

How Will Same-Sex Marriage Affect America's Children?

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Mr. Rauch's latest work is *Gay Marriage: Why It Is Good for Gays, Good for Straights, and Good for America* (2004, Times Books, Henry Holt & Company), which is described as "a clear and honest manifesto explaining why gay marriage is important—even crucial—to the health of marriage in America today."

Mr. Rauch's other books include *Government's End: Why Washington Stopped Working* (1999, Public Affairs Books); *Demosclerosis: The Silent Killer of American Government* (1994, Times Books Random House; paperback, with new afterword, August, 1995); *Kindly Inquisitors: The New Attacks on Free Thought* (1993, University of Chicago Press); and *The Outnation: A Search for the Soul of Japan* (1992, Harvard Business School Press).

I. In Memoriam, Daniel Patrick Moynihan

I begin, of course, with thanks to Dean Allen-Meares and the faculty for inviting me to speak here. To be chosen for this lecture is an honor for anyone, but all the more so for a working journalist whose honorific is “Mr.” It is true that I have a Yale degree, but so does President Bush. (At least I can boast that Alice Cooper went to my high school.)

I also begin by dedicating this lecture to a man whom I met only once, shortly before his death last year, but who influenced me profoundly, and entirely for the better. When I was 16, I won a social-studies essay award. The prize was a book. *Coping*, it was called—by Daniel Patrick Moynihan. I no longer recall anything particular of the book’s contents, to be honest; and, to be even more honest, I do recall having a hard time reading it. Yet read it I did. That book was my first exposure to a man I came to revere for his wisdom and honesty and foresight. He taught not a doctrine but a way of thinking. He taught that, contrary to Marx and the populist left, economic structures are not the most fundamental shapers of society; and that, contrary to some on the neoliberal right, markets do not solve all problems. Rather, for Moynihan what mattered most were the mediating structures of everyday attachment: community, religion, but above all, and beneath all—family. When family goes right, Moynihan realized (long before it was fashionable), much else goes right; but when it goes wrong, poverty, crime, violence, inequality, and misery are never far behind. He taught, too, that government cannot and must not control social change, but that it can and must *influence* social change. And public policy has an obligation to use its influence for the better. Government must not butt too far in, but it also cannot butt out—even if it tries.

Moynihan’s name came up a lot in the Senate debate this past July over the so-called Federal Marriage Amendment, which sought to amend the U.S. constitution to ban same-sex marriage. (It failed to garner a majority.) Moynihan’s authority was invoked, in all cases, by opponents of same-sex marriage. Moynihan was a great believer, after all, that family structure matters, and he spent a lifetime fighting for policies to respect and strengthen family, so—it was said—he would have opposed gay marriage.

I met him, as I say, only once, over lunch, when he disappointed me by drinking moderately. I did not have the presence of mind to ask him about same-sex marriage, an oversight I will always regret. Still, I am sure he would have been scornful of the Senators’ caricature of his thinking. He would have regarded their appropriation of his influence, I believe, as defining Moynihan down. He would have agreed that how same-sex marriage might affect family structure and the welfare of children is an urgent question. But he would have required a more searching kind of thinking than anything we saw in the Senate. From the correct notion that marriage is good, he might have said, it does not automatically follow that same-sex marriage is bad.

In what I flatter myself is Moynihan’s spirit, I speak today to a question which I hope scholars here at Michigan will work toward answering: How will same-sex marriage affect America’s children? Same-sex marriage is, far and away, the most important family-policy reform in a generation, at least. Yet the scholarly world has paid it virtually no attention. Indeed, many of the country’s leading experts on family policy and the welfare of children have seemed eager to avoid it.

Perhaps they believed that same-sex marriage was too farfetched a prospect to be worth a slice of one’s career. If so, that would have been understandable until about a decade ago. Since then, however, Hawaii’s supreme court seemed poised to establish same-sex marriage before being

pre-empted by a state constitutional amendment; Vermont, by order of *its* supreme court, has established civil unions, the equivalent in state law of marriage for gay couples but under a different name; California has enacted legislatively a somewhat more limited but still far-reaching civil unions program. And Massachusetts, as of May 17, 2004, is actually marrying gay couples.

