

## A BRIEF CATECHISM ON MARRIAGE

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The well-being of the individual person and of human and Christian society is intimately linked with the healthy condition of that community produced by marriage and family.<sup>1</sup>

### I. INTRODUCTION

Marriage appears to be in trouble in Western European countries, at least among the intellectual elite. The Netherlands and Belgium have embraced same-sex marriage by legislative acts.<sup>2</sup> Seven provinces in Canada have followed suit through judicial command.<sup>3</sup> In the United States, state legislatures continue to hold firm in their refusal to redefine marriage while the courts waiver.<sup>4</sup>

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<sup>1</sup> II VATICAN COUNCIL: GAUDIUM ET SPES § 47 (1964).

<sup>2</sup> See The Netherlands Ministry of Justice Fact Sheet, Same-sex Marriages (Apr. 2001), [http://www.justitie.nl/english/publications/factsheets/same-sex\\_marriages.asp](http://www.justitie.nl/english/publications/factsheets/same-sex_marriages.asp); Ralf Michaels, *Same-Sex Marriage: Canada, Europe and the United States*, ASIL INSIGHTS, June 2003, available at <http://www.asil.org/insights/insigh111.htm>. The French and Dutch versions of the Belgian law are available at: <http://www.dekamer.be/FLWB/pdf/50/2165/50K2165001.pdf>.

<sup>3</sup> See *EGALE Canada, Inc. v. Canada* (Att'y Gen.), [2003] 225 D.L.R. (4th) 472 (B.C. Ct. App.); *Halpern v. Canada* (Att'y Gen.), [2003] 225 D.L.R. (4th) 529 (Ont. Ct. App.); *Hendricks v. Canada* (Att'y Gen.), [2003] 238 D.L.R. (4th) 577 (Que. Ct. App.); *N.W. v. Canada* (Att'y Gen.), [2004] SKQB 434 (Sask. Ct. Q.B.); *Dunbar v. Yukon*, [2004] YKSC 54 (Yukon Sup. Ct.).

<sup>4</sup> See *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993) (holding that equal protection under the state constitution requires strict scrutiny of marriage law requiring couples be composed of one man and one woman). The underlying litigation was subsequently dismissed as moot due to a state constitutional amendment that removed the definition of marriage from the equal protection clause of the constitution. *Baehr v. Miike*, 994 P.2d 566 (Haw. 1999); *Brause v. Bureau of Vital Statistics*, No. 3AN-95-6562, 1998 WL 88743 (Alaska Super. Feb. 27, 1998) (holding privacy protection in state constitution requires strict scrutiny of state requirement that marriage license applications be made only by opposite sex couples). The Alaska legislature responded by proposing a constitutional amendment which passed. It reads: "To be valid or recognized in this State, a marriage may exist only between one man and one woman." ALASKA CONST. art. I, § 25 (added after passage in general election on Nov. 3, 1998). See also *Standhardt v. Super. Ct. of Ariz.*, 77 P.3d 451 (Ariz. Ct. App. 2003), review denied (May 25, 2004) (finding no state constitutional right to recognition of same-sex unions); *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003) (holding there is a constitutional right to recognition of same-sex marriage); *Lewis v. Harris*, No. MER-L-15-03, 2003 WL 23191114 (N.J. Super. Ct. Law Div. Nov. 5, 2003) (holding there is no state constitutional right to recognition of same-sex marriage); *Hernandez v. Robles*, 794 N.Y.S.2d 579 (N.Y. Sup. Ct. 2005); *Baker v. State*, 744

Independent of the same-sex union debate, marriage itself remains a fragile legal status even in the most conservative of states. It is subject to unilateral termination for the flimsiest of reasons, with no substantial legal requirement that the party seeking the divorce show any attempt to maintain the marriage.<sup>5</sup>

Yet, the more things change, the more they remain the same. Whether it is the Pharisees debating the basis for divorce in Biblical times,<sup>6</sup> university professors blessing Henry VIII's specious reasons for divorce from Catherine of Aragon,<sup>7</sup> or the American Law Institute arguing for recognition of multi-partner relationships today,<sup>8</sup> the nature of marriage has been contested throughout history. The Church has always argued that marriage is the permanent union of a man and woman.<sup>9</sup> It is this vision that must be a part of the American dialogue today as we once again explore the legal structure of marriage and family life in this country.

