

## Red Families, Blue Families, Gay Families, and the Search for a New Normal

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It is an honor to be with you today, and there could not be a better moment to talk about law, values, and the meaning of family in a time of tumultuous change.

I should begin with a caveat: I am neither a lawyer nor any kind of expert on the law. I do think and write a great deal about same-sex marriage and marriage as a whole—the two being, of course, inseparable. And I try to think about the larger cultural and social contexts which frame the gay-marriage issue and family law more generally. I want to take my few minutes today to talk about some reflections on a question I have had for a long time.

We know that gay marriage is very controversial. But why, exactly?

Well, we know that some people oppose it because they oppose homosexuality, and gay marriage, in their view, would give society's and the law's imprimatur to a deviant lifestyle.<sup>1</sup> Those opponents will, on the whole, never change.<sup>2</sup> Fortunately for people like me, their numbers are diminishing with time.<sup>3</sup>

Contrary to what some of my friends in the gay-marriage movement believe, however, homophobia is far from the only

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1. See, e.g., Pam Belluck, *The Gay-Marriage Debate Resumes in Massachusetts*, N.Y. TIMES, Mar. 12, 2004, at A12 (describing the signs of gay marriage opponents as "saying gays were godless and deviant").

2. Cf. Ben Smith, *Is Gay Marriage Inevitable?*, POLITICO, Dec. 9, 2009, <http://www.politico.com/news/stories/1209/30377.html> (stating that research shows younger people's views on this issue tend to not change as they age).

3. See *id.* (citing various data showing broader support for same-sex marriage among younger generations, while older people tend to oppose it).

reason for opposition. Another group, which I think is at least equally large, feels threatened—less by the normalization of homosexuality than by the *abnormalization*, so to speak, of the conventionally defined family. “Nothing personal, do what you want,” they tell us, “but leave the definition of family—of marriage—alone!”

One way to see that more is going on than homophobia is to reflect, for a moment, on a peculiar fact: gay marriage is far more controversial in America than either same-sex adoption or same-sex child custody.<sup>4</sup>

Think about that. Isn’t it odd? The care of children, by definition, involves third parties who often have little or no choice about their situation. If there is a case for harm, one would think it would be strongest here—not in the union of two mutually consenting adults. In fact, the other side has a very hard time articulating any concrete harm at all that gay marriage would do. Yet efforts to make a political issue of gay adoption have consistently failed,<sup>5</sup> while, wherever it appears, gay marriage finds it cannot *not* be a political issue.

What is behind the alarm raised by gay marriage?

To answer this question, I think one must widen the aperture and look at same-sex marriage in the context of a much larger cultural battle over the nature of family, of marriage, and even of adulthood: a debate over what it is that constitutes, and should constitute, the template for “normal” in all of those areas.

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My thinking here is indebted to an important and interesting new book by Naomi Cahn and June Carbone, of the George Washington University Law School and the University of Missouri–Kansas City School of Law, respectively. It is called *Red Families v. Blue Families: Legal Polarization and the Creation of Culture*,<sup>6</sup> and I recommend it highly.

This book is more detailed and nuanced than my brief treatment here can reflect, but I think it is not too far off the mark

4. See William Meezan & Jonathan Rauch, *Gay Marriage, Same-Sex Parenting, and America’s Children*, FUTURE CHILD., Fall 2005, at 97, 97–113, available at [http://futureofchildren.org/futureofchildren/publications/docs/15\\_02\\_FullJournal.pdf](http://futureofchildren.org/futureofchildren/publications/docs/15_02_FullJournal.pdf) (noting the less incendiary political climate surrounding both same-sex custody and adoption compared to gay marriage).

5. See *id.* at 98–99 (discussing the general allowance of unmarried partner adoptions and noting the separate treatment of marriage and adoption in most states).

6. NAOMI CAHN & JUNE CARBONE, *RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE* (2010).

to summarize their thesis as follows: Blue and Red America—the predominantly socially liberal, Democratic areas and constituencies and the predominantly socially conservative, Republican areas and constituencies—are not just different politically but are on opposite ends of the sexual revolution.<sup>7</sup> This, in part, is *why* they are so different politically.<sup>8</sup>

And here, more specifically, is the difference between them in a sentence (my formulation, not the authors’): in Red America, families form adults; in Blue America, adults form families.

Meaning?