Ladies and gentlemen, the experiment has begun. We had better think, and fast.

II. Two Cop-Outs

Before I dive in, allow me a few minutes to close some escape hatches. Both are common responses to the question at hand. We hear them all the time. Both, however, are cop-outs: attempts to duck the question.

The first is the notion, common among same-sex marriage advocates, that, because same-sex marriage is a civil-rights issue, family-policy considerations can be set aside. The motto would be, I suppose, "It's equality, stupid!" After all, in 1967, which is a long time ago now, the Supreme Court declared that marriage is a "basic civil right" and a "fundamental freedom." Gay couples are denied this right. End of story. Americans of good will did not ask how letting blacks sit where they pleased on the bus affected the efficiency of public transportation. And they need not ask how letting gay couples marry might affect the welfare of American families and children.

But this cannot be right, however laudable the impulse. We all, as individuals and couples, have a right to marry as we choose. We do not, however, have a right to *define* marriage as we choose. It seems to me beyond reasonable dispute that the gay marriage debate is about how to define marriage as well as whom to include in it. Let's face it: marriage has been understood to be a gendered institution, to be a union of man and woman, continuously and for the most part unquestioningly for 3,000 years of western civilization. Even to say that the union of man plus man or woman plus woman *can* be a marriage is to change an ancient and, for most Americans, fundamental boundary.

Moreover, if same-sex marriage would wreck traditional marriage, it is not a right worth having. Just as, if it were the case that giving women the franchise would wreck democracy, that right would also not be worth having.

Gay marriage, then, is a civil rights issue, but it is not *just* a civil rights issue. Now, that is not to deny the powerful claims of 9 million or 12 million or 15 million gay Americans who are today, outside of Massachusetts, denied access to life's single most important and sustaining institution. Marriage makes people happier, healthier, and financially more secure; and, even for those who do not choose marriage, the *prospect* of marriage shapes and guides life in stabilizing and maturing ways, from the first crush, the first date, the first kiss, and the first going steady. The denial of the hope and the reality of marriage is a scalding and warping deprivation, and we must never lose sight of that. To my knowledge, in all of American history only two classes of people have been shut out of the culture of marriage, with all its blessings: children and slaves. That tells you something about what the denial of marriage means and does to gay people.

Nonetheless, it also cannot be right that civil rights trump the general welfare: that damage to our foundational social institution is of no account. The civil-rights claim is one of several competing claims. It opens the discussion but does not end it.

That brings me to a second dodge, which is just as commonly heard from same-sex marriage's opponents. "Same-sex marriage takes risks with a major institution," they say. "It is likely to do some harm, even if we can't point to a specific harm. American families are under enough

pressure already. Why take chances, especially for the sake of a small number of people, many of whom may not even want to get married?”

This “precautionary principle,” as I have called it, is also an attempt to foreclose argument by shifting the presumption, but in the reverse direction. It militates against same-sex marriage *if* same-sex marriage might have *any* harmful effect on children or families. In effect, unless same-sex marriage is proven, in advance, 100 percent safe, it must never be tried. Maggie Gallagher, a conservative opponent of same-sex marriage, has written, “Will same-sex marriage strengthen or weaken marriage as a social institution? If the answer is that it will weaken marriage at all, we should not do it.” In other words, *any* harm or inconvenience to straight people outweighs *every* benefit to gay people.

This, too, cannot possibly be the right answer. Obviously, same-sex marriage can never be proven either safe or dangerous if it can never be tried. Moreover, even if same-sex marriage were bad for some children or families, that would not automatically mean we should not have it. Here and now, millions of gay and lesbian couples face unquestioned hardship as a result of being locked out of marriage. Beyond that, *every* gay or lesbian person suffers from growing up excluded from the prospect of marriage and alienated from the culture of marriage. Though this should be obvious, I have found that it bears repeating: gay people’s welfare counts just as much as straight people’s.

