vast majority of which (72 percent) consider themselves bisexual.⁵⁵ Do these estimates reflect a genuine sexual orientation – bisexuality – that was previously stymied as unacceptable? It’s prudent to be skeptical. (Few hold that there is such a thing as innate bisexuality.) A far more likely answer is the social environment Giddens describes, favoring sexual experimentation and identity cultivation. A distinct lack of immutability is evident in sociologist Leslie Bell’s study of northern California women.⁵⁶ Half of the lesbian, bisexual, and queer women Bell interviewed experienced no clear sexual identity transformation in moving between male and female partners. Fully

⁵² J. Ward, *No One is Born Gay (or Straight): Here Are 5 Reasons Why*, “Social (In)Queery” 2013, March 18, paragraph 12, <http://socialinqueery.com/2013/03/18/no-one-is-born-gay-or-straight-here-are-5-reasons-why>.

⁵³ Northwestern University psychologist J. Michael Bailey concurs with Ward that women’s sexual orientation is more sensitive to social influence and more subject to personal decision-making. See: J.M. Bailey, *What is Sexual Orientation, and Do Women Have One?*, [in:] *Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities*, ed. D.A. Hope, Springer, New York 2009, pp. 43–64. The quote is from p. 60.

⁵⁴ D. Compton, T. Bridges, *2018 GSS Update on the U.S. LGB Population*, “Inequality by (Interior) Design Blog” 2019, April 12, <https://inequalitybyinteriordesign.wordpress.com/2019/04/12/2018-gss-update-on-the-u-s-lgb-population/>.

⁵⁵ J.M. Jones, *LGBT Identification Rises to 5.6% in Latest U.S. Estimate*, “Gallup” 2021, February 24, <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx>; by comparison, just over 9 percent of adults ages 24–39 identify as LGBT; the same is true of just under 4 percent of 40–55-year-olds.

⁵⁶ L.C. Bell, *Hard to Get: 20-Something Women and the Paradox of Sexual Freedom*, University of California Press, Berkeley and Los Angeles, CA, 2013.

69 percent of women who self-identified as homosexual in the 2015 *Relationships in America* survey reported having had sex with a man at some point in their life. Reczek admits that “SGM adults today may have children through a different-sex relationship due to the fluidity of sexual identity and behavior.”⁵⁷

To be sure, self-identified sexual orientation appears both more discernible and more stable for men than for women.⁵⁸ I take no position on the etiology of homosexuality, save for the conclusion that the matter – so long studied employing all manner of rigorous methodologies and samples – is complicated, may involve some degree of genetic and hormonal components, and certainly differs between men and women. To deny there is a social influence aspect to sexual orientation, however, is to ignore empirical reality.

Despite this, simplistic and categorical etiological assumptions continue to undergird legal decisions and opinions in the West. Judge Richard Posner, a conservative legal scholar and author of *Sex and Reason* (1992), maintained in his *Baskin v Bogan* (2014) opinion that “there is little doubt that sexual orientation . . . is an immutable (and probably an innate, in the sense of in-born) characteristic rather than a choice.”⁵⁹ Posner repeats the term “immutable” seven times in his decision, concluding that the law discriminated “against a minority defined by an immutable characteristic.”⁶⁰ At some point, a reckoning about immutability and its political (as distinct from scientific) use as a blanket justification for extending LGBT rights is merited.

Indeed, so much about sexual orientation and accompanying self-identities remains unsettled, a fact that is reflected in court decisions and jurist remarks. 5 Supreme Court associate justice Neil Gorsuch, writing for the majority in

⁵⁷ Reczek, *op. cit.*, p. 310.

⁵⁸ R.F. Baumeister, *Gender Differences in Erotic Plasticity: The Female Sex Drive as Socially Flexible and Responsive*, “Psychological Bulletin” 2000, No. 126, pp. 347–374; L.M. Diamond, *Sexual Fluidity: Understanding Women’s Love and Desire*, Harvard University Press, Cambridge, MA, 2008; L.M. Diamond, *Was It a Phase? Young Women’s Relinquishment of Lesbian/Bisexual Identities over a 5-Year Period*, “Journal of Personality and Social Psychology” 2003, No. 84, pp. 352–364; L.M. Diamond, *Development of Sexual Orientation among Adolescent and Young Adult Women*, “Developmental Psychology” 1998, No. 34(5), pp. 1085–1095; E. Illouz, *Why Love Hurts: A Sociological Explanation*, Polity Press, Cambridge, UK, 2012; L.A. Peplau, L.D. Garnets, *A New Paradigm for Understanding Women’s Sexuality and Sexual Orientation*, “Journal of Social Issues” 2000, No. 56, pp. 329–350.

⁵⁹ *Baskin v Bogan*, *op. cit.*, p. 9.

⁶⁰ *Ibidem*, p. 7.

Bostock v Clayton County, made consistent reference to homosexuality as largely characterized by one's being attracted to members of the same sex.⁶¹ Associate Justice Amy Coney-Barrett, in remarks made during her confirmation before the U.S. Senate judiciary committee, was widely criticized for using the term "sexual preference." The lingo has not remotely settled, as the numerous iterations of acronyms (LGBT, LGBTQ, LGBTQI+, etc.) attest.

Marriage law would seem to be more fundamentally about *sex* – male and female – than about *sexual orientation*, which is increasingly understood to be malleable in numerous cases and indicated by nothing more (required) than a self-identification. Instead, as law professor Helen Alvaré observes, beginning with the early contraception cases *Griswold v Connecticut* (1968) and *Eisenstadt v Baird* (1972), the U.S. Supreme Court came to adopt a constructivist understanding of personal identity that depended on the person's sexual activity.⁶² As a result, persons are increasingly understood to become who they are by way of their sexual choices and self-references. This is unprecedented and unfortunate.

Empirical Inaccuracies and Challenges in Judicial Decisions and Opinions

The saturation of immutability language in judicial decisions, the disregard for rising numbers of self-identified bisexuals, the endemic levels of extramarital partners among men in same-sex unions, and the absence of discussion about elevated same-sex marriage dissolution rates all raise questions about what *other* empirical information about same-sex households is backgrounded, erroneous, or ignored in judicial discussions on the topic. One of the earliest and consistently most challenging empirical discussions has been the basic estimation of same-sex households, with or without children.