What is at issue are three characteristics of marriage which were once widely understood to be intrinsic to its legal status: permanence, procreativity, and monogamy. Today, each of these characteristics is deeply contested. The Roman Catholic Church continues to defend each, and her teaching provides great insight into the value of each.

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A.2d 864 (Vt. 1999) (holding that state constitutional provision insuring all citizens enjoy all common benefits requires legal recognition of same-sex unions); *Anderson v. King County*, 04-2-04964-4-SEA, 2004 WL 1738447 (Wash. Super. Ct. Aug. 04, 2004) (holding there is a constitutional right to same-sex marriage recognition).

<sup>5</sup> *Developments in the Law—The Law of Marriage and Family, Marriage as Contract and Marriage as Partnership: The Future of Antenuptial Agreement Law*, 116 HARV. L. REV. 2075, 2086 (2003).

<sup>6</sup> The Biblical books of both Matthew and Mark record exchanges between Jesus and the Pharisees regarding the requirements of divorce. *Matthew* 19:1-9 and *Mark* 10:2-12. The followers of the Hillel school believed that divorce was permitted if "a man's wife should burn his food or even be less pleasing to him than another woman." A NEW CATHOLIC COMMENTARY ON HOLY SCRIPTURE 782, 937 (Reginald C. Fuller et al. eds., 1969) (citing Rabbi Aqiba c. A.D. 120). Members of the Shammai school required that the wife commit adultery or some sexual offense before divorce was permitted. *Id.* This difference in opinion was presented to Jesus to resolve. He, however, rejected both justifications, responding, "Because of the hardness of your hearts Moses allowed you to divorce your wives, but from the beginning it was not so. I say to you, whoever divorces his wife (unless the marriage is unlawful) and marries another commits adultery." *Matthew* 19:8-9 (New American Bible) (This version will be used throughout this article).

<sup>7</sup> See Edward A. Pace, *Universities*, in THE CATHOLIC ENCYCLOPEDIA, available at <http://www.newadvent.org/cathen/15188a.htm>; Herbert Thurston, *Henry VIII*, in THE CATHOLIC ENCYCLOPEDIA, available at <http://www.newadvent.org/cathen/07222a.htm>.

<sup>8</sup> See PRINCIPLES OF THE LAW OF DISSOLUTION OF THE FAMILY §6.01 cmt. d (2003) ("Knowledge that a domestic partner is married to another does not alone bar claims under this Chapter.").

<sup>9</sup> See generally MARY ANN GLENDON, THE TRANSFORMATION OF FAMILY LAW (1989).

## II. PERMANENCE

A. *Traditional Christianity's View*

The Church's recognition of the permanence of marriage arises from scripture.<sup>10</sup> Christ lived in a time when the very nature of marriage was contested. Jesus' exchange with the Pharisees concerning divorce evidences this.<sup>11</sup> While wives were not permitted to divorce their husbands, Jewish Law permitted husbands to divorce their wives if the circumstances met the requirements of Mosaic Law.<sup>12</sup> The content of these requirements was disputed at the time. Followers of the Hillel School believed that divorce was permitted if "a man's wife should burn his food or even be less pleasing to him than another woman."<sup>13</sup> Members of the Shammai School required that the wife commit adultery or some sexual offense before divorce was permitted.<sup>14</sup>

A group of Pharisees approached Jesus, asking him "Is it lawful for a man to divorce his wife for any cause whatever?"<sup>15</sup> Jesus responded, "Have you not read that from the beginning the Creator 'made them male and female' and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two, but one flesh. Therefore, what God has joined together, no human being must separate."<sup>16</sup>