Anyway, the precautionary principle fails even on its own terms, because it assumes that there is risk only on one side of the equation: that changing marriage is risky, whereas leaving it alone, in a changing social environment, is not risky. Moynihan, I am sure, would have been quick to point out that there are risks on *both* sides. I believe that prohibiting same-sex marriage poses some grave risks to families and children and, above all, to marriage itself, a point I will come back to.

For now, suffice it to say that we have no choice but to plunge into the brush, machete in hand, and try to understand what sort of risks and benefits pertain to same-sex marriage. Try though one might, there is no getting around the utilitarian calculus. There is no way to avoid asking how same-sex marriage may affect American families and—the subject of this discussion—children.

I recently wrote a book called *Gay Marriage: Why It Is Good for Gays, Good for Straights, and Good for America*. As the most astute observers among you may have surmised, I am an advocate of same-sex marriage. I am also a gay man. You will not get a disinterested analysis from me. I have a dog in this fight.

But in today’s lecture I want to try to map the risk-benefit terrain as disinterestedly as I can. Though I make no bones about where I end up, I hope to draw a map reliable enough to allow others to choose different destinations. So: Where are the risks? How might same-sex marriage endanger or benefit children and families?

III. Direct Effects: Children with Gay Couples

To grapple with this question, it is perhaps best to ask another question: *which* children? I find it helpful, conceptually, to divide children into two groups. The first consists of children raised by same-sex couples. The second consists of all other children.

According to the Census Bureau, in 2000 there were at least 160,000 same-sex-couple households with children. That is a minimum, very likely to be an undercount. Those children

would be directly affected by same-sex marriage. And there seems to be no dispute that the effects would be positive.

Marriage would, to begin with, give these families the additional legal security that marriage provides. The children would have, as Evan Wolfson notes (in his book *Why Marriage Matters*), “automatic and undisputed access to the resources, benefits, and entitlements of both parents.” For example, “If one of the parents in a marriage dies, the law provides financial security not only for the surviving spouse, but for the children as well, by ensuring eligibility for all appropriate entitlements, such as Social Security survivor benefits, and inheritance rights.” A surviving parent would inherit the couple’s home and property incontestably and tax-free, ensuring stability for the children. Marriage law is rich with provisions ensuring that, if one spouse meets with death or disability, the other can carry on—for the good of the kids.

Marriage makes couples better off, even after adjusting for confounding variables. That may be because it provides a sturdier partnership and thus a stronger economic platform. Obviously, more resources are good for kids. So, indeed, is durability itself. Marriages are more durable than cohabitations, even after accounting, as best we can, for the differences in married and cohabiting populations. Many gay couples who have wed in San Francisco and Massachusetts have attested to how the act and fact of marriage has deepened and strengthened their bonds—often to no one’s surprise more than their own. On my book tour, several recently married gay couples told me they had expected to get a piece of paper that merely formalized their relationship; instead they discovered that marriage *changed* their relationship. Stability and commitment, of course, are good for children.

Finally, marriage is likely to bring more social acceptance of gay couples, and more social investment in their unions. That, too, would almost certainly be good for such couples’ children. It would give them a more supportive and less stressful environment. (Of course, the normalization of same-sex unions is hardly an advantage in the eyes of many opponents of same-sex marriage.)

So we can say with reasonable certainty that at least a couple of hundred thousand children would be directly and substantially better off in a world with same-sex marriage. In principle, another group of children would also be directly affected, but in a less clear-cut way: *additional* kids, as it were, who might be raised by same-sex parents as a result of the legalization of same-sex marriage. It seems plausible, after all, that same-sex marriage would reduce the legal and social obstacles to same-sex parenting, and so same-sex parenting might well become more common.