U.S. Supreme Court justice Anthony Kennedy, in his 2013 decision in *U.S. v Windsor*, claimed "it humiliates tens of thousands of children now

⁶¹ *Bostock v Clayton County, Georgia*, No. 17–1618, (U.S. Supreme Court, June 15, 2020), p. 21.

⁶² H.M. Alvaré, *Religious Freedom versus Sexual Expression: A Guide*, "Journal of Law and Religion" 2015, No. 30(3), pp. 475–495, quote at p. 476.

being raised by same-sex couples.”⁶³ Two years later, writing the same for *Obergefell v Hodges*, asserted that “... hundreds of thousands of children are presently being raised by such couples.”⁶⁴ Which is it? The number of same-sex households, as well as a count of children living within them, has never been easy to estimate. In fact, demographers Martin Kolk and Gunnar Andersson reported in 2020 that “same-sex family dynamics ... is often based on relatively sketchy quantitative data. In particular, there is still a dearth of reliable quantitative data on and demographic analyses of the family dynamics in relation to childbearing and parenthood in same-sex unions.”⁶⁵

The actual figure continues to be elusive but generally underwhelming. Demographer Gary Gates’s 2013 estimate of “more than 200,000 children are being raised by homosexuals, mainly homosexual couples” in the United States was noted in the *Baskin v Bogan* and *DeBoer v Snyder* decisions. It is a figure eclipsed by the nearly 74 million children (under age 18) living in the United States in 2010.⁶⁶ Gates nevertheless conjectures that as many as 3.7 million children in the States may have a sexual minority parent (of which, by his math, only 5.4 percent would be living in same-sex couple households).⁶⁷

Data collection methods and estimates are improving, however. In 2019, the Current Population Survey, conducted by the U.S. Census Bureau, offered an updated estimate of 191,000 children living in same-sex households, or three out of every 1,000 children under the age of 18.⁶⁸ Earlier (and higher) figures, then, appear exaggerated. Indeed, professional organizations like the American Association for Marital and Family Therapy continue to suggest that “between 1 and 9 million children in the United States have at least one

⁶³ *U.S. v Windsor*, No. 12-307, U.S. Supreme Court, June 26, 2013, p. 23.

⁶⁴ *Obergefell v Hodges*, No. 14-556, U.S. Supreme Court, June 26, 2015, p. 15.

⁶⁵ M. Kolk, G. Andersson, *op. cit.*, p. 148.

⁶⁶ *Baskin v Bogan*, *op. cit.*, p. 20; Forum on Child and Family Statistics, *Child Population: Number of Children (in Millions) Ages 0–17 in the United States by Age, 1950–2019 and Projected 2020–2050*, ChildStats.gov, <https://www.childstats.gov/americaschildren/tables/pop1.asp>.

⁶⁷ G.J. Gates, *Marriage and Family: LGBT Individuals and Same-Sex Couples*, “The Future of Children” 2015, No. 25, pp. 67–87.

⁶⁸ U.S. Census Bureau, *U.S. Census Bureau Releases CPS Estimates of Same-sex Households*, Release No. CB19-TPS.5. U.S. Census Bureau 2019, November 19, <https://www.census.gov/newsroom/press-releases/2019/same-sex-households.html>.

parent who is lesbian or gay.”⁶⁹ There is obvious political gain to be had in such overestimates.

In progressive Western Europe, the most recent estimates of children raised in same-sex households are even lower than in the U.S. Two-tenths of one percent of all children in two-parent families in the Netherlands, one of the most progressive in the world, are being raised by a same-sex couple – 96 percent of which are female same-sex couples.⁷⁰ Indeed, in a country-wide dataset, they observe only 125 children living in male same-sex households.⁷¹ This is a stunning figure, prompting questions about how a tiny cadre of a minority is commanding the majority.

Overestimates are not unusual in this domain. Alfred Kinsey, author of *Sexual Behavior in the Human Male*, published in 1948, famously claimed that 10 percent of American men were consistently homosexual in practice. His sampling strategy, however, was abysmal. Today, there is a consensus among scholars that about 2–4 percent of the adult population (in the United States) identifies as gay or lesbian, that is, homosexual. But the population at large? The average American believes that nearly 25 percent of the population is gay or lesbian, and has for years.⁷²

The 2–4 percent scholarly consensus stands in stark contrast to repeated claims made about the obvious “consensus” in the social scientific literature on how children fare in same-sex households, a domain I explored in a pair

⁶⁹ D. Linville, M. O’Neil, *Same Sex Parents and their Children*, American Association for Marriage and Family Therapy, https://www.aamft.org/Consumer_Updates/Same-sex_Parents_and_Their_Children.aspx.

⁷⁰ J. Kabátek, F. Perales, *Academic Achievement of Children in Same- and Different-Sex-Parented Families: A Population-Level Analysis of Linked Administrative Data from the Netherlands*, “Demography” 2021, No. 58(2), pp. 393–418.

⁷¹ Even the number of same-sex marriages pale in contrast to a population. In a 17-year-long study of Swedish households, less than two in every 1,000 persons entered a same-sex legal union: “In terms of population numbers, our study covers longitudinal information on 2,142,905 men and 1,893,518 women born in Sweden, of which 4,230 women and 2,444 men formed a same-sex marriage when they were younger than 50 during our study period.” See: M. Kolk, G. Andersson, *op. cit.*, p. 154.

⁷² J. McCarthy, *Americans Still Greatly Overestimate the U.S. Gay Population*, “Gallup” 2019, June 27, <https://news.gallup.com/poll/259571/americans-greatly-overestimate-gay-population.aspx>.

of 2012 studies.⁷³ Indeed, before there was a single random sample of more than 50 children living in same-sex households, two American sociologists had already declared a consensus on the conclusions of how they fared, based on small, nonrepresentative “convenience” samples alone – the kind that cannot deliver confidence about a population:

“[W]e do not yet have research that compares the children of married same-sex and different-sex couples. Even so, scholars have achieved a rare degree of consensus that unmarried lesbian parents are raising children who develop at least as well as their counterparts with married heterosexual parents.”⁷⁴

The American Academy of Pediatrics, which historically reserves judgment on scientific claims until consistently confirmed across stronger samples, had already endorsed this same claim by 2002.⁷⁵ On this particular research question, the hubris of scientists is staggering. Judge Friedman, in his remarks about *DeBoer v Snyder*’s expert witnesses, openly praised the conclusions of all expert witnesses supporting same-sex marriage, but was explicitly critical of the entire slate of cautionary voices (myself included) particularly for their scepticism around the use of convenience samples in drawing conclusions about populations.⁷⁶ Given the diversity of same-sex households, this would be akin to claiming one could come to a consensus conclusion about Polish politics by fielding a survey to a convenience sample of young adults walking down a central Warsaw street on a summer evening.