This response seemed contrary to Jewish law, which clearly recognized the husband's right to divorce his wife, so the Pharisees asked, "Then why did Moses command that the man give the woman a bill of divorce and dismiss (her)?"<sup>17</sup> Jesus' response reveals that divorce was contrary to God's original plan for humanity. "Because of the hardness of your hearts Moses allowed you to divorce your wives, but from the beginning it was not so. I say to you, whoever divorces his wife (unless the marriage is unlawful) and marries another commits adultery."<sup>18</sup> By his answer, Christ refers the Pharisees back to the Genesis account of creation and God's original plan for the permanent

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<sup>10</sup> CATECHISM OF THE CATHOLIC CHURCH § 1614 (2d ed. 2000). See also PIUS XI, CASTI CONNUBII [CHRISTIAN MARRIAGE] (1930).

<sup>11</sup> *Matthew* 19:1-9 and *Mark* 10:2-12. See also John Paul II, *Theology of the Body: Original Unity of Man and Woman* (Nov. 7, 1979); JOHN PAUL II, MULIERIS DIGNITATUM [ON THE DIGNITY AND VOCATION OF WOMEN] (1988).

<sup>12</sup> A NEW CATHOLIC COMMENTARY ON HOLY SCRIPTURE 782 (Reginald C. Fuller et al. eds., 1969) ("Divorce was a privilege of the husband alone.").

<sup>13</sup> *Id.* at 937 (citing Rabbi Aqiba c. A.D. 120).

<sup>14</sup> *Id.* at 927.

<sup>15</sup> *Matthew* 19:4.

<sup>16</sup> *Matthew* 19:5.

<sup>17</sup> *Matthew* 19:6.

<sup>18</sup> *Matthew* 19:6-7.

union of man and woman by marriage.<sup>19</sup> Neither spouse is permitted to destroy that union. In this way, he reestablishes the equal duty of husband and wife to live out the lifelong commitment made in marriage.<sup>20</sup>

*B. Permanence of Marriage Eroded by Modern Laws*

In her historical review of the institution of marriage in Western European nations, Professor Mary Ann Glendon found that marriage has always been defined as a relationship of extended duration, but subject to dissolution by mutual consent.<sup>21</sup> With the rise of Christianity's influence, marriage came to be viewed as a lifetime commitment subject to dissolution only for grave reasons.<sup>22</sup> Once established, this ideal of marriage as a lifetime commitment held sway in Western European countries until recently.<sup>23</sup> It was only in the mid-1960's that laws began to recognize or expand the application of no-fault and mutual consent divorce statutes.<sup>24</sup>

Simultaneously, either reflecting the same cultural tides that swept through the law or as a result of those legal changes, the number of divorces in the United States skyrocketed.<sup>25</sup> As a consequence, more men and women now find themselves alone or struggling to raise children in a one-parent household. On average, those who choose divorce end up less healthy, wealthy, and happy than their counterparts who persevere in their marriages.<sup>26</sup> Similarly, children raised in a married household comprised of their biological mothers and fathers are physically and mentally healthier, better educated, and more likely to succeed in marriages and careers later in life.<sup>27</sup>

This contemporary research merely confirms what the Church has taught throughout the centuries.

Matrimonial contracts are by [divorce] made variable; mutual kindness is weakened; deplorable inducements to unfaithfulness are supplied; harm is done to the education and training of children;

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<sup>19</sup> John Paul II, *Theology of the Body: Original Unity of Man and Woman* (Nov. 7, 1979).

<sup>20</sup> CATECHISM OF THE CATHOLIC CHURCH § 1614 (2d ed. 2000).

<sup>21</sup> GLENDON, *supra*, note 9, at 17–34.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 149.

<sup>24</sup> *Id.*

<sup>25</sup> Stephen J. Bahr, *Social Science Research: On Family Dissolution*, 4 J.L. & FAM. STUD. 5, 6-7 (2002).

<sup>26</sup> *Id.* See also Department of Health and Human Services, *Cohabitation, Marriage, Divorce, and Remarriage in the United States*, 23 VITAL & HEALTH STATISTICS 3–4 (2002). See generally LINDA J. WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE* (2000).