Cahn and Carbone make two interesting observations. First, the Red and Blue worlds exhibit a marked, consistent difference in the age at first childbirth and marriage.<sup>9</sup> For example:

- States with the lowest median age at marriage in 2007 were all Red: Utah, Idaho, Arkansas, Oklahoma, Kansas.<sup>10</sup>
- States with the highest median age at marriage were all Blue: Massachusetts, New York, Rhode Island, Connecticut, New Jersey.<sup>11</sup>
- The same pattern holds for age at first childbirth. Massachusetts, a Blue state, is highest (about twenty-eight years old), while Mississippi, a Red state, is lowest (about twenty-three years old).<sup>12</sup>

Second, Red states have higher levels of divorce and teen pregnancy.<sup>13</sup>

In other words, states with the most-traditional family values were the ones with, so to speak, the least-traditional family outcomes, or at any rate the outcomes least desirable from both a traditional point of view and from a public-policy point of view.

We gay-marriage advocates have sometimes thrown this seeming paradox in our opponents’ faces. We love pointing out that

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7. *See id.* at 1–15 (detailing the demographic highlights of Red and Blue states and the divergent attitudes towards timing of education, pregnancies, and childbirth).

8. *See id.* at 4 (attributing the current “culture war” to the “dynamic of class and regional antagonisms,” which is aggravated by intentionally divisive political figures).

9. *See id.* at 24–27 (reporting the median age at marriage and mean age of women at first birth in all fifty states).

10. *Id.* at 25.

11. *Id.*

12. *Id.*

13. *See id.* at 22–28 (noting the states with the highest percentages of teen births, pregnancy, and divorce).

Massachusetts, the original home of gay marriage and supposed threat to family values, has the lowest divorce rate of any state.<sup>14</sup> But there is more going on here than a “gotcha.” There are deeper forces at work, or so Cahn and Carbone argue.

Here is their story. I’m not sure it is perfect or complete, but it is plausible.

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For decades—if not centuries, argue Cahn and Carbone—American family and economic norms were framed by two realities, both taken as givens.

One: sex makes babies, and a core purpose of marriage and of many other conventions is to regulate sexual and social behavior so as to provide for the formation of stable, nurturing families.<sup>15</sup>

Two: a low-skilled man, if he applies himself, can get a job, make a living, and support a family.<sup>16</sup>

Fact One gave rise to a strong linkage between sexual activity, marriage, and procreation.<sup>17</sup> They were seen as three aspects of the same thing.<sup>18</sup> After all, it was (and still is) pretty hard for teenagers and young adults not to have sex.<sup>19</sup> So one important norm was not to have sex before marriage.<sup>20</sup> A second important norm was that, if you did have premarital sex and conceived a child, you had to marry.<sup>21</sup>

Under those rules, families formed early—sometimes by choice, sometimes at the point of a shotgun.<sup>22</sup> That was alright, however, because the man could get a job and support his wife and kids.<sup>23</sup> The woman could probably stay at home and raise the

14. *See id.* at 28; *see also* DIV. OF VITAL STATISTICS, CTRS. FOR DISEASE CONTROL & PREVENTION, DIVORCE RATES BY STATE: 1990, 1995, AND 1999–2007, <http://www.cdc.gov/nchs/data/nvss/Divorce%20Rates%2090%2095%20and%2099-07.pdf> (providing a table of divorce rates) (last visited Apr. 28, 2010).

15. *See* CAHN & CARBONE, *supra* note 6, at 128.

16. *See id.* at 34–37 (noting demographic shifts across the United States that have eroded the notion that a low-skilled earner can support a family in an increasingly technological economy).

17. *See id.* at 1, 128.

18. *See id.* at 128–32 (discussing the overlap between sex, marriage, and procreation in certain circles).

19. *See id.* at 20–21 (addressing the “teen divide” and speaking to the sexual habits of teens).

20. *Id.* at 128–29.

21. *See id.* at 22–24 (noting that the traditional response to premarital conception led to early family formation in many cases).

22. *See generally id.* at 33–41 (detailing the “shotgun marriages” of the 1950s and the resulting divorces of the 1970s).

23. *Cf. id.* at 51–52 (“Both hourly wages and employment figures have correspondingly decreased for men while increasing for women.”).

kids.<sup>24</sup> Neither member of the couple needed an extended education in order to meet their obligations as spouses or parents.<sup>25</sup>

True, young people often make poor marital choices (or their hormones make the choices for them).<sup>26</sup> But that, too, was usually alright, at least from society's point of view, because divorce was stigmatized, fairly hard to get, and therefore rare.<sup>27</sup> The couple did not necessarily expect deep personal fulfillment in marriage, a certain amount of adultery was taken for granted, and more of what would today be considered abusive or dysfunctional marriages were thought to be tolerable.<sup>28</sup> So even a flawed marriage was likely to be a stable one.<sup>29</sup> Over time, we had reason to hope, the spouses would grow into their responsibilities.<sup>30</sup>

That is what "families form adults" means. Many teenagers and young adults formed families before they reached maturity, and came to maturity precisely by shouldering family responsibilities. Immature choices and what were once called, euphemistically, "accidents" were a fact of life; but the unity of sex, marriage, and procreation, combined with the pressure not to divorce, turned childish errors into adult vocations.