While differences between heterosexual and same-sex households with children are often apparent at face value, despite the common narrative to the contrary, once you “control for” (or set aside) household instability, it

⁷³ M. Regnerus, *How Different are the Adult Children of Parents who have Same-Sex Relationships? Findings from the New Family Structures Study*, “Social Science Research” 2012, No. 41, pp. 752–770; M. Regnerus, *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children: Answering Critics of the New Family Structures Study with Additional Analyses*, “Social Science Research” 2012, No. 41, pp. 1367–1377.

⁷⁴ T.J. Biblarz, J. Stacey, *op. cit.*, p. 5.

⁷⁵ American Academy of Pediatrics, *Coparent or Second-parent Adoption by Same-sex Parents*, “Pediatrics” 2002, No. 109, pp. 339–344.

⁷⁶ *DeBoer v Snyder*, *op. cit.*, p. 17. Friedman called out three of the state’s expert witnesses by name, saying they “all failed to concede the importance of ‘convenience sampling’ as a social science research tool.”

becomes easier to conclude that the sexual orientation of parents does not *directly* cause problems for children. (I have never claimed it does.) Indeed, data quality in the domain of same-sex households and children's well-being has improved notably in the past decade, and with it the conclusion that children raised in same-sex households do not often directly suffer from developmental challenges brought about *because* of their living situation.⁷⁷

But the dominant analytic approach, together with its concomitant interpretations, means that indirect effects – the pathways by which most sub-optimal child outcomes happen – are ignored. Controlling for household instability is now nearly ubiquitous in practice. This is how researchers get to “no differences,” that is, by controlling for – and hence ignoring – household turmoil. As noted earlier, breakup rates among female same-sex households – by far the most likely to exhibit children – tend to be twice as high as heterosexual households. Is it a systemic problem? It may be. But when analysts control for instability, the effects of this pattern are removed from consideration. Elsewhere I have identified this analytic practice as “controlling for the pathways,” an approach that is unhelpful for understanding social reality.⁷⁸ Others demur. The consequences of this common practice, however, are significant – and very political. Sociologist Luke Gahan's study of same-sex parents who had recently separated noted up front the challenge to social desirability that same-sex couples' separations posed to both analysts and politicians:

*“Separated same-sex parents were... concerned that their families would disrupt efforts to achieve social and political acceptance – and this created challenges with recruitment and interviewing techniques with male participants in particular.”*⁷⁹

⁷⁷ In particular, academic progress – a particularly popular focus of such research – does not appear to be hampered by same-sex parents. See, for example, J. Kabátek, F. Perales, *op. cit.*

⁷⁸ M. Regnerus, *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children*, *op. cit.* The quote is on p. 1369.

⁷⁹ L. Gahan, *Separated Same-sex Parents: Troubling the Same-sex Parented Family*, “Sociological Research Online” 2018, No. 23(1), pp. 245–261. The quote is from p. 245; see also p. 383 of: D. Sullins, *Bias in Recruited Sample Research on Children with Same-sex Parents using the Strengths and Difficulties Questionnaire (SDQ)*, “Journal of Scientific Research & Reports” 2015, No. 5(5), pp. 375–387.

Gahan admitted that he was frequently encouraged to “withhold the research findings until after marriage equality had been achieved,” and observed that the national debate and scrutiny on same-sex partnerships had “only heightened the pressure to demonstrate the worthiness of same-sex parented families by presenting idealized images of LGBTI people.”⁸⁰

Faalty to one’s family and impression management is natural and understandable. And yet it must also be expected to harm the validity of the data collected from the children of same-sex parents, especially those who were aware of the study’s purpose and its implications. This is not how social science is supposed to work.

Predicting the Course of Same-Sex Marriage in the West

As I noted at the beginning of this chapter, and as ought to be obvious by observation, lawmakers and judges can alter the legal terms and boundaries of civil marriage as they wish. Indeed, the sky is the limit to what can be altered about civil marriage’s *de jure* status. What human societies are unable to do, however, is alter the terms of the social institution of marriage itself – its core constitutive structure and norms. Those are less tightly coupled with civil marriage law, and embody a logic of their own.

Only six years into nationwide same-sex marriage in the United States, rates of uptake remain far below those among opposite-sex couples. Data from the (large) 2018 National Health Interview Survey (NHIS) reveal that LGBT adult men are married at one-third the rate of heterosexual men (16 percent vs. 48 percent, respectively), while LGBT women display a rate one-half that of heterosexual women (23 percent vs. 47 percent).⁸¹ A 2020 Gallup poll – which asked about spousal orientation – revealed that 10 percent of self-identified “LGBT” adults in the United States were in a same-sex marriage, while noting

⁸⁰ L. Gahan, *op. cit.*, pp. 257–258.

⁸¹ Recent analyses of tax returns show that while 92 percent of opposite-sex married couples file “jointly” (something only married couples can do), only 59 percent of same-sex couples do so. There may be as few as five same-sex marriages for every 1,000 opposite-sex marriages. See R. Fisher, G. Gee, A. Looney, *Same-Sex Married Tax Filers after Windsor and Obergefell*, “Demography” 2018, No. 55, pp. 1423–1446.

that *more* of them (11 percent) reported being married to someone of the opposite sex.⁸² (The reality is that the surge in self-identified bisexuals is responsible for most of this latter figure.) The numbers barely moved from the same poll fielded in 2017.⁸³ Hence, the real NHIS gap in marriage may be at least twice as large as it appears. In 2019, 88 percent of opposite-sex couples living together in the United States were married. And while same-sex couples have had four years of access to civil marriage by then, 54 percent of same-sex couples living together were married.⁸⁴ (Gallup estimates this figure at 57 percent.)⁸⁵ While 54 percent is a figure that signals interest in the institution, any claims made that there is *equal* interest in marriage are simply empirically untrue. Overall, 1.4 percent of coupled households in the United States are same-sex ones.