Is that good, bad, or neither? That depends on how good same-sex parenting is for kids, and on what the children’s real-world alternative would be. Michigan’s William Meezan and I, in a paper we’re working on, recently looked at the evidence on same-sex parenting. Dr. Meezan, who is the methodological expert, found that the literature provides no evidence that children raised by same-sex couples suffer from emotional, social, or cognitive disadvantages. Others who have reviewed the literature reached the same conclusion. The methodological quality of this literature is, in many cases, less than ideal (though studies have improved recently). Personally, I am prepared to believe that same-sex parents may not be a first choice, other things being equal. But other things are rarely equal. Most children come to same-sex couples not from loving opposite-sex homes but from foster care, single parents, broken heterosexual marriages or relationships, foreign or domestic orphanages, or insemination. If they were not with same-sex couples, most

of these kids either would be in more difficult circumstances or would never have been born at all. If same-sex marriage helps them find secure two-parent homes, that seems like a good thing.

In any case, the number of *additional* children who would be raised in mommy-mommy or daddy-daddy homes as a result of same-sex marriage is probably small—marginal in all senses of the word. Many gay couples who want to raise children do so even without same-sex marriage; and even with same-sex marriage many, perhaps most, gay couples will not raise children.

Still, the question nags. In my travels speaking on same-sex marriage, the single most common concern, rivaled only by polygamy, has been whether two moms or two dads are as good for kids as a mom and a dad. This is a real sticking-point, and I think I know why. Same-sex marriage may send some powerful social signals about family structure.

Which brings us to the really interesting and perplexing case: kids who may be *indirectly* affected by same-sex marriage. In other words: all other children.

IV. Downsides: Negative Externalities

According to Gary Gates and Jason Ost in their new *Gay & Lesbian Atlas*, 996.5 out of every 1,000 households with children are *not* headed by gay couples. The critical question where social policy is concerned, and the great unknown, is: How would same-sex marriage affect this vast majority of children? In other words: How might homosexual marriage affect heterosexual behavior?

In academe and among same-sex marriage proponents, the presumption has been that the effects would be insignificant or, on balance, neutral—or, most likely, both. Same-sex marriage just will not prove to be a big deal for anyone but gay couples. After all, same-sex couples are but a small percentage of the population. Even granting gay people's growing cultural visibility, it is still possible for straight people to go through most of life without giving homosexuals a second thought. Many Americans say they do not even know anyone who is gay. Thus, after the initial political jolt, straight couples would presumably mostly go on about their lives much as they had before. Some would never personally witness a gay wedding or meet a married gay couple. Heterosexuals' decisions about marriage and divorce and child rearing, in any event, are based on many things. Surely whether gay couples could marry must be fairly low on the list.

There is, let me say, a strong case for this view. I think it may be right. I suspect that same-sex marriage may, at the end of the day, be one of the *least* impactful reforms of marriage. Divorce reform, for example, and allowing wives to own their own property changed the terms of marriage for everyone who got married, whereas it is not clear that gay marriage would have any effects on non-gay couples at all.

Still, to stop probing there would be lazy. We might be missing risks because we are not thinking hard enough. Moynihan would have urged us to tirelessly explore every angle. And, of course, many people think same-sex marriage would have significant, even calamitous, effects on children and families—negative effects. Or, as economists would call them, negative externalities: ill consequences besetting people who are not themselves involved in the gay-marriage transaction.

