The Liberal Case Against Same-Sex Marriage

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Political and religious liberals pride themselves in valuing justice, rationality, knowledge, and hypothetical thinking. With these values in mind, the rush to legalize same-sex marriages may have problems.

Take justice. Some legal theorists wonder if giving marriage benefits to same-sex couples does injustice to other human arrangements where people care for one another brother caring for ailing brother, a younger daughter caring for her aging mother, two older women pooling resources without having sex. Why privilege partners in sexual relationships and not those actually dependent on one another? Rather than extending marriage to cover all dependent relations, shouldn't we find other ways to support people who need help?

Others ask whether same-sex marriage may be unjust to children. Doesn't it raise to the level of normative social policy the idea that children don't need the parents who gave them life? Others observe that we do not know the effects on children of being raised by same-sex parents. Recent reviews by Steven Nock and Robert Lerner of existing social-science studies of gay parenting demonstrate that all are inadequate with regard to testable hypotheses, sample, controls, and hence conclusions. In short, we have no knowledge about these effects even though recent court opinions assume we do. This raises the question, is it rational to develop social policies without better knowledge?

There are strong arguments that the present discussion is based on inadequate historical knowledge. Marriage is frequently characterized as based on past religious prejudices. It is true: Judaism and Christianity have carried much of our Western understanding of marriage. It is also true, however, that these marriage traditions have absorbed parts of the secular marital codes of Greek law, Aristotelian philosophy, Roman law, and German law. Ancient secular systems saw legal marriage as accomplishing a complex alignment between sexual activity, procreation, mutual help and affection, and parental care and accountability. Bringing biological parents into the reinforcements of sex, mutual help, and affection enhanced their responsibility and satisfied the observed hunger of children to be raised by those who give them life. These were the classic goods of marriage. Integrating and channeling these fragile values was a task for law, religion, and the socializing institutions of society. The religious language of sacrament and covenant added sacred weight that both valued and integrated these four human goods, but they could be identified independently of the religious symbols that gave them depth. It is a highly dubious charge that keeping these goods together is an act of religious discrimination and prejudice.

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The legalization of same-sex marriage may give public codification to modernity's march toward breaking apart these goods sex from love, sex from procreation, and parenting from procreation. It finally changes the logic of marriage. Same-sex marriage does not simply extend an old institution to a new group of people. It changes the definition of marriage. It reduces marriage primarily to a committed affectionate sexual relation. It goes further. It gives this new and more narrow view of marriage all of the cultural, legal, and public supports that accrued to the institution when it functioned to hold together this complex set of goods. Should liberalism give up its interest in complex organizations of the good in the name of a flat justice which actually promotes new injustices? Same-sex marriage changes the purpose of law. It no longer will serve, in cooperation with other parts of society, to channel behavior and socialization to achieve this synthesis of goods. It will function to extend marriage privileges to a particular group of sexual friendships while excluding many other interdependent care givers. Rather than extending the marital status and privilege to same-sex couples and then gradually to other kinds of caring relationships (which logic will dictate), we should find alternative ways of meeting the dependency needs of same-sex couples, interdependent friends, and dependent but unmarried kin. Tax benefits, legal adoption, welfare transfers, and more refined and accessible legal contracts should be used to meet these needs, not the institution of marriage itself.

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