By comparison, in the Dutch population-based Labor Force Surveys (collected annually by Statistics Netherlands) about 0.9 percent of all couples were same-sex couples.⁸⁶ Although marriage has been legal there since 2001, 38 percent of both male and female same-sex couples interviewed were married, compared with 62 percent cohabiting, far below opposite-sex couples, among whom 86 percent were married and 14 percent cohabiting.

Given that nonmonogamy characterizes a significant share of gay men's unions, I would expect the uptake rate (for same-sex marriage among men) to peak quickly (anywhere it is legalized) before commencing a slow decline, because an institution in which monogamy and childbearing are longstanding expectations will not shed those easily. Early evidence from Sweden tracks in this manner: same-sex union formation increases steadily from 1998, with little obvious boost from same-sex marriage's legalization in 2009, but after 2010, rates leveled off – and even dipped – especially male same-sex marriages.⁸⁷

⁸² J.M. Jones, *One in 10 LGBT Americans Married to Same-Sex Spouse*, “Gallup” 2021, February 24, <https://news.gallup.com/poll/329975/one-lgbt-americans-married-sex-spouse.aspx>.

⁸³ See J.M. Jones, *In U.S., 10.2% of LGBT Adults Now Married to Same-Sex Spouse*, “Gallup” 2017, June 22, <https://news.gallup.com/poll/212702/lgbt-adults-married-sex-spouse.aspx>.

⁸⁴ U.S. Census Bureau, *op. cit.*

⁸⁵ J.M. Jones, *One in 10 LGBT Americans Married to Same-Sex Spouse*, *op. cit.*

⁸⁶ E. Verbakel, M. Kalmijn, *Assortative Mating among Dutch Married and Cohabiting Same-Sex and Different-Sex Couples*, “Journal of Marriage and Family” 2014, No. 76(1), pp. 1–12.

⁸⁷ M. Kolk, G. Andersson, *op. cit.*, p. 154.

Old institutions are not undone in a decade or by legal fiat. The most likely scenario remains that, after pent-up demand is met and the novelty has worn off, civil marriage will be selected by proportionally far fewer gay couples than heterosexuals or lesbians, the latter of which will exhibit dissolution rates in excess of either type. Why? Because marriage remains embedded in expectations about permanence, fidelity, and children – values more tightly held whenever women are involved. In lesbian marriages, however, children will be comparatively few. The centrality of emotional satisfaction will remain a central priority within their unions, contributing to their heightened instability and breakup rates.

Some jurists and courts have signaled their preference for letting “the democratic process” prevail. That is, they prefer to let voters decide what marriage is. This preference appears to be a conservative defense of sorts, a recognition that if civil marriage law should change, more people should weigh in on the matter than a mere handful of judges.⁸⁸

On its face, a civil or legal definition of marriage is socially constructed, because governmental authorities decide which relationship arrangements they will formally recognize and which they will not.⁸⁹ Persons ought not be required to vote in a plebiscite about what marriage is, but rather, marriages ought to be observed over time, space, and culture – the result of which has so far yielded the norms and patterns I have described above. Relying on the “democratic process” (as even the late U.S. Supreme Court Justice Antonin

⁸⁸ Judge Sutton (*DeBoer v Snyder*) is emphatic on this matter. “Our judicial commissions did not come with such a sweeping grant of authority, one that would allow just three of us – just two of us in truth – to make such a vital policy call for the thirty-two million citizens who live within the four States of the Sixth Circuit...” See: *DeBoer v Snyder, op. cit.*, p. 8.

⁸⁹ It is an intellectual challenge to identify non-marital relationships that ought to be recognized (and hence endorsed) by the state and receive benefits comparable to that of marriage. In *Schalk and Kopf v Austria, op. cit.*, it was noted that Austria’s registered partnership “involves co-habitation on a permanent basis...” and “must not be established between close relatives...”, among other criteria, an obvious effort to include only romantic or sexual relationships, not sibling pairs or (adult) parent-child relationships. But since each of these often include extensive family caretaking practices, why exclude non-sexual relationships? Historically, this was driven by the procreative probabilities of a sexual relationship. With same-sex relationships, however, there are no unplanned pregnancies. Hence, lawful registered partnerships, in which the pair is “expected to live together like spouses in every respect, to share a common home, to treat each other with respect and to provide mutual assistance,” favor sexual relationships, even if they are nonprocreative ones.

Scalia wished to do) renders an objective status vulnerable to public opinion. The law, after all, is a teacher. In this case, the act of voting on the definition of marriage tacitly instructs a country's citizens that marriage itself is in fact a social construction malleable by popular will.

There are more ways than a plebiscite to alter how a population understands marriage, however. Demographers evaluating Sweden's uptake of same-sex marriage observed that 2003 policy changes establishing parental rights for same-sex parents were far more effective in encouraging formalized same-sex unions than was the actual 2009 addition of same-sex marriage rights.⁹⁰ This is because same-sex marriage access tends to be more important to women than to men – again, given its longstanding association with childbearing.

The Confused Role of Dignity in Legal Deliberations about Marriage

Despite my concern for understanding the data cited in previous cases, depictions of (and disputes about) empirical social reality are not the primary means by which effective arguments in favor of altering the structural core of marriage are typically made. A philosophical idea, once rooted in theological discourse, has been far more influential. I am referring to dignity, a concept whose definition seems, like that of marriage, to be “evolving.”

The 1948 Universal Declaration of Human Rights (UDHR), borrowing from a rich patrimony of Christian tradition before it, understands dignity as an irrevocable personal trait. Dignity, of course, is empirically unmeasurable, outside the realm of the social sciences to evaluate. (Evaluating the manner and frequency with which the term is employed in legal arguments, however, is an empirical effort.)

