

# GAY MARRIAGE AND THE “ME DECADES”

In the recent Supreme Court oral arguments over Proposition 8 and same-sex marriage, Charles Cooper, the lawyer defending Proposition 8, urged the high court not to refocus “the definition of marriage away from the raising of children and to the emotional needs and desires of adults.”

In doing so, Cooper was simply restating the basic sociological observation that the purpose of marriage is to serve the best interests of children in the institution of the family. To put it differently, marriage was not created to make adults happy. Not long thereafter, *New York Times* columnist Maureen Dowd took Cooper to task, asking, “Did he miss the last few Me Decades?” Dowd just didn’t get it. It’s precisely because he didn’t miss those decades that he seeks not to sustain them.

Cooper’s adversary, Theodore Olson, also shared Dowd’s handicap. Olson argued that marriage is a “personal right,” not “society’s right.” If marriage were in fact a personal right, then Olson needed to explain why the Framers of the Constitution, along with all of the jurists since the 18th century, never discovered it. Also, societies do not possess rights—they have interests. Only individuals have rights.

In his dissent in the 2003 *Lawrence v. Texas* decision that legalized homosexuality, Justice Antonin Scalia warned that if the laws against homosexuality were to be jettisoned, then there would be no principled basis left on which to proscribe such things as polygamy and incest. Scalia was widely scorned for saying so. Interestingly enough, though, Justice Sonia Sotomayor asked Olson if gay marriage were okay, then why not polygamy and incest? Without a trace of evidence, Olson responded that the two involve exploitation and abuse. What is

equally interesting here is that only one newspaper in the United States, the *San Francisco Chronicle*, cited her concern.

It might well benefit Olson to meet with Allen and Patricia Muth. Brother and sister, they have long been seeking to get married, and they would take great umbrage at the very idea that they are exploited or abused. Ditto for thousands of women in polygamous relationships: they love their husbands and their co-wives. Moreover, Kinsey associate Wardell Pomeroy argued over forty years ago that incest "can sometimes be beneficial." In short, the "Me Decades" are on trial.