This is the post-peer version of the following article:

**The Ethical Complexities of Same-Sex Marriage Reform**


The ethical complexities of same-sex marriage reform

Throughout the western world there are now processes under way for the reform of marriage legislation to include same-sex couples. Most often this involves the amendment of legislation so that marriage is not necessarily between a man and a woman, but between any two persons. Most often such reforms have been supported by progressives, but I want to suggest that, from a progressive perspective, there are aspects of such changes which may be problematic.

Like beauty, that which is progressive is often in the eye of the beholder. Interestingly, the word assumes some inevitable progress, with those opposing such progress supposedly being on the wrong side of history. What is progressive is thus not always clear, but, in this context, I define progressive as that which is inclusive, and that which is supportive of and in agreement with democratic and human rights.

In discussing same-sex marriage, there is an argument that, as a matter of principle, traditional definitions of social institutions ought to prevail, that is, in this case marriage ought to be interpreted as between a man and a woman. Indeed, writers such as George Orwell have long warned about changing definitions to suit social and political changes. For the moment, however, I will take as accepted that definitions of social institutions, such as marriage, will change over time.

My focus, therefore, is to identify some critical ethical issues with same-sex marriage reform, which may be of particular concern to progressives.

Firstly, it is difficult not to see amending existing marriage legislation to include same-sex couples as involving some exclusion and discrimination against people of a bisexual orientation, especially those involved or seeking to be involved in long-term relationships. By definition, the long-term sexual relationships of a bisexual person may involve more than one relationship. And just as discrimination and exclusion against people of a homosexual orientation can be argued to cause psychological damage, so it could be argued that exclusion and discrimination
against bisexual persons could cause psychological damage.

Secondly, it is difficult not to see amending existing marriage legislation to include same-sex couples as involving some exclusion and discrimination against those of a polyamorous orientation, especially those polyamorous persons involved in or seeking to be involved in long-term relationships. As with those of a bisexual orientation, long-term sexual relationships of the polyamorous, by definition, may involve more than one partner. And, as with bisexuals, just as exclusion and discrimination against homosexuals can be argued to be psychologically damaging, so too exclusion and discrimination against the polyamorous could be argued to cause psychological damage.

Thirdly, it is not difficult to see that amending marriage legislation to include same-sex relationships results in problems of freedom of expression and freedom of religion. For instance, if a person indicates that she or he believes that marriage is properly a gendered enterprise, that is, between a man and woman, then the expression of that view could be deemed discrimination against those involved in a same-sex marriage. Freedom of religion and free speech have always been foundational values for modern liberal democracies, and this would seem to be an issue that progressives, irregardless of their religious persuasion, ought to be concerned about.

Fourthly, there is the issue of human rights. It is often claimed that amending marriage legislation to include same-sex couples is a matter of human rights. A closer analysis, however, suggests that this is not as straightforward as it seems. The right to marriage in human rights documents is a compound right, in that it is linked to the founding of a family. Further, both the United Nations Human Rights Committee and the European Court of Human Rights have ruled that there is no inequality or breach of human rights where a state retains the traditional definition of marriage.
Finally, there is the issue of the rights of the child. In human rights discourse, the rights of the child are widely regarded as taking precedence over other rights, given the vulnerability of children. It would be difficult to contest the proposition same-sex parents can be loving and effective parents, just as heterosexual parents can be. That said, it still valid to raise the question of the rights of the child, and in particular: Does a child have a right to have an opportunity to have a father and mother? It is a question related to same-sex marriage reform, and a question which those concerned with human rights need to ponder.

How then ought we proceed? If we conclude that traditional marriage legislation wrongly excludes same-sex relationships, and that this exclusion needs to change, then I’d like to suggest a lateral solution is to start a conversation about revoking marriage legislation entirely. This means that individuals could interpret marriage the way they wanted to, which would be arguably appropriate in a pluralist society, and also consistent with the modern doctrine of separation of religion and state.

Conservatives will probably counter the above suggestion by positing that marriage is an important legal institution for the protection of the vulnerable, and in particular women and children. This may be true in principle, although an obvious response is that it is not all that clear that marriage as a legal institution now really works all that effectively in protecting the vulnerable, given the extent of domestic violence and the abuse of children around the world. Indeed marriage as a legal institution can serve as a cover for violence against women and children.

The issue of protection of the vulnerable therefore may need to be addressed more deliberately than merely having marriage legislation, of whatever shape or form. It is argueable we need more directed education for nonviolence and respect, and we also need to have active structures to support those who seek to establish families, on whatever basis that may be, as well as intervention processes where the vulnerable are at risk. It is argueable there is a need a comprehensive and deliberate commitment to a culture of peace and nonviolence.
We live in challenging times, of rising expectations and challenges to norms. I think we need to tread carefully, but we also need to be thinking creatively, and to start thinking of creative changes.

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