It is ironic that as marriage retreats broadly throughout the West, judicial decisions concerning marriage seem increasingly saturated with remarks about how marriage confers and conveys dignity upon a sexual union. “All seek dignity and respect,” wrote Justice Sutton in his *DeBoer v Snyder* opinion, “the same dignity and respect given to marriages between opposite-sex

⁹⁰ M. Kolk, G. Andersson, *op. cit.*

couples.” More famously, Supreme Court Justice Anthony Kennedy aligned dignity tightly with human autonomy and the right to define oneself, one’s own “concept of existence, of meaning, of the universe, and of the mystery of human life.”⁹¹ Kennedy used the word at least ten times in his 2013 decision in *U.S. v Windsor*. A decade earlier, writing in *Lawrence v Texas*, Kennedy referred to the “dignity [of] free persons,” equating dignity with negative liberty – the freedom from external constraints and the ability to make one’s own decisions about what is worthy.⁹² But to understand dignity this way – as a form of autonomy, nobility, or gravitas – is to offer a socially constructed version of dignity, which means that we create or confer dignity.⁹³

Concern for the autonomy of persons and their right to privacy in their relationship life, while noble in intent, is a fundamentally different understanding of dignity than that identified in the UDHR, which was in turn shaped by the social teachings of the Catholic Church. The Polish Constitution includes three references to the “dignity of the person,” but also to the dignity of the nation, and that of particular offices (and their duties and functions). To speak of relationships, or nations or offices as having dignity is an anthropomorphism, albeit a common one. Dignity, at its core, is personal, signaling “an inherent worth of immeasurable value that is deserving of certain morally appropriate responses.”⁹⁴ As such, dignity does not become real when we start to believe in it. It does not cease to exist when neglected or violated (or ignored in oneself). It is no synonym for autonomy. Most importantly, dignity is not socially constructed by collective will or vote.

Justice Kennedy repeatedly disagrees. In the *U.S. v Windsor* decision, Kennedy contested the constitutionality of Congress’s “interference with the

⁹¹ *Planned Parenthood of Southeastern Pennsylvania et al. v Casey*, No. 505 U.S. 833, (U.S. Supreme Court, June 29, 1992).

⁹² *Lawrence et al. v Texas*, No. 02-102, 539 U.S. 558, (U.S. Supreme Court, June 26, 2003), pp. 2, 6. See also: L. Halloran, *Explaining Justice Kennedy: The Dignity Factor*, “NPR-The Two-Way” 2013, June 28, <https://www.npr.org/sections/thetwo-way/2013/06/27/196280855/explaining-justice-kennedy-the-dignity-factor>.

⁹³ Renowned Harvard psychologist Steven Pinker holds that we should replace “dignity” with “autonomy” in discussions of bioethics, given the former term is a squishy, subjective notion.” See: S. Pinker, *The Stupidity of Dignity*, “The New Republic” 2008, May 27, <https://newrepublic.com/article/64674/the-stupidity-dignity>.

⁹⁴ C. Smith, *What is a Person?: Rethinking Humanity, Social Life, and the Moral Good from the Person Up*, University of Chicago Press, Chicago, IL, 2010.

equal dignity of same-sex marriages, a dignity conferred by the States in the exercise of their sovereign power.” In his dissent (from Kennedy’s remarks) in *Obergefell v Hodges* two years later, Justice Clarence Thomas observed that:

“... the majority goes to great lengths to assert that its decision will advance the ‘dignity’ of same-sex couples. The flaw in that reasoning, of course, is that the Constitution contains no ‘dignity’ Clause, and even if it did, the government would be incapable of bestowing dignity.”⁹⁵

Thomas is right. Why? Because dignity is not conferred by human beings or their institutions.

Marriage may be thought to *exhibit* dignity, since it is born of the free, consensual union of persons, but it does not *confer* dignity.⁹⁶ It is no surprise that many today believe marriage does in fact confer dignity, by which most mean a sense of nobility. This is largely due to the shift in thinking about marriage as a “capstone” rather than a “foundation,” a mentality now pronounced throughout the West as expectations of the psychological satisfactions of marriage rise in step with the average age at first marriage.⁹⁷ When perceived as a capstone, marriage becomes less of a populist institution and more of a cultural marker of elite prestige, something that confers a sense of accomplishment, due respect, and, perhaps, a *sense* of dignity.

But if marriage does not confer dignity, what does marriage signal? Judge Richard Posner, in his *Baskin v Bogan* (2014) decision overturning the state of Indiana’s ban on same-sex marriage, claimed, “Marriage confers respectability on a sexual relationship; to exclude a couple from marriage is thus to deny it a coveted status.”⁹⁸ This suggests that marriage not only legitimizes

⁹⁵ *Obergefell v Hodges*, *op. cit.*, p. 16.

⁹⁶ In his *Obergefell v Hodges* dissent, Chief Justice John Roberts raises an obvious logical question about the purported dignity of relational bonds. If “[t]here is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices,” *ante*, at 13, why would there be any less dignity in the bond between three people who, in exercising their autonomy, seek to make the profound choice to marry? *Ibidem*, p. 20. After all, the globe’s history of polygamous unions is far older and more extensive than that of same-sex ones.

⁹⁷ A.J. Cherlin, *The Marriage-Go-Round: The State of Marriage and the Family in America Today*, Vintage Books, Random House, Inc., New York, NY, 2010.

⁹⁸ *Baskin v Bogan*, *op. cit.*, p. 10.

any sexual relationship, encouraging peers and family to esteem and respect it, but also affords the couple “coveted status.” Historically, such legitimacy was both civil and religious in nature. In an era wherein premarital sexual relationships are common, pregnancy readily preventable, and where the proscription of such relationships are largely religious in nature, Posner’s claim makes less and less sense, unless one is convinced of the capstone model of marriage. Justice Thomas, writing in his *Obergefell* dissent, considers the “respectability” argument of one piece with the marriage-as-dignity claim:

“The majority also suggests that marriage confers ‘nobility’ on individuals. I am unsure what that means. People may choose to marry or not to marry. The decision to do so does not make one person more ‘noble’ than another. And the suggestion that Americans who choose not to marry are inferior to those who decide to enter such relationships is specious.”

In sum, justice does not demand marriage “equality,” because the dignity of persons is *not at stake* in marriage law. Resistance to one’s wish to marry someone of the same sex may offend their *sense of dignity*, but this is distinct from damaging or compromising the real thing. We can recognize the dignity of persons by acknowledging and respecting their freedom to form relationships, or their parental rights. Indeed, Poland does both of these. It is neither animus nor an injury to human dignity, however, for a state to identify one relationship as a marriage, and another not.

Conclusion

In the United States Constitution, there is no reference to the right to marry. Hence, the long sequence of court cases that brought the matter to the Supreme Court twice in three years. Poland, on the other hand, addresses marriage, family, motherhood, and parenthood in Article 18, placing each “under the protection and care of the Republic of Poland.” Any other reading would shift the place of the judiciary from interpreting a nation’s laws and its

constitution to that of self-commissioned architect of them.⁹⁹ Additionally, claims of “evolution” of the original meaning of the Polish Constitution here are moot. The document is not yet 25 years old.