This paradigm is a traditional norm-set, well rooted in the human condition for untold generations. What the traditional norms say is: keep sex, marriage, and kids linked and more or less synchronized, and things are basically okay. Disassemble the package and you get social chaos.

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But now along come two game-changers (so argue Cahn and Carbone): the global information economy and the birth control

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24. *See id.* at 38.

25. *See id.*

26. *See id.* at 41–42 (noting that more premarital sex leads to more religious focus on the topic, more failures to use contraception, more pregnancies, and, thus, more "forced marriages").

27. *Cf. id.* at 38–39 (discussing the various factors that "unleashed the pent-up demand for divorce").

28. *See id.* at 56–57 (citing studies showing younger people are less mature and are more likely to engage in criminal behavior, abuse drugs, and have more sexual partners than older people, behaviors which make relationships less likely to last).

29. *See id.* (noting that two factors—"immaturity and selection effects"—serve to make the union less likely to last if the marriage is entered into before twenty-one).

30. *See id.* at 56–59 (outlining the transition to adulthood and the importance of institutions that guide this process).

revolution, which is what the sexual revolution mostly amounts to.<sup>31</sup>

The new economy puts a premium on a high level of skill.<sup>32</sup> Even basic jobs require literacy and numeracy and a good deal of cognitive sophistication, so a high-school education or less no longer offers very good prospects.<sup>33</sup> Moreover, lifetime jobs disappear.<sup>34</sup> People need to be able to switch jobs pretty nimbly, so vocational training and apprenticeship are no longer adequate.<sup>35</sup> Blue-collar wages fall,<sup>36</sup> so a factory job often will no longer cut it—if you can find a factory job!

Meanwhile, birth control means that you can have sex without making babies, and people do. Effective female contraception, in the form of the birth control pill, allows men to shift the responsibility for unwed pregnancies to women, giving more fathers the moral leeway to do what they were always inclined to do, which is to walk away.<sup>37</sup>

And, of course, women stream into the work force, raise their sights, and grow more economically independent—a good thing, but with the side effect of contributing to a much higher divorce rate.<sup>38</sup>

This is a very different world. In this world, early family formation is often a calamity.

- It often short-circuits skills acquisition by knocking one or both parents out of school. A frequent result is a lifetime of low income.<sup>39</sup>
- It carries a high penalty for immature marital judgment in the form of likely divorce. A frequent result is family instability.<sup>40</sup>
- It leaves many young mothers, now bearing both children and the cultural responsibility for

31. *Id.* at 171 (“The sexual revolution began with birth control . . .”).

32. *See id.* at 36, 51–52.

33. *Id.* at 51–52 (“The relatively high-paying positions available to men without a high school diploma have moved overseas . . .”).

34. *Id.* at 52 (citing an economics professor at Princeton University for the proposition that “the drop in long-term employment for men has been dramatic.”).

35. *See id.* at 52.

36. *See id.* at 51, 57–58.

37. *See id.* at 38 (“As women gained greater ability to avoid unplanned pregnancies, men felt less obliged to marry the women they impregnated.”).

38. *Id.* at 58.

39. *See id.* at 8, 57 (stating early marriage “derails education,” and that higher education is more necessary in today’s job market).

40. *Id.* at 8.

pregnancy, without the option of ever marrying at all. A frequent result is poverty.<sup>41</sup>

In this new environment, new norms arise: norms geared to prevent premature family formation.<sup>42</sup> The “new normal” prizes responsible childbearing and child-rearing far above the traditional linkage of sex, marriage, and procreation. It enjoins: Don’t form a family until *after* you have finished your education and are ready for adult responsibility. In other words, adults form families—not the other way around. Family life marks the end of the transition to adulthood, not the beginning.