Those who see same-sex marriage as bad for children make many kinds of arguments, many of them just generalized predictions of doom or condemnations of homosexuality. Let me focus here on what I take to be the strongest argument. In U.S. Senate testimony in June, Mitt Romney, the governor of Massachusetts, framed it this way:

[M]arriage is principally for the nurturing and development of children. The children of America have the right to have a father and a mother.... Are we ready to usher in a society indifferent about having fathers and mothers? Will our children be indifferent about having a mother and a father? ... [C]hanging the definition of marriage to include same sex unions will lead to further far-reaching changes that also would influence the development of our children. For example, school textbooks and classroom instruction may be required to assert absolute societal indifference between traditional marriage and same-sex practice. It is inconceivable that promoting absolute indifference between heterosexual and homosexual unions would not significantly affect child development, family dynamics, and societal structures. [Judiciary Committee, June 22, 2004]

Knowing exactly what he means is difficult, but I think it is fair to say that the central idea is this: children do better with two opposite-sex parents, and they do better with married than with unmarried parents, and they do best of all with married biological parents. Same-sex marriage makes it more likely that more children will grow up with unmarried parents or single parents or couples other than their biological parents.

What is unclear is the precise mechanism by which letting same-sex couples marry would make straight parents less likely to get married, stay married, or raise their children as a fully engaged couple. I have had a hard time extracting a coherent story, beyond flat statements and dire but vague warnings that much will go wrong when we redefine marriage. That may be because I am not the best person to look for such a story, since I am unsympathetic to it. Still, a coherent narrative can be pieced together, notably from the work of Maggie Gallagher, among others. What follows is my own paraphrase of what I take to be the strongest version of the negative-externalities argument.

The law sends powerful cultural and, of course, legal signals about the relative desirability and normalcy of family structures. And the single most important way it does this is through marriage. Although we have always let infertile couples marry, marriage and children have always been linked culturally, with marriage setting the template for society's idea of the preferred structure for childrearing. Not every couple or child can attain the ideal, of course; but the legal structure of marriage expresses a preference, not a requirement.

Same-sex marriage would change the law to put opposite-sex and same-sex unions on an equal legal footing. This might benefit gay couples and their kids, but it would also signal the law's indifference to family structure. In particular, marriage could no longer signal that there is something special about families consisting of mother, father, and biological children. This, in turn, would further erode the prestige of the traditional family structure. People who favored the time-honored structure as a matter of social policy would be called bigots and would find the law, in its majesty, aligned against them. For the law to lend its prestige and muscle to the proposition that mother-father families are interchangeable with other arrangements would hasten the de-norming of the traditional family. It would further erode the status of the core family structure.

Indeed (the argument continues), in Scandinavia and the Netherlands same-sex marriage and domestic-partner laws have been part and parcel of the demotion of traditional marriage to a matter of complete legal and social indifference. Same-sex marriage, in this view, has not been the only problem for marriage in northern Europe, but it has been part of the problem.

Moreover (the argument continues), America faces its own widespread problem with fatherlessness. Even granting that the trouble has many causes, using the law to suggest that a fatherless couple is the full equivalent of a mother-father couple can only signal to fathers that their full participation is inessential—the last message they ought to be receiving.

And so the problem with same-sex marriage is not so much the policy per se as what the policy signals: how it will be interpreted by the culture and by couples and by courts. It sends the wrong signal at the wrong time. It turns away from efforts to attach both mothers and fathers to their children just when America was finally starting to “get” that there really is, on average, no substitute for being raised by the mother and father who brought you into the world.

That is the argument, as best I can state it. I think there are serious problems with it. I also think it misconstrues the evidence from Europe. (Professor M.V. Lee Badgett of the University of Massachusetts at Amherst has cast that evidence in quite a different light; her recent paper on the subject is easy to find online and worth reading.) Still, I grant that this is an argument with real weight. It cannot be dismissed as crankiness or paranoia.

Rather than pick it apart, I leave it before you and instead turn to explore a very different view, one that is much more optimistic.

V. Upsides: Positive Externalities

This view, I confess, is my own. It is that same-sex marriage may indeed have significant externalities, but that those may be positive, both for children and for marriage itself. In a single sentence, the idea is that the main cultural effect of same-sex marriage will be not to signal indifference to family structure but to signal a preference for marriage over nonmarriage. In other words, same-sex marriage may be part of the solution for marriage, not part of the problem.