Certainly the institution of marriage is part of that which is valuable enough for Poland to be “obliged to bequeath to future generations...”¹⁰⁰ In support of Polish autonomy, the European Court of Human Rights pledges member states discretion here. There is no European consensus on the matter of gender identification and same-sex marriage, and hence “‘the margin of appreciation to be afforded’ to States ‘must still be a wide one,’” the ECHR ruled in 2014 in *Hämäläinen v Finland*.¹⁰¹ The decision about national autonomy noted in *Schalk and Kopf v Austria* (2010) would seem to remain similarly effectual:

“Neither the principle of equality set forth in the Austrian Federal Constitution nor the European Convention on Human Rights (as evidenced by ‘men and women’ in Article 12) require that the concept of marriage as being geared to the fundamental possibility of parenthood should be extended to relationships of a different kind.”

Matters of privacy do not give rise to “an obligation to change the law of marriage ... Nor is it the task of this court to advise the legislature on constitutional issues or even matters of legal policy” (*Schalk and Kopf v Austria*). This is the case with the Charter of Fundamental Rights of the European Union as well, which reads, “The right to marry and to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.” The Polish Constitution is not, upon this reading, impugned by

⁹⁹ *DeBoer v Snyder*, *op. cit.*, pp. 17–18.

¹⁰⁰ Republic of Poland, *Constitution of the Republic of Poland*, 1997, 2 April, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, Preamble, p. 3.

¹⁰¹ *Hämäläinen v Finland*, No. 37359/09 (European Court of Human Rights, July 16, 2014), section 75. See also Section 74: “... it cannot be said that there exists any European consensus on allowing same-sex marriages. Nor is there any consensus in those States which do not allow same-sex marriages as to how to deal with gender recognition in the case of a pre-existing marriage. The majority of the member States do not have any kind of legislation on gender recognition in place.”

the jurisdiction of outside courts. By extension, it ought not be held hostage by the purse strings of EU politics.

The facts on the ground suggest a prudential path. No one is keeping same-sex couples from conducting their relationships. Homosexuality is legal in Poland. Same-sex sexual activity is legal in Poland. Parents are not being penalized by the state (e.g., Poland's Family 500+ program treats children and their households fairly). No, the sky will not fall if same-sex marriage rights are secured. But same-sex marriage would enshrine in law what is impossible in structure and hence inconsonant in norm. Marriage remains heteronormative, and that will not change in step with legal attempts to unravel the core of marriage. Marriage will not successfully be deconstructed, because it is not a mere social construction, despite assumptions and convictions to the contrary.

As a result, the matter is not simply about expanded access to the same one thing – marriage. It is, rather, about the creation of two additional forms of marriage, yielding three types in total – one heterosexual and two homosexual, together with predictable patterns that result from consolidating sex differences rather than moderating them.

The current effort to undermine Polish marriage law is not about respecting national autonomy. It is not about ensuring children experience life with their biological mothers and fathers. What we are witnessing, rather, is a cultural “land grab” rather than a product of the genuine and wide desire to legally access an institution and seek to mimic its norms. It is about giving a tiny (and, at least in the United States, generally privileged) elite what they wish – in response to claims of discrimination and in return for the false promise that national, provincial, and village culture can be left alone. (They will not.) It is a bitter irony that Poland's constitution, birthed from painful experience of decades of foreign oppression, is now being contested by yet another external source deeming Polish self-rule in such a significant matter to be inept and in need of an enlightened patron's correction. I encourage Poles to peacefully but firmly declare, in the words of one of their own heroes of resistance, “Non possumus.”

Bibliography

- Alvaré, H.M., *Religious Freedom versus Sexual Expression: A Guide*, “Journal of Law and Religion” 2015, No. 30(3), pp. 475–495.
- American Academy of Pediatrics, *Coparent or Second-parent Adoption by Same-sex Parents*, “Pediatrics” 2002, No. 109, pp. 339–344.
- Atwood, B., *Marital Contracts and the Meaning of Marriage*, “Arizona Law Review” 2012, No. 54, pp. 11–42.
- Bailey, J.M., *What is Sexual Orientation, and Do Women Have One?*, [in:] *Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities*, ed. D.A. Hope, Springer, New York 2009, pp. 43–64.
- Balsam, K.F., Rothblum, E.D., Wickham, R.E., *Longitudinal Predictors of Relationship Dissolution among Same-Sex and Heterosexual Couples*, “Couple and Family Psychology” 2017, No. 5, pp. 247–257.
- Baskin v Bogan*, No. 14–2386, (7th U.S. Circuit Court of Appeals, September 4, 2014).
- Bauman, Z., *Liquid Love*, Polity Press, Cambridge 2003.
- Baumeister, R.F., *Gender Differences in Erotic Plasticity: The Female Sex Drive as Socially Flexible and Responsive*, “Psychological Bulletin” 2000, No. 126, pp. 347–374.
- Behler, R., Donnelly, R., Umberson, D., *Psychological Distress Transmission in Same-sex and Different-sex Marriages*, “Journal of Health and Social Behavior” 2019, No. 60, pp. 18–35.
- Bell, L.C., *Hard to Get: 20-Something Women and the Paradox of Sexual Freedom*, University of California Press, Berkeley and Los Angeles, CA, 2013.
- Biblarz, T.J., Stacey, J., *How Does the Gender of Parents Matter?*, “Journal of Marriage and Family” 2010, No. 72, pp. 3–22.
- Bos, H.M.W., Gartrell, N.K., van Balen, F., Peyser, H., Sandfort, T.G.M., *Children in Planned Lesbian Families: A Cross-Cultural Comparison between the United States and the Netherlands*, “American Journal of Orthopsychiatry” 2008, No. 78, pp. 211–219.
- Bostock v Clayton County, Georgia*, No. 17–1618, (U.S. Supreme Court, June 15, 2020).
- Cantron, M.L., *What You Lose When You Gain a Spouse*, “The Atlantic Monthly” 2019, July 2, <https://www.theatlantic.com/family/archive/2019/07/case-against-marriage/591973/>.
- Center for Disease Control, *Marriage and Divorce*, National Center for Health Statistics, <https://www.cdc.gov/nchs/fastats/marriage-divorce.htm>.
- Cherlin, A.J., *The Marriage-Go-Round: The State of Marriage and the Family in America Today*, Vintage Books, Random House, Inc., New York, NY, 2010.
- Compton, D., Bridges, T., *2018 GSS Update on the U.S. LGB Population*, “Inequality by (Interior) Design Blog” 2019, April 12, <https://inequalitybyinteriordesign.wordpress.com/2019/04/12/2018-gss-update-on-the-u-s-lgb-population/>.