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Cahn and Carbone mention a very good example of how these two quite different versions of normalcy ramify in contemporary political life. Remember Bristol Palin in 2008? During the presidential campaign, it came out that the Republican vice presidential nominee’s daughter was having a child out of wedlock, but the family announced her betrothal to the father, Levi Johnston.<sup>43</sup>

You might have thought that Bristol’s broken chastity would offend conservatives while evoking support from liberals. In fact, reactions were more the reverse. To Red Americans, Bristol was making her pregnancy okay by marrying the boy.<sup>44</sup> They were kids, to be sure, but they would form a family and grow up, as so many generations before them had done. To Blue Americans, on the other hand, Bristol and Levi had committed a cardinal sin. They had children much too young.<sup>45</sup> This was the height of irresponsibility, and a poor example to set!

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Now, Cahn’s and Carbone’s story doesn’t end there. A further twist makes it more interesting, if also more sobering. They find an asymmetry. Both normals, Blue and Red, have fervent adherents and moral coherence.<sup>46</sup> But in today’s world, only one of them consistently works.

Blue norms are well adapted to the information age.<sup>47</sup> They encourage late family formation and advanced education.<sup>48</sup> They

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41. *See id.* at 165.

42. *See id.* at 37–41 (describing “the remaking of moral understandings” in the modern United States).

43. *Id.* at 9.

44. *Id.*

45. *Id.*

46. *See, e.g., id.* at 3–5 (outlining various divisive issues in the “culture wars”).

47. *See id.* at 35 (“The information economy similarly created greater demand

tend to produce parents with maturity, graduate degrees, low divorce rates, and one or two very coddled children.<sup>49</sup> These families do well.<sup>50</sup>

Red norms, on the other hand, pose a quandary in today's world.<sup>51</sup> Deferring sex is difficult in the current cultural environment.<sup>52</sup> It was always hard to begin with, and the availability of birth control makes it harder.<sup>53</sup> And, if you need more school and are marrying later, you are required to defer sex not to, say, age nineteen or twenty but to age twenty-three, twenty-five, or even later. No wonder, as Cahn and Carbone write, "even the most devout overwhelmingly do not abstain until marriage."<sup>54</sup>

In any case, for a lot of people, a graduate degree or even a bachelor's degree isn't realistic. The injunction to delay family formation until you are twenty-four and have finished your master's, or what have you, offers these people only cold comfort. Many non-college-bound people need to figure that delaying marriage and family formation wins them not much economically while costing them several years of gratification and fertility.<sup>55</sup>

The result of this Red quandary, Cahn and Carbone argue, is a self-defeating backlash: "a set of reinforcing cycles."<sup>56</sup>

- Moral traditionalism fails to prevent pre-marital sex and extra-marital childbirth. Demands for abstinence delay sexual activity, but not much, and often make early pregnancy more likely by reducing the use of contraception.<sup>57</sup>
- This increase in early pregnancy precipitates more early marriages, which are more likely to end in divorce. It also precipitates more unwed parenthood.<sup>58</sup>

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for highly educated women . . . creating even greater pressures to delay the beginning of family formation.").

48. *Id.*

49. *Cf. id.* at 1, 34, 40 (describing the Blue norms).

50. *See id.* at 1.

51. *Id.* at 45.

52. *Cf. id.* at 37–38 (citing statistics showing that premarital sex and sex at young ages are prevalent).

53. *See id.* at 37.

54. *Id.* at 43.

55. *See id.* at 41, 44–45.

56. *Id.* at 42.

57. *Id.*

58. *Id.*

- Premature family formation, in turn, “derails education and limits earning potential” and increases stress on families.<sup>59</sup>
- The resulting sense of social breakdown fuels more calls for moral traditionalism. “More sex prompts more sermons and more emphasis on abstinence.”<sup>60</sup>
- The cycle repeats.<sup>61</sup>

I think Cahn and Carbone may overstate the importance and dynamic intensity of such a cycle, and the extent to which it overlaps with Blue and Red politics. Much family breakdown, for instance, is concentrated among minority constituencies that tend to vote Democratic—though, it should be noted, those constituencies tend to be more morally conservative, and in that respect less “Blue,” than upscale liberal Democrats.<sup>62</sup> But I do think it is plausible to say that the Red and Blue normative systems, while both morally compelling in their very different ways, are not working equally well. Even if they did work equally well, they put lower-skilled and less-privileged people on a different and less-promising track than the so-called cognitive elite. As a result, Blue and Red America drift further apart, not just politically, but familially.

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Now back, at last, to same-sex marriage.

The account I’ve given of different and diverging Blue and Red “normals” provides an interesting perspective on gay marriage and the culture wars—or, if you prefer, the family wars. In the Blue and Red paradigms, same-sex marriage has entirely different meanings.

