



## Historical Talking Points Regarding Marriage

### Marriage in World History

- Marriage emerged as a social and religious institution long before the 19<sup>th</sup> century, when homosexuals began to argue in favor of same-sex “marriage.”<sup>1</sup> The definition of marriage as the union of a man and a woman itself goes back even farther than our modern understanding of sexual orientation as a classification.
- In all or nearly all human societies, marriage is socially approved sexual intercourse between a woman and a man, conceived both as a personal relationship and as an institution, primarily such that any children resulting from the union are understood to be—emotionally, morally, practically and legally affiliated with both of the parents.<sup>2</sup>
- Even more ancient history illustrates male-female marriage as a common element in diverse societies from Mesopotamia, India, etc.<sup>3</sup>
- The history of marriage demonstrates that non-recognition of same-sex “marriages” does not stem from a particular religious tradition; it is universal. Even secular and aggressively atheist regimes (like Soviet Russia) have never recognized same-sex “marriages.”
- Prior to the thirteenth century, when the Church finally managed to take control of it, marriage was an entirely social practice.<sup>4</sup>
- Marriage only became a sacrament in the Catholic Church in 1439, and the Catholic Church only began requiring the attendance of a priest for a valid marriage in 1563, after the Reformation.<sup>5</sup>
- The state came to marriage even later than did the Church. It was not until 1753, with the passage of Lord Hardwicke’s Marriage Act, that the British state became a significant player in the joining together of men and women as husbands and wives.<sup>6</sup>

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<sup>1</sup> *Lawrence v. Texas*, 539 U.S. 558, 568 (2003) (citing J. Katz, *The Invention of Heterosexuality*, 10 (1995); J. D. Emilio & E. Freedman, *Intimate Matters: A History of Sexuality in America*, 121 (2d ed. 1997)).

<sup>2</sup> David Blankenhorn, *The Future of Marriage*, 91 (2007).

<sup>3</sup> See Jan Knappert, *The Family in Antiquity* in *THE FAMILY IN GLOBAL TRANSITION* 29 (Gordon L. Anderson, editor, 1997).

<sup>4</sup> F.C. DeCoste, *Courting Leviathan: Limited Government and Social Freedom in Reference re Same-Sex Marriage*, 42 ALBERTA L. REV. 1099, 1112-13 (2005) (citation omitted).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*



- The historical origin of marriage is in society and culture, as a response to the needs of the family, and has only later been extended legal recognition and regulation.
- In fact, some 150 years of systematic inquiry by anthropologists leaves little doubt that heterosexual marriage is found in nearly every human society and almost always as a pivotal institution. Homosexual marriage outside contemporary Western societies is exceedingly rare and never the basis of "viable social order."<sup>7</sup>

### **Marriage in American History**

- In the United States, the original thirteen colonies and all of the states inherited the definition of marriage as the union of a man and a woman from English law.<sup>8</sup>
- The colonies imported most of the substantive law of marriage created by the English Church and its ecclesiastical courts. Thus, the civil law reflected the religious English view of marriage as a permanent monogamous union of one man and one woman. The English "inherited traditions relating to marriage from three major sources: from Roman law, from Judaeo-Christian tradition, and from Germanic society."<sup>9</sup>

### **Marriage in the Courts**

- The Washington Court of Appeals opinion noted that "marriage as now defined is deeply rooted in our society."<sup>10</sup>
- The Ninth Circuit held that same-sex marriage would "violate traditional and often prevailing societal mores."<sup>11</sup>

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<sup>7</sup> Wood, Peter, "The Marriage Debate Goes Multicultural: Anthropologists jump in — and distort the history of their field," National Review Online.

<sup>8</sup> Charles P. Kindregan, Jr., *Same-Sex Marriage: The Cultural Wars and the Lessons of Legal History* 38 FAM. L. Q. 427, 430 (2004)

<sup>9</sup> Conor McCarthy, *Marriage in Medieval England*, 8 (2004).

<sup>10</sup> *Singer v. Hara*, 522 P.2d 1187, 1197 (Wash. Ct. App. 1974).

<sup>11</sup> *Adams v. Howerton*, 673 F.2d 1036, 1043 (9th Cir. 1982).