- DeBoer v Snyder et al. Appeal*, Nos. 14-1341; 3057; 3464; 5291; 5297; 5818 (6th U.S. Circuit Court of Appeals, November 6, 2014).
- Diamond, L.M., *Development of Sexual Orientation among Adolescent and Young Adult Women*, “Developmental Psychology” 1998, No. 34(5), pp. 1085–1095.
- Diamond, L.M., *Sexual Fluidity: Understanding Women’s Love and Desire*, Harvard University Press, Cambridge, MA, 2008.
- Diamond, L.M., *Was It a Phase? Young Women’s Relinquishment of Lesbian/Bisexual Identities over a 5-Year Period*, “Journal of Personality and Social Psychology” 2003, No. 84, pp. 352–364.
- Eurostat, *Marriage and Divorce Statistics*, Eurostat Statistics Explained, http://ec.europa.eu/eurostat/statistics-explained/index.php/Marriage_and_divorce_statistics.
- Fisher, R., Gee, G., Looney, A., *Same-Sex Married Tax Filers after Windsor and Obergefell*, “Demography” 2018, No. 55, pp. 1423–1446.
- Forum on Child and Family Statistics, *Child Population: Number of Children (in Millions) Ages 0–17 in the United States by Age, 1950–2019 and Projected 2020–2050*, ChildStats.gov, <https://www.childstats.gov/americaschildren/tables/pop1.asp>.
- Fromm, E., *The Art of Loving*, Harper, New York 1956.
- Gahan, L., *Separated Same-sex Parents: Troubling the Same-sex Parented Family*, “Sociological Research Online” 2018, No. 23(1), pp. 245–261.
- Gates, G.J., *Marriage and Family: LGBT Individuals and Same-Sex Couples*, “The Future of Children” 2015, No. 25, pp. 67–87.
- Giddens, A., *The Transformation of Intimacy*, Stanford University Press, Stanford, CA, 1992.
- Halloran, L., *Explaining Justice Kennedy: The Dignity Factor*, “NPR-The Two-Way” 2013, June 28, <https://www.npr.org/sections/thetwo-way/2013/06/27/196280855/explaining-justice-kennedy-the-dignity-factor>.
- Hämäläinen v Finland*, No. 37359/09 (European Court of Human Rights, July 16, 2014).
- Illouz, E., *Why Love Hurts: A Sociological Explanation*, Polity Press, Cambridge, UK, 2012.
- Jones, J.M., *In U.S., 10.2% of LGBT Adults Now Married to Same-Sex Spouse*, “Gallup” 2017, June 22, <https://news.gallup.com/poll/212702/lgbt-adults-married-sex-spouse.aspx>.
- Jones, J.M., *LGBT Identification Rises to 5.6% in Latest U.S. Estimate*, “Gallup” 2021, February 24, <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx>.
- Jones, J.M., *One in 10 LGBT Americans Married to Same-Sex Spouse*, “Gallup” 2021, February 24, <https://news.gallup.com/poll/329975/one-lgbt-americans-married-sex-spouse.aspx>.

- Joyner, K., Manning, W., Bogle, R., *Gender and the Stability of Same-Sex and Different-Sex Relationships among Young Adults*, "Demography" 2017, No. 54, pp. 2351–2374.
- Kabátek, J., Perales, F., *Academic Achievement of Children in Same- and Different-Sex-Parented Families: A Population-Level Analysis of Linked Administrative Data from the Netherlands*, "Demography" 2021, No. 58(2), pp. 393–418.
- Ketcham, E., Bennett, N.G., *Comparative Couple Stability: Same-Sex and Male-Female Unions in the United States*, "Socius" 2019, No. 5, pp. 1–15.
- Kimport, K., *Queering Marriage? Challenging Family Formation in the United States*, Rutgers University Press, New Brunswick, NJ, 2013.
- Kolk, M., Andersson, G., *Two Decades of Same-Sex Marriage in Sweden: A Demographic Account of Developments in Marriage, Childbearing, and Divorce*, "Demography" 2020, No. 57, pp. 147–169.
- Kramer, S., *Polygamy is Rare around the World and Mostly Confined to a Few Regions*, "Pew Research Center" 2020, December 7, <https://www.pewresearch.org/fact-tank/2020/12/07/polygamy-is-rare-around-the-world-and-mostly-confined-to-a-few-regions/>.
- Lamont, E., *"We Can Write the Scripts Ourselves": Queer Challenges to Heteronormative Courtship Practices*, "Gender & Society" 2017, No. 31(5), pp. 624–646.
- Lau, C.Q., *The Stability of Same-Sex Cohabitation, Different-Sex Cohabitation, and Marriage*, "Journal of Marriage and Family" 2012, No. 74, pp. 973–988.
- Lawrence et al. v Texas*, No. 02–102, 539 U.S. 558, (U.S. Supreme Court, June 26, 2003).
- Lesthaeghe, R., *The Second Demographic Transition: A Concise Overview of Its Development*, "Proceedings of the National Academy of Sciences" 2014, No. 111, pp. 18112–18115.
- Linville, D., O'Neil, M., *Same Sex Parents and their Children*, American Association for Marriage and Family Therapy, https://www.aamft.org/Consumer_Updates/Same-sex_Parents_and_Their_Children.aspx.
- Macedo, S., *Just Married: Same-Sex Couples, Monogamy, and the Future of Marriage*, Princeton University Press, Princeton, NJ, 2015.
- Manning, W.D., Brown, S.L., Sykes, J.B., *Same-Sex and Different-Sex Cohabiting Couple Relationship Stability*, "Demography" 2016, No. 53, pp. 937–953.
- McCarthy, J., *Americans Still Greatly Overestimate the U.S. Gay Population*, "Gallup" 2019, June 27, <https://news.gallup.com/poll/259571/americans-greatly-overestimate-gay-population.aspx>.
- Obergefell v Hodges*, No. 14–556, (U.S. Supreme Court, June 26, 2015).
- Oppenheimer, M., *Married, with Infidelities*, "New York Times" 2011, June 30, <http://www.nytimes.com/2011/07/03/magazine/infidelity-will-keep-us-together.html>.
- Oppenheimer, V.K., *Women's Rising Employment and the Future of the Family in Industrial Societies*, "Population and Development Review" 1994, No. 20, pp. 293–342.

