

## Same-Sex Love and Marriage

Defining Marriage in the Context of U.S. Democracy

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Let me just start out as saying I am a straight, male Catholic and I support same-sex marriage (and I am NOT speaking for the Catholic Church here). Still reading? Good.

As I type these words the Supreme Court is deliberating for its second day the legality of Proposition 8: California's law that allowed the question of same-sex civil union to be put to a vote. Many of my friends and colleagues have raised the point that Prop 8 is based on a fundamental error: it assumes that such human rights as marriage should be able to be "put to a vote." After all, on what grounds do people have the right to assert the exclusion of the LGTBQ community from a right that we all take for granted as basic: Religion? Legal precedent? Biological function? The status quo of culture?

Depending on your view on the matter, you may accept or reject some or all of these considerations and let me be clear that I am not advocating for the supremacy or sufficiency of any of these factors to determine an adequate definition of marriage.

Instead I just want to take a page from Anderson Cooper's playbook and keep

the discussion honest and ask the question: Why is the statement, "Marriage is a fundamental right for all persons regardless of sexual orientation," somehow more normative than, "Marriage is defined between a man and a woman"? And vice versa: Why must marriage be defined only between a man and a woman? The fact of the matter is, all these factors (among others) mentioned above go into fashioning our ideas and concepts about marriage: our religious beliefs, our political structure and laws, our understanding of nature, and in the end our fundamental gut feeling that we share with our family and culture.

But all of a sudden you know someone who is gay and so now your opinion has changed (Senator Portman, I'm looking at you). Why? What was there in your understanding that wasn't there before? Surely the Bible still says what it says and the law is still the law, but your very experience of reality has disclosed to you a new insight—somehow excluding gay and lesbian couples from "marriage" is no longer "right." You can no longer demonize a homosexual because you know her to be a normal human person just like you and me, which may actually imply—gasp!—she might love someone too and want that love recognized. What a shock.

So what does this mean for our understanding of marriage? What changed? When we remove appeals to religious sentiment, humanist ethics, legal precedent, utilitarian understandings of procreation, public sentiment, etc., we come to realize that our understanding of the definition of marriage—as well as any other concept—is entirely conditioned by a manifold of interrelated factors leading to your present experience and opinion on the matter. That is, when understood outside of appeal to these factors, there really is no essential and enduring identity

to the term "marriage" applicable across all cultures for all times.

Think about it: Where does the concept of marriage "exist" given the 13.7 billion years of cosmic evolution? Is it present in the stardust of a supernova? Are animals that mate for life "married"? Religious persons usually appeal to Scripture to locate a foundational understanding of marriage. Fine, no problem there. But if you want to extend that past your religious community to the level of law, you assert that Scripture is the normative foundation for defining marriage for all persons. But thank God (yes, I went there) that we live in a democracy where I can't make someone follow the Bible of my own faith nor can someone make me follow the sharia of Islam or the vegetarianism of Jainism. Often times, analogous socio-religious concepts appear in different cultures. Marriage appears to be one of these concepts. But as a citizen of the United States I am subject to the constitution. And so I ask: legally, outside the confines of our houses of worship, upon what foundation are we to define the concept of marriage?

If we admit that there is no essentiality to the concept of marriage at the level of the state outside of our legal definitions, and if we understand our legal definitions to be constructed by individual lawmakers representing *us* (yes, I still like to believe democracy works), then the definition of marriage as laid down in the 1996 Defense of Marriage act to mean: "only a legal union between one man and one woman as husband and wife" is a concept constructed and abstracted from the experience of a community of persons and has normative purchase for defining marriage so long as it is invested with the power by the community to do so (remember that polygamy is an acceptable definition of marriage for some cultures).

This means that *it is the cumulative experience of a community that sets and defines an understanding of marriage*—and any other concept—relative to their moment in history.

The late-medieval Scholastic philosopher William of Ockham (yes, the guy with the razor) understood this in the early 13th century and is known in philosophical circles as nominalism: that concepts are not universal, necessary, invariant or immutable—they are merely thought-objects (abstractions) drawn from the particulars of human experience. In light of the interconnected multitude of influences forming our knowledge about reality that factor into our individual and communal experiences, we really only have our mutual exchange of understanding via language to bounce ideas off each other and see what works in order to survive. So when an idea or concept no longer becomes "selectively fit," to draw an analogy from the biological sciences, the idea becomes less favorable, and perhaps eventually "extinct." When communities are left alone, their ideas generally stay static and flourish. But with the rise of new experience, specifically interaction with different peoples and cultures, ideas are challenged and status quos torn asunder—usually to the chagrin of those in power.

Monarchy, patriarchy, oligarchy, theocracy, slavery, disenfranchisement of women and African-Americans, apartheid, segregation, anti-Semitism—just to name a few concepts that once held essential force—are no longer fit to survive in the psyche of the human endeavor (well, we hope so, at least). Moreover, the democracy of our United States community has wholly divested these sentiments from any essential worth by declaring these positions "unconstitutional"—also a nominal,

non-universal, concept. It now appears that exclusion from marriage based on sexual orientation can be added to this list.

What this means is that "we the people" get to decide what marriage is based on our understanding from experience, as opposed to imposing some invariant ethical norm—"liberal" or "conservative"—as a condition and restriction on experience. Even if we come to a definition of marriage that is inclusive of homosexuals, does that make this new definition static and unchanging? What happens in the year 3000 when intelligent robots want to get married? Do they have this "unalienable right" as well if they are capable of love? I say this in jest, but think about it. What are the actual foundations in reality for the norms through which we judge and understand our very own experience?

Does this then relativize the concept of marriage at the level of the state? Yes. But as far as the power of the state is concerned, I'll take relativity over hegemony any day. Moreover, this does not mean that churches, mosques, temples and private communities cannot define and construct marriage in whatever way they see fit. And so I would make a distinction between marriage by the state (civil union) and marriage within the context of a religious group. I am here talking only about the former.

All this is to say is that at the level of our political government, we fashion our laws and concepts in our own image, and not the other way around. I for one believe it is absolutely a human right that homosexual couples should be able to be identified as married to another by the state if they so choose. And I hold this in light of the criticisms I raise because my *experience*—of my faith, of my education, of my

socio-economic status, etc.—says so. So please don't misunderstand me as advocating for an indiscernibility of ethical behavior. In the end *my* ethics come down to the irreducible value and worth of the person, and any attempt to minimize a person's worth is something I understand as "wrong." And that's what we're doing when we say LGBTQ persons shouldn't be able to marry according to the laws of our land—the laws that are an expression of our very thought. It's just that we come to these conclusions from our own experience in this thing we call life. What does your experience say?

So get out there and (peacefully) make your experience heard. Maybe you can convince someone, maybe you won't. Maybe the position you advocate is for the better, maybe not. But the merry-go-round of human experience will not stop, time will march on, and change is inevitable. One era's "right" is another era's "wrong," and we will always be discussing where we "ought" to be.