The case begins with an observation. It is not true, as Gallagher and other same-sex marriage opponents have said, that children need a mommy and a daddy. Children *have* a mommy and a daddy. That is how we get children. What children need is a *married* mommy and daddy. The question is whether gay marriage would improve or damage their prospects. To a some extent, I think, the answer will depend on how same-sex marriage is interpreted. It might, as Gallagher and Romney claim, be interpreted as endorsing and thus encouraging nontraditional family structures. Or it might, to the contrary, be interpreted as endorsing and thus encouraging the most traditional of all family structures: marriage. Or—a possibility I will come back to—it might operate culturally on both vectors at once.

In my writings on the subject, I have put my money on the second kind of cultural signaling. I argue that America is at a turning point in the history of marriage. The country faces a choice between expanding marriage to make it inclusive of gay couples or establishing a variety of formal and informal alternatives to marriage. Conservatives may wish they did not face this choice. But they do. Gay couples and their children will build their lives together either inside of marriage or outside of marriage. And, of course, millions of heterosexual couples face exactly the same choice.

Marriage is a unique commitment. It is the only legally binding promise that we make for life; at no other time do we make a pledge “until death.” Of course, many couples can and do abandon marriages short of a lifetime, but even today doing so is complicated and requires the consent of a court. Marriage is unique also in that it is not just an agreement that two people

make with each other but also a covenant, a weighty covenant, that both make, as a couple, with their community. The couple promise to look after each other and their children, so the community won't have to; the community bestows a unique legal and social status on the couple, recognizing the pair as kin and honoring the profoundly noble and burdensome obligation they have undertaken.

Getting people to marry is hard. Just having sex is more fun. Just shacking up, as it was once called, is easier. In the past, people got married because they more or less had to. They were betrothed by their parents, or someone got pregnant, or, more recently, marriage was just expected. It was what adults did, a rite no less than a right. Much of that has changed. Thanks to abortion and contraception and the destigmatization of cohabitation and unwed parenthood, marriage today is, if you will allow the expression, a "lifestyle choice." Though marriage still does, and should, convey a special status and a unique bundle of rights and responsibilities (more responsibilities, actually, than rights), the line between marriage and nonmarriage has blurred. Once upon a time, respectable people took for granted that sex, love, marriage, and children (for couples that had them) all went together. Lately all the links have attenuated. The old formula isn't working so well.

Marriage is under threat, all right. The threat, however, comes not from gay couples who want to get married but from straight couples who either do not get married or don't stay married. About half of new marriages end in divorce; the marriage rate fell 40 percent from 1970 to 2000; a third—one third, a staggering number!—of children are born outside marriage; and cohabitation rose 72 percent in the 1990s. Twenty-eight percent of young couples aged 18-29 are unmarried. "The future of marriage may depend," as an analysis of that last figure by the Gallup Organization remarks, "on whether young people simply delay marriage or sidestep it altogether." I believe that society generally and children especially have an interest in encouraging these couples to get and stay married.

One way to do that is with governmental initiatives to support and encourage marriage. Such initiatives may or may not be effective; I hope they are, but I don't know. Another way is through the culture: to find ways to signal that marriage is the gold standard for committed relationships. For generations, society signaled that if you really cared about someone, you married them. For generations, society signaled that everyone should aspire to marry (though, of course, no one has to). For generations, society signaled that people who wanted the benefits and status that went with marriage had to get married, and thus undertake the unique commitment that marriage entails. These are signals that my grandmother from the Old Country, may she rest in peace, would have understood well.

Same-sex marriage may be the first opportunity the country has had in decades to move back up the slippery slope we have been on and say, quite dramatically, that marriage—not cohabitation, not partnership, not civil union, but marriage—is the gold standard. A gay couple in their 80s got married last year in Canada, after 58 years together. When asked why they both-ered, one of them replied, "The maximum is getting married." That is a good pro-marriage signal to send. Now, the cultural impact of gay marriage might be small, even if positive. As I said earlier, same-sex marriage may just turn out not to matter much. On the other hand, it might make a real difference. Fifteen years from now, when the male Best Director holds up his Oscar statuette and thanks, above all, his loyal and devoted husband, while the camera cuts to the husband smiling through tears in the audience—that, friends, is a heck of an advertisement for marriage.