<sup>27</sup> WAITE & GALLAGHER, *supra* note 26, at 124.

occasion is afforded for the breaking up of homes; the seeds of dissention are sown among families; the dignity of womanhood is lessened and brought low, and women run the risk of being deserted after having ministered to the pleasures of men.<sup>28</sup>

### *C. Benefit of Permanent Unions*

In contrast, permanence or indissolubility of marriage provides significant benefits to the wife and husband, their children, and the community.

First of all, both husband and wife possess a positive guarantee of the endurance of this stability which that generous yielding of their persons and the intimate fellowship of their hearts by their nature strongly require, since true love never falls away. Besides, a strong bulwark is set up in defense of a loyal chastity against incitements to infidelity . . . any anxious fear lest in adversity or old age the other spouse would prove unfaithful is precluded and in its place there reigns a calm sense of security. Moreover, the dignity of both man and wife is maintained and mutual aid is most satisfactorily assured, while through the indissoluble bond, always enduring . . . . In the training and education of children, which must extend over a period of many years, it plays a great part, since the grave and long enduring burdens of this office are best borne by the united efforts of the parents. Nor do lesser benefits accrue to human society as a whole. For experience has taught that unassailable stability in matrimony is a fruitful source of virtuous life and of habits of integrity. Where this order of things obtains, the happiness and well-being of the nation is sagely guarded; what the families and the individuals are, so also is the State, for a body is determined by its parts.<sup>29</sup>

By irrevocably rejecting divorce as an option, couples can confidently develop a healthy interdependence and division of labor that yields these benefits—benefits that social scientists are now documenting. When marriage is viewed as a permanent commitment, each partner is encouraged to work toward making the relationship realize its full potential, assured that his or her “investment” in the marriage is protected from unilateral dissolution. Efforts at reconciliation that may, at first blush, seem too taxing, suddenly appear more inviting when separation and life-long celibacy are viewed as the only alternative. The presence of no-fault divorce undermines this sort of commitment and slowly erodes the ability of many couples to weather the difficult times that married couples face.

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<sup>28</sup> LEO XIII, ARCANUM [ON CHRISTIAN MARRIAGE] (1880). *See also* PIUS XI, CASTI CONNUBII [CHRISTIAN MARRIAGE] (1930).

<sup>29</sup> PIUS XI, CASTI CONNUBII [CHRISTIAN MARRIAGE] (1930).

### III. PROCREATIVITY

Contemporary law similarly sends false messages regarding the procreative nature of marriage. Once the bedrock of the American legal understanding of marriage,<sup>30</sup> courts are increasingly confused regarding the role of procreation in marriage. State judges in Vermont,<sup>31</sup> Hawaii,<sup>32</sup> Alaska,<sup>33</sup> Massachusetts,<sup>34</sup> Washington,<sup>35</sup> and New York<sup>36</sup> have declared that the union of two men or two women is the equivalent of marriage and have ordered state officials to recognize such unions under the guise of state constitutional analysis. Citizens in Hawaii and Alaska responded by enacting constitutional definitions of marriage as the union of one man and one woman.<sup>37</sup> Disregarding the desires of Vermont citizens, the Vermont legislature responded to the court order by creating “civil unions,” a legal status that equates homosexual unions and marriages.<sup>38</sup> The Massachusetts Supreme Judicial Court declared that the state’s constitution required the issuance of marriage licenses to same-sex couples.<sup>39</sup> Trial courts in New York and Washington have also declared same-sex marriage to be a constitutional right.<sup>40</sup>

#### A. Federal Encroachment Into the Procreative Aspect of Marriage

To date, the federal courts have refused to recognize same-sex unions as marriages.<sup>41</sup> Notwithstanding this fact, confusion regarding the essential nature of marriage reigns at the highest level. Starting with its opinion in *Griswold v. Connecticut*,<sup>42</sup> the Supreme Court has joined the battle over “sexual liberation.”<sup>43</sup> With language that

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<sup>30</sup> See Charles Reid, *The Augustinian Goods of Marriage: The Disappearing Cornerstone of the American Law of Marriage*, 18 *BYU J. PUB. L.* 449 (2004).