- Orlandi and Others v Italy*, Nos. 26431/12; 26742/12; 44057/12; 60088/12, (European Court of Human Rights, December 14, 2017).
- Peplau, L.A., Garnets, L.D., *A New Paradigm for Understanding Women's Sexuality and Sexual Orientation*, "Journal of Social Issues" 2000, No. 56, pp. 329–350.
- Pew Research Center, *Religious Belief and National Belonging in Central and Eastern Europe* 2017, May 10, <http://assets.pewresearch.org/wp-content/uploads/sites/11/2017/05/15120244/CEUP-FULL-REPORT.pdf>.
- Pinker, S., *The Stupidity of Dignity*, "The New Republic" 2008, May 27, <https://newrepublic.com/article/64674/the-stupidity-dignity>.
- Planned Parenthood of Southeastern Pennsylvania et al. v Casey*, No. 505 U.S. 833, (U.S. Supreme Court, June 29, 1992).
- Potârca, G., Mills, M., Neberich, W., *Relationship Preferences among Gay and Lesbian Online Daters: Individual and Contextual Influences*, "Journal of Marriage and Family" 2015, No. 77(2), pp. 523–541.
- Reczek, C., *Sexual- and Gender-Minority Families: A 2010 to 2020 Decade in Review*, "Journal of Marriage and Family" 2020, No. 82, pp. 300–325.
- Regnerus, M., *Cheap Sex: The Transformation of Men, Marriage, and Monogamy*, Oxford University Press, New York, NY, 2017.
- Regnerus, M., *How Different are the Adult Children of Parents who have Same-Sex Relationships? Findings from the New Family Structures Study*, "Social Science Research" 2012, No. 41, pp. 752–770.
- Regnerus, M., *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children: Answering Critics of the New Family Structures Study with Additional Analyses*, "Social Science Research" 2012, No. 41, pp. 1367–1377.
- Regnerus, M., *The Future of Christian Marriage*, Oxford University Press, New York, NY, 2020.
- Republic of Poland, *Constitution of the Republic of Poland*, 1997, 2 April, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.
- Reuters, *'Til 2013 Do Us Part? Mexico Mulls 2-Year Marriage* 2011, September 29, Reuters, <https://www.reuters.com/article/us-mexico-marriage/til-2013-do-us-part-mexico-mulls-2-year-marriage-idUSTRE78S6TX20110929>.
- Riskind, R.G., Patterson, C.J., *Parenting Intentions and Desires among Childless Lesbian, Gay, and Heterosexual Individuals*, "Journal of Family Psychology" 2010, No. 24(1), pp. 78–81.
- Rosenfeld, M.J., *Are Tinder and Dating Apps Changing Dating and Mating in the U.S.?*, [in:] *Families and Technology*, eds. J. Van Hook, S.M. McHale, V. King, Springer, Switzerland 2018, pp. 103–117.
- Rosenfeld, M.J., *Couple Longevity in the Era of Same-Sex Marriage in the United States*, "Journal of Marriage and Family" 2014, No. 76, pp. 905–918.

- Ruiz-Vallejo, F., Boertien, D., *Do Same-Sex Unions Dissolve More Often than Different-Sex Unions? Methodological Insights from Colombian Data on Sexual Behavior*, “Demographic Research” 2021, No. 44, pp. 1149–1164.
- Schalk and Kopf v Austria*, No. 30141/04 (European Court of Human Rights, June 24, 2010).
- Smith, C., *What is a Person?: Rethinking Humanity, Social Life, and the Moral Good from the Person Up*, University of Chicago Press, Chicago, IL, 2010.
- Stacey, J., *Unhitched: Love, Marriage, and Family Values from West Hollywood to Western China*, New York University Press, New York 2012.
- Stein, E., *Essays on Women*, ICS Publications, Washington, D.C., 2010.
- Sullins, D., *Bias in Recruited Sample Research on Children with Same-sex Parents using the Strengths and Difficulties Questionnaire (SDQ)*, “Journal of Scientific Research & Reports” 2015, No. 5(5), pp. 375–387.
- U.S. Census Bureau, *U.S. Census Bureau Releases CPS Estimates of Same-sex Households*, Release No. CB19-TPS.5. U.S. Census Bureau 2019, November 19, <https://www.census.gov/newsroom/press-releases/2019/same-sex-households.html>.
- U.S. v Windsor*, No. 12-307, U.S. Supreme Court, June 26, 2013.
- Udry, J.R., *Biological Limits of Gender Construction*, “American Sociological Review” 2000, No. 65, pp. 443–457.
- Umberson, D., Donnelly, R., Pollitt, A., *Marriage, Social Control, and Health Behavior: A Dyadic Analysis of Same-sex and Different-sex Couples*, “Journal of Health and Social Behavior” 2018, No. 59, pp. 429–446.
- Umberson, D., Thomeer, M.B., Lodge, A.C., *Intimacy and Emotion Work in Lesbian, Gay, and Heterosexual Relationships*, “Journal of Marriage and Family” 2015, No. 77, pp. 542–556.
- United Nations Human Rights Committee, *General Comment 28, Equality of Rights between Men and Women (Article 3)*, United Nations 2000, U.N. Doc. CCPR/C/21/Rev.1/Add.10. Available at: <http://hrlibrary.umn.edu/gencomm/hrcom28.htm>.
- Verbakel, E., Kalmijn, M., *Assortative Mating among Dutch Married and Cohabiting Same-Sex and Different-Sex Couples*, “Journal of Marriage and Family” 2014, No. 76(1), pp. 1–12.
- von Hildebrand, D., *Marriage: The Mystery of Faithful Love*, Sophia Institute Press, Manchester, NH, 1997.
- Ward, J., *No One is Born Gay (or Straight): Here Are 5 Reasons Why*, “Social (In) Queery” 2013, March 18, <http://socialinqueery.com/2013/03/18/no-one-is-born-gay-or-straight-here-are-5-reasons-why>.
- Wax, A.L., *Experiments in Matrimony*, “First Things” 2017, February, <https://www.firstthings.com/article/2017/02/experiments-in-matrimony>.
- Wolff, K.H., *The Sociology of Georg Simmel*, Simon and Schuster, New York 1950.