In Blue World, same-sex marriage is wholly consonant with the ethic of responsibility and autonomy as the pillars of family formation. In this world:

- Mature adults form families to express and nurture commitment to each other and their children, and to share human capital which both partners have already amassed.<sup>63</sup>

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59. *Id.*

60. *Id.*

61. *Id.*

62. *See id.* at 4 (addressing the relative social conservatism of the leaders of more troubled communities, including minority communities).

63. *See id.* at 157–58.

- Sex comes before marriage, and marriage comes before children, and indeed children need never come at all.<sup>64</sup>
- The decisions to have sex, marry, and have children are thus distinct and separate. What counts is not the linkage but the timing (not too early, at least not without birth control!).<sup>65</sup>
- The crucial moral requirement is not that the decisions be linked or made synchronously, but that they be made *responsibly*.<sup>66</sup>

In Blue World, gay couples fit the paradigm perfectly. They are responsible adults trying to live more stable, more responsible lives, and trying to improve the prospects of any children they may have. Who could ask for anything more?

In fact, in Blue World, marriage is incomplete if it excludes gay couples! Excluding them sends all the wrong signals about family and responsibility. It would make a hypocritical nonsense of what it is that marriage is supposed to be all about.

In Red World, things look very different. The Red project is to maintain the linkage between sex, marriage, and procreation.<sup>67</sup> In Red World, de-linkage has wrought all kinds of social problems.<sup>68</sup>

Same-sex marriage, in this view, is in some sense the ultimate symbolic assault on what is left of the unity of sex, marriage, and procreation. "Ultimate," I might add, in both senses of the word: "extreme," but also "last," the blow that completes the most destructive demolition work of the sexual revolution. After gay marriage, in the Red view of things, how can sex, marriage, and procreation ever be put back together again?

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It is no secret which side of the divide I am on.

I am a product of parents who married in 1951 at age twenty-one and twenty-two. My mother was a very bright young woman who gave up her graduate education to become a bored, unhappy housewife. My father was brought up in a man-in-charge world and found himself disoriented by his wife's need for an independent life. My parents grew apart and their marriage ended in an angry divorce. Theirs was a transitional generation. They *got*

64. See *id.* at 128 (stating that the emphasis of marriage in the Blue paradigm is "committed love and companionship").

65. *Id.*

66. *Id.*

67. *Id.* at 2, 128.

68. See *id.* at 128–30.

married under the old rules, the Red rules, only to find themselves trying to *be* married under the emerging Blue rules.

By contrast, I am on the far side of the transition, as are so many of my peers. I am entirely on the Blue side. My advocacy of gay marriage is shaped by that perspective. No wonder same-sex marriage makes sense to me! But widening the aperture, as I have tried to do here, I think helps me to stand in the other side's shoes.

It is not that I think same-sex marriage opponents are right. Even within their own traditionalist framework, gay marriage makes sense, or at least more sense than the alternatives. But that is a case I will save for another day.

Today I would merely point out a kind of integrity in their position. If it were all about animus against homosexuals, or if it all stemmed from lies about a gay menace to children, the custody and adoption issues *would* be paramount. The deeper arguments here are over what constitutes family normalcy, how we structure the transition to adulthood, and who is entitled to set up a family at a time when many American families are under all too much stress.

I believe that, slowly but surely, family values are renormalizing and will continue to renormalize around later family formation and an ethic which stresses responsible childbearing over abstinence from sex—if only because economic and cultural forces are pulling so hard in that direction. At a time when even many young traditionalists (evangelicals, for example) take contraception for granted, are unable to abstain from sex until marriage, and are unwilling to accept shotgun weddings, it is hard to see how the old unity of sex, marriage, and procreation can be sustained. In today's world, progress has got to lie in the direction of discouraging early family formation and encouraging (and improving) education.

Therefore it is hard to see how limiting marriage to heterosexual couples can continue to make much sense even in Red America. I don't think excluding gay couples from marriage will do anything to strengthen or restore the old sex/marriage/procreation unity, and I think trying to hold homosexual couples to the old norm while heterosexuals live by the new one will be counterproductive as well as unfair.

But I would also point out that young people will continue, often, to be irresponsible; and that sex will continue, often, to lead to unintended or unwanted pregnancy. I would try to keep in mind that not everyone is in a position to put off family formation until receipt of an advanced degree, and that the new, education-

centered pathway to adulthood may often be least accessible to those who most need help getting started in life.

Gay marriage opponents are wrong, I think, to see gay marriage as the problem and its prevention as a solution. But they are not wrong to believe that, for many Americans, the new rules are not a perfect or complete or sometimes even adequate substitute for the old. And so I would hate to lose touch with the traditionalist ethic along the way to whatever is coming next.