<sup>31</sup> *Baker v. State*, 744 A.2d 864 (Vt. 1999).

<sup>32</sup> *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

<sup>33</sup> *Brause v. Bureau of Vital Statistics*, No. 3AN-95-6562, 1998 WL 88743 (Alaska Super. Ct. Feb. 27, 1998).

<sup>34</sup> *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

<sup>35</sup> *Anderson v. King County*, 04-2-04964-4-SEA, 2004 WL 1738447 (Wash. Super. Ct. Aug. 04, 2004).

<sup>36</sup> *Hernandez v. Robles*, 805 N.Y.S.2d 354 (N.Y. App. Div. 2005).

<sup>37</sup> See *supra* note 4.

<sup>38</sup> *Baker v. State*, 744 A.2d 864 (Vt. 1999).

<sup>39</sup> *Goodridge*, 798 N.E.2d 941.

<sup>40</sup> *Hernandez*, 794 N.Y.S.2d 579, *rev’d*, 805 N.Y.S.2d 354 (N.Y. App. Div. 2005); *Anderson v. King County*, No. 04-2-04964-4-SEA, 2004 WL 1738447 (Wash. Super. Ct. Aug. 4, 2004) (finding a state constitutional right to recognition of same sex marriage).

<sup>41</sup> *In re Kandu*, 315 B.R. 123, 139 (W.D. Wash. 2004). “No federal court, however, has explicitly recognized that this fundamental right to marry extends to a person of the same sex.” *Id.* at 139.

<sup>42</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>43</sup> See *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

seemingly provided strong support for the institution of marriage,<sup>44</sup> the Court struck down a Connecticut statute that banned the sale of contraceptives to married couples.<sup>45</sup> Expressing little patience for the state's argument that the ban discouraged adultery,<sup>46</sup> members of the *Griswold* Court found that married couples had a constitutional right to use contraception, and declared the ban unconstitutional. None of the justices grappled with the state's interest in the procreative aspect of marriage, or the state's legitimate interest in encouraging fidelity.

Seven years later in *Eisenstadt v. Baird*,<sup>47</sup> the Court expanded this holding to declare that unmarried adults also had a constitutional right to have access to contraceptives. Perhaps even more important to the American understanding of marriage, the Court introduced a radical redefinition of marriage. In explaining what he saw as the natural progression to the opinion in *Eisenstadt*, Justice Brennan wrote:

It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as a decision whether to bear or beget a child.<sup>48</sup>

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The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.

*Id.*; *Carey v. Population Serv. Int'l*, 431 U.S. 678 (1977) (striking down law prohibiting the sale of contraception to minors below the age of sixteen).

<sup>44</sup> See *Griswold*, 381 U.S. at 486.

Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

*Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 498, 505-06.

<sup>47</sup> *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

<sup>48</sup> *Id.* at 453.

*B. Federal Jurisprudence Is Contrary to God's Plan for  
Marriage and Families*

This new emphasis on marriage as “an association of two individuals” and the “right of the individual” within the marriage is contrary to the Catholic understanding of marriage as a communion of persons or one-flesh union.

In marriage man and woman are so firmly united as to become—to use the words of the Book of Genesis—“one flesh” (Gen 2:24). Male and female in their physical constitution, the two human subjects, even though physically different, *share equally in the capacity to live “in truth and love”*. This capacity, characteristic of the human being as a person, has at the same time both a spiritual and a bodily dimension. It is also through the body that man and woman are predisposed to form a “communion of persons” in marriage. When they are united by the conjugal covenant in such a way as to become “*one flesh*” (Gen 2:24), their union ought to take place “*in truth and love*”, and thus express the maturity proper to persons created in the image and likeness of God.<sup>49</sup>

It is through this communion of persons that the community of the family arises.<sup>50</sup> This communion is expressed by the total gift of self, including the gift of one’s procreativity. Through this gift, each comes to know the other and themselves.