If you take this view of the cultural meaning of same-sex marriage, then there may be significant benefits for children, gay and straight alike. Gay children, of course, benefit directly from knowing that their future holds the prospect of marriage, with all the blessings that go with it. Straight children benefit when they look all around and see marriage as the norm. If a child sees that Mr. and Mrs. Smith, the neighbors to the left, are married, and that Mrs. and Mrs. Jones, the neighbors to the right, are married, and that the child's own parents are married—that, I think, sends a positive and reassuring message to children, about both the importance of marriage and the stability of their community.

The message would be all the stronger if same-sex marriage were accompanied by the repeal of budding legal and social alternatives to marriage: domestic-partner registries, civil-union programs, and the like. That would make crystal clear that the intent of same-sex marriage is not to establish new family structures but to reaffirm the old one: to sharpen rather than blur the boundary between marriage and nonmarriage. A number of companies in Massachusetts are, in fact, already revoking partner benefits. They are saying, "If you want spousal benefits, be a spouse!"

Even without that sort of clarifying gesture, however, the very availability of same-sex marriage, and the status it will enjoy (and already does enjoy) among gay couples as the ultimate commitment, may nudge straight couples toward marriage by signaling that marriage is the model, whether you are old or young, gay or straight, parents or childless. Until now, societies around the world have understood that there is no conflict between adults and children in the matter of marriage. Every culture I know of celebrates rather than bemoans the marriage of, say, elderly couples who are past childbearing. Marriage is good for adults and it is good for children. In fact, the marriage of childless couples is good for children, just as the marriage of couples with children is good for childless adults. Every marriage signals the cultural primacy of marriage and adds to the social capital available to adults and children.

And, conversely, it is hard to see how excluding gay couples—including ones with children—from marriage will nudge any wavering straight couples toward marriage, or discourage out-of-wedlock pregnancy. After all, marriage can't be universally expected if it is not universally available.

VI. The Cost of the Ban

That brings me to one last branch of the argument which is very important but usually overlooked. So far I have been discussing potential externalities of same-sex marriage. But the discussion is not complete until we look, for a few minutes, at the potential negative externalities of *not* having same-sex marriage. It seems to me that conservatives have been irresponsible in refusing to consider this obverse side of the argument.

Let me re-emphasize: by definition, if marriage is not universally available, it cannot be universally expected. If, say, the U.S. Constitution were to be amended to forbid same-sex marriage, I can think of four things which, over time, would be very likely to happen—none of them good for marriage.

First, both law and custom will busy themselves setting up new non-marital structures to accommodate same-sex couples. The innovations will range from full-blown Vermont-style civil unions (marriage in all but name) to halfway-house programs like California's domestic partner program to patchwork corporate "partner benefits." Now, most existing partner programs, corpo-

rate and governmental, are open to heterosexual couples, because heterosexuals have a lot of influence and many of them would like spousal health-benefits without the hassles of marriage. In fact, in some places the antidiscrimination laws *require* partner programs to be open to heterosexual couples. Insofar as this pattern continues, we will have set up a whole new structure of non-marriage for heterosexuals. That is the path that many European countries have taken, and I believe it really will damage marriage.

Even if partner programs could somehow be fenced off from heterosexual couples, they would still signal culturally that marriage is just one of many options on a Chinese menu of lifestyle options. Children will grow up learning that some people have marriages, some civil unions, some partnerships, and so on. It is hard to see how that could do marriage any good. In fact, I would argue that *not* having gay marriage would represent the real continuation of the past several decades' retreat from marriage.