Procreation brings it about that the man and the woman [his wife] know each other reciprocally in the “third,” [a child] sprung from them both. Therefore, this knowledge becomes a discovery. In a way it is a revelation of the new man, in whom both of them, man and woman, again recognize themselves, their humanity, their living image. In everything that is determined by both of them through the body and sex, knowledge inscribes a living and real content.<sup>51</sup>

By remaining open to the conception and nurturing of children, the couple evidences their willingness to cooperate with God’s plan to be co-creators of new life.

Contrary to popular mythology, the Church does not teach an absolute duty to have as many children as physically possible. Rather, the Church teaches that each married couple must recognize children as

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<sup>49</sup> JOHN PAUL II, LETTER TO FAMILIES (1994).

<sup>50</sup> JOHN PAUL II, FAMILIARIS CONSORTIO [ON THE ROLE OF THE CHRISTIAN FAMILY IN THE MODERN WORLD] (1981).

<sup>51</sup> John Paul II, Original Unity of Man and Woman: The Mystery of Woman is Revealed in Motherhood (Mar. 12, 1980).



the supreme gift of marriage and that the couple should seek to act in accordance with God's will for their lives.<sup>52</sup>

With regard to physical, economic, psychological and social conditions, responsible parenthood is exercised by those who prudently and generously decide to have more children, and by those who, for serious reasons and with due respect to moral precepts, decide not to have additional children for either a certain or an indefinite period of time.<sup>53</sup>

If a proper decision is made to postpone or avoid having a child, the Church teaches that couples must do so by cooperating with the natural order rather than seeking to frustrate it through artificial means.<sup>54</sup>

The choice of the natural rhythms involves accepting the cycle of the person, that is the woman, and thereby accepting dialogue, reciprocal respect, shared responsibility and self-control. To accept the cycle and to enter into dialogue means to recognize both the spiritual and corporal character of conjugal communion and to live personal love with its requirement of fidelity. In this context the couple comes to experience how conjugal communion is enriched with those values of tenderness and affection which constitute the inner soul of human sexuality, in its physical dimension also. In this way sexuality is respected and promoted in its truly and fully human dimension, and is never "used" as an "object" that, by breaking the personal unity of soul and body, strikes at God's creation itself at the level of the deepest interaction of nature and person.<sup>55</sup>

The couple both acknowledges God's design and cooperates with each other in their mutual plan to be fruitful in other dimensions of their married life.

### *C. Modern Views on Contraception*

Mocked at the time as a puritanical alarmist, Pope Paul VI warned that acceptance of artificial means of contraception would lead to widespread sexual immorality, increased sexual denigration of women, and attempts by governmental authorities to control the conception and birth of children.<sup>56</sup> Yet each of these evils has come to pass. Out of

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<sup>52</sup> PAUL VI, *HUMANE VITAE* [ON HUMAN LIFE] (1968).

<sup>53</sup> *Id.*

<sup>54</sup> John Paul II, *Familiaris Consortio* [On the Role of the Christian Family In the Modern World] (1981).

<sup>55</sup> *Id.*

<sup>56</sup> PAUL VI, *HUMANAE VITAE* [ON HUMAN LIFE] (1968).

wedlock births<sup>57</sup> and sexually transmitted diseases<sup>58</sup> have reached crisis proportions. Violence against women continues to escalate, and its control eludes public authorities.<sup>59</sup> Young women increasingly speak out against the coarseness of social interactions they are forced to endure under the guise of “equality.”<sup>60</sup> Foreign governments like The People’s Republic of China impose draconian policies of forced abortions on women who violate its one child policy, while the rest of the world passively looks on.<sup>61</sup>

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<sup>57</sup> George A. Akerlof & Janet L. Yellen, *An Analysis of Out-of-Wedlock Births in the United States* (Aug. 1996), <http://www.brook.edu/comm/policybriefs/pb05.htm>.

Before 1970, the stigma of unwed motherhood was so great that few women were willing to bear children outside of marriage. The only circumstance that would cause women to engage in sexual activity was a promise of marriage in the event of pregnancy. Men were willing to make (and keep) that promise for they knew that in leaving one woman they would be unlikely to find another who would not make the same demand. Even women who would be willing to bear children out-of-wedlock could demand a promise of marriage in the event of pregnancy.

The increased availability of contraception and abortion made shotgun weddings a thing of the past. Women who were willing to get an abortion or who reliably used contraception no longer found it necessary to condition sexual relations on a promise of marriage in the event of pregnancy. But women who wanted children, who did not want an abortion for moral or religious reasons, or who were unreliable in their use of contraception found themselves pressured to participate in premarital sexual relations without being able to exact a promise of marriage in case of pregnancy. These women feared, correctly, that if they refused sexual relations, they would risk losing their partners. Sexual activity without commitment was increasingly expected in premarital relationships.

*Id.*

<sup>58</sup> Centers for Disease Control and Prevention, *Tracking the Hidden Epidemics: Trends in STDs in the United States 2000* (as corrected Apr. 1, 2001) [http://www.cdc.gov/nchstp/std/Stats\\_Trends/Trends2000.pdf](http://www.cdc.gov/nchstp/std/Stats_Trends/Trends2000.pdf).

<sup>59</sup> “Nearly one-third of women murdered each year in the United States are killed by their current or former intimate partners. Approximately 1 million women are stalked each year, and 1 in 36 college women is a victim of an attempted or completed rape in each academic year.” Letter from John Ashcroft, U.S. Attorney General, and Tommy Thompson, Secretary of U.S. Department of Health and Human Services, to unspecified recipients (undated), <http://toolkit.ncjrs.org/files/393409.pdf>.

<sup>60</sup> See, e.g., DANIELLE CRITTENDEN, *WHAT OUR MOTHERS DIDN’T TELL US* (1999); WENDY SHALIT, *A RETURN TO MODESTY* (1999).

<sup>61</sup> Arthur E. Dewey, Asst. Sec’y for Population, Refugees & Migration, Testimony before the House International Relations Committee (Dec. 14, 2004), <http://www.state.gov/g/prm/rls/39823.htm>.

Yet, let me be clear. China’s birth planning law and policies retain harshly coercive elements in law and practice. Forced abortion and sterilization are egregious violations of human rights, and should be of concern to the global human rights community, as well as to the Chinese themselves. Unfortunately, we have not seen willingness in other parts of the international community to stand with us on these human rights issues.

*Id.*

Each of these abuses arises from a failure to appreciate the power of human sexuality. American laws and customs had long attempted to channel that power into permanent unions of one man and one woman, in part because the act of sexual intercourse was understood to hold the potential to create a new life. As a community, we believed that the participants in that act owed a duty to care for the child during infancy. This duty was best fulfilled within marriage.

When the Court and the culture said sexual intercourse could be rendered sterile at will, the nature of marriage necessarily changed. If the signature act of the union was, or could be voluntarily and permanently sterile, what was marriage for? And what were the proper boundaries or rules for this new institution? The legislatures and courts answered “self-fulfillment.”<sup>62</sup> “So long as you both shall live,” a sensible constraint if the function and meaning was tied to the creation and raising of children, has become “so long as you both shall love,” an illusory constraint that in the end poses no real barriers to the unilateral termination of any relationship.

#### IV. EXCLUSIVITY

A third marital truth under attack today is that marriage, as a total gift of self between husband and wife, is only fully experienced in an exclusive relationship. Implicit in the idea of exclusivity is the loyalty and intimacy enjoyed within the “bonds of matrimony.” Exclusivity is a necessary condition for the complete revelation of self that marriage entails.<sup>63</sup> In part, exclusivity eliminates any basis for comparison. This avoids the danger of devaluing the unique gift of the spouse, and the damage suffered from being evaluated, rather than loved.

##### *A. The Growth of ‘Domestic Partnerships’*

For centuries, the Church has rejected polygamy. The Catechism teaches that polygamy “is contrary to the equal personal dignity of men

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<sup>62</sup> See generally *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>63</sup> PAUL VI, *HUMANAE VITAE* (1968).