Second, and possibly more potentially damaging: blocking same-sex marriage will also ensure that law and custom will get busy bestowing legal and social recognition on cohabitation. Courts and, eventually, politicians will look at same-sex couples who have been together for ten or 20 years, and they'll say, "This couple looks and acts married. They talk the talk and walk the walk. We don't let them marry, but we also surely can't pretend they're just unrelated individuals in the eyes of the law." On the cultural side, every happily *un*married gay couple will be a walking billboard for the joys of cohabitation. And, even in principle, there is just no way to exclude heterosexual couples from cohabitation. Over time, the line between cohabitation and partnership and marriage will become impossible to defend—or even to discern. Canada and a number of European countries are already well along this road.

Third: by definition, banning same-sex marriage ensures that all same-sex couples with children will be raising their kids out of wedlock. That, of course, is true by definition. Obviously, that is no way to reconnect marriage with childrearing. Just the opposite. It will turn every parenting gay couple into an advertisement for the expendability of marriage. I mean, how important can marriage be for children if some children's parents are forbidden to marry?

Fourth, and not least: To most Americans over age 55 or so, same-sex marriage is a contradiction or an abomination; but to most Americans under 30, the ban on same-sex marriage is discrimination. For this younger generation, nondiscrimination is the pole star in the firmament of values. They do not want to be associated with what they perceive as antigay discrimination any more than their parents—my generation—does with anti-woman or anti-black discrimination. To brand marriage as the *discriminatory* lifestyle choice risks condemning it to cultural obsolescence. That may seem farfetched now, but in my lifetime it seemed farfetched to say that men would shun clubs that exclude women.

Let me note that I am not just conjecturing. San Francisco's decision to grant same-sex marriage licenses was an antidiscrimination protest. Ditto for the granting of licenses in New Paltz, New York. Benton County, Oregon, recently stopped issuing marriage licenses altogether, saying it did not want to be associated with a discriminatory institution. When I spoke recently at the University of Kansas, two young heterosexual audience members separately stood up to announce that they and their partners refuse to marry until gay couples can marry, too. How the forces here might play out over a generation or two is impossible to know. But it would be foolish not to consider the possibility that excluding gay couples could turn marriage into our father's Oldsmobile.

VII. Netting It Out

Well, I see that, despite my best efforts, I have made it clear which side I'm on. Moynihan might have done better. By way of amends, I'll conclude by putting on my impartial hat, as best I can.

However one assesses the balance of risks, it is clear that there are risks on both sides of same-sex marriage. Given the way marriage and the culture and the understanding of human sexuality have all changed in my lifetime, legalizing same-sex marriage is a leap in the dark, but so is *not* legalizing it.

It is important to note, as I mentioned earlier, that the various forecasts which I have outlined here are not mutually exclusive. The Rauch view, the Romney-Gallagher view, and the "it won't matter" view could all be right. Some people might see same-sex marriage as an affirmation of marriage, while other people see it as a travesty of marriage, while yet other people pay it no attention at all. The question, in the end, is how the cultural forces will add up and net out. We cannot possibly know that in advance.

That is why I have been suggesting that the United States, with its federalist system that has traditionally left marriage law to the states, is ideally suited to cope with same-sex marriage. Instead of betting the whole country, we can try same-sex marriage in a few states for a while and see what happens. That course requires great forbearance and patience from gay couples, whose marriages would, at least for some years, be recognized in only a few states. But it also offers the best hope of allaying panic, avoiding mistakes, and persuading the culture as well as the courts to regard same-sex marriages as the real thing.

And you, the faculty here at Michigan, have a role to play. Not by being advocates but by being investigators. So far, the same-sex marriage debate has been conducted mostly by gay civil-rights activists and anti-gay moralists. Now that one state is really marrying gay couples, what we need above all is careful study of the results. As I began by saying: the experiment has begun. We had better think, and fast. And I believe Daniel Patrick Moynihan would have agreed, at least, that you are the sort of people who should do the thinking.