Married love is also faithful and exclusive of all other, and this until death. This is how husband and wife understood it on the day on which, fully aware of what they were doing, they freely vowed themselves to one another in marriage. Though this fidelity of husband and wife sometimes presents difficulties, no one has the right to assert that it is impossible; it is, on the contrary, always honorable and meritorious. The example of countless married couples proves not only that fidelity is in accord with the nature of marriage, but also that it is the source of profound and enduring happiness.

*Id.*

and women who in matrimony give themselves with a love that is total and therefore unique and exclusive.”<sup>64</sup> Similar concern for the equal dignity of men and women persuaded the United States Supreme Court to reject claims that polygamy was protected as a religious practice when presented with the issue in 1878.<sup>65</sup>

Today, new claims on behalf of multi-partner unions are made in the name of “domestic partnerships” or polyamorous unions.<sup>66</sup> In its Principles of the Law Governing Family Dissolution, the American Law Institute embraced the idea that a person may be legally responsible to provide for both a spouse and a domestic partner. “Knowledge that a domestic partner is married to another does not alone bar claims under this Chapter.”<sup>67</sup> The drafters justify this innovation in the law on the basis that the unmarried member of the *menage a trois* often enters such relationships without knowledge of the marriage, and learns of the marriage only when “the person may not be in a position to leave the relationship and frequently has no power to cure the legal defect.”<sup>68</sup> Exactly what circumstances constitute a position in which a person would be unable to leave the adulterous relationship is not specified. Certainly the stranger to the marriage would have no power to “cure the legal defect” by either initiating a divorce or joining in the marriage. Yet why this justifies continuing a relationship with a man or woman who is married to someone else is never explained.

### B. ‘Polyamorous’ Unions

Polyamorous unions are sexual groupings that have no predetermined gender composition.<sup>69</sup> Advocates of such unions argue that, unlike polygamy with its inherent bias against women, polyamorous unions allow women as well as men to arrange their sexual

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<sup>64</sup> CATECHISM OF THE CATHOLIC CHURCH § 2387 (quoting JOHN PAUL II, [ON THE ROLE OF THE CHRISTIAN FAMILY IN THE MODERN WORLD] (1981)).

<sup>65</sup> Reynolds v. United States, 98 U.S. 145, 165-66 (1878).

Upon [marriage] society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says, polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy.

*Id.*

<sup>66</sup> See, e.g., Maura Strassberg, *The Challenge of Post-Modern Polygamy: Considering Polyamory*, 31 CAP. U. L. REV. 439 (2003).

<sup>67</sup> PRINCIPLES OF THE LAW OF DISSOLUTION OF THE FAMILY § 6.01 cmt. (d) (2003).

<sup>68</sup> *Id.*

<sup>69</sup> WEBSTER’S NEW MILLENNIUM DICTIONARY OF ENGLISH (preview ed. 2005).

partnerships to suit their tastes.<sup>70</sup> These arguments continue to treat the physical dimension of the sexual act as if there is no inherent emotional or spiritual component. This denies the reality of the person.

Marriage is intended to be a complete and mutual gift of self.<sup>71</sup> This requires exclusivity. In the absence of exclusivity, the intensity of being fully available to the other would be overwhelming. Competing claims for attention or inevitable comparisons would lead to jealousy and bitterness, with ultimate failure in some aspects of the relationships.

#### V. CONCLUSION

Permanent sexual partnering between men and women has been the bedrock of every society. For over forty years, Americans have experimented with redefining marriage as temporary liaisons between a man and a woman designed for self-gratification and sexual pleasure. The costs of that experiment have been high and borne most immediately by children and women. Some wish to extend the experiment even further by redefining marriage to include any combination of individuals who publicly affirm their sexual unions. Such a radical change would divorce the word marriage from its content in the natural law, and ultimately lead to even greater harm. Men, women, and children flourish only in a society where the sexual powers are exercised in loving, life-long, and exclusive unions between a man and a woman that are intended to be total gifts of self to the other.

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<sup>70</sup> See *supra* note 62.

<sup>71</sup> *Matthew* 19:5-6.