

## Issue 8: Introduction

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# 'I Now Pronounce You Husband and . . . Husband?' Legal Marriage and Same-Sex Couples

In 2001, the Missouri legislature passed a bill, signed by the governor, that prevents the state from recognizing homosexual marriages that were formed in other states. Only marriages between a man and a woman will be considered to be legal marriages in the state. It was already the law in Missouri that two men or two women cannot marry each other. Since there is currently no place in the United States in which same-sex couples can legally marry, neutral observers may wonder why such a bill, called the Defense of Marriage Act, was needed.

Few of us seem to be neutral on the question of whether gays and lesbians should be allowed to marry. This issue has been hotly debated for more than a decade. Advocates and opponents of homosexual marriage bolster their positions with arguments that include legal, moral, religious, psychological, political, financial, and genetic considerations.

Advocates for homosexual marriage frequently point to earlier laws that prohibited

interracial marriage as another example of laws and public policy based solely on prejudice. Opponents fear that allowing gays and lesbians to marry will erode what they see as an important social institution that is under attack and must be protected (see Issues 4, 6, and 19 for further discussion of the condition of marriages).

The fierceness of the debate over homosexual marriage belies the fact that only a small proportion (i.e., about 10 percent is a frequently cited estimate) of the population is homosexual. Regardless of the number of people affected, however, legislative bodies, policy makers, social critics, and advocates have spent much time and energy on this issue.

In the essays that follow, William Bennett and Scott Miller briefly present some of the main points of the cases for and against legal homosexual marriages. As you read these essays, note the rationale used to support each position, and see if you can think of other reasons that could be offered to support these differing views. ♦

## A Man and a Woman Are Needed for the 'Honorable Estate'

*William J. Bennett*

We are engaged in a debate that, in a less confused time, would be considered pointless and even oxymoronic: the question of same-sex marriage. But we are where we are. The Hawaii Supreme Court has found a new state constitutional "right"—legal union of same-sex couples.

Unless a "compelling state interest" can be shown against them, Hawaii will become the first state to sanction such unions [Editors' note—Vermont became the first state to legally recognize homosexual civil partnerships]. If Hawaii legalizes same-sex marriages, other states might have to recognize them because of the Constitution's full faith and credit clause. Some in Congress have introduced legislation to prevent this.

Now, anyone who has known someone who has struggled with his homosexuality can appreciate the poignancy, human pain, and sense of exclusion that are often involved. One can therefore understand the effort to achieve for homosexual unions both legal recognition and social acceptance. Advocates of homosexual marriages even make what appears to be a sound conservative argument: Allow marriage to promote faithfulness and monogamy. This is an intelligent and politically shrewd argument: It might benefit some people. But I believe that overall, allowing same-sex marriages would do significant, long-term social damage. Recognizing the legal union of gay and lesbian couples would represent a profound change in the meaning and defini-

tion of marriage. It is not a step we ought to take.

The function of marriage is not elastic: the institution is already fragile enough. Broadening its definition to include same-sex marriages would stretch it almost beyond recognition—and new attempts to broaden the definition still further would surely follow. On what principled grounds could the advocates of same-sex marriage oppose the marriage of two consenting brothers? How could they explain why we ought to deny a marriage license to a bisexual who wants to marry two people? After all, doing so would be a denial of that person's sexuality. In our time, there are more (not fewer) reasons to preserve the essence of marriage.

Marriage is not an arbitrary construct; it is an "honorable estate" based on the different, complementary nature of men and women—how they define, support, encourage, and complete one another. To insist that we maintain this traditional understanding of marriage is not to put other down. It is simply an acknowledgment and celebration of our most precious social act.

Nor is this view arbitrary or idiosyncratic. It mirrors the accumulated wisdom of millennia and the teaching of every major religion. Among cultures worldwide, where there are so few common threads, it is no coincidence that marriage is almost universally recognized as an act meant to unite a man and a woman.

To say that same-sex unions are not comparable to heterosexual marriages is not an argument for intolerance, bigotry, or lack of compassion (although it will be considered so by some). But it is an argument for making distinctions in law about relationships that are themselves distinct.

Even Andrew Sullivan, among the most intelligent advocates of same-sex marriage, has admitted that a homosexual marriage contract will entail a greater understanding of the need for "extramarital outlets." He argues that gay male relationships are served by the "openness of the contract," and he has written that homosexuals should resist allowing their "varied and complicated lives" to be flattened into a "single, moralistic model."

But this "single, moralistic model" is precisely the point. The marriage commitment between a man and a woman does not—it cannot—countenance extramarital outlets. By definition, it is not an open contract; its essential idea is fidelity. Obviously that is not always honored in practice. But it is normative, the ideal to which we aspire precisely because we believe some things are right (faithfulness in marriage) and others are wrong (adultery). In insisting that marriage accommodate the less restrained sexual practices of homosexuals, Sullivan and his allies destroy the very thing that supposedly drew them to marriage in the first place.

There are other arguments to consider against same-sex marriage—for example, the signals it would send, and the impact of such signals on the shaping of human sexuality, particularly among the young. Former Harvard professor E. L. Pattullo has written that "a very substantial number of people are born with the potential to live either straight or gay lives." Societal indifference about heterosexuality and homosexuality would cause a lot of confusion.

A remarkable 1993 article in *The Washington Post* supports this point. Fifty teenagers and dozens of school counselors and parents were interviewed. Teens said it has become "cool" for students to proclaim they are gay or bisexual—even for some who are not. Not surprisingly, the caseload of teen-

agers in "sexual identity crisis" doubled in one year. "Everything is front page, gay and homosexual," according to one psychologist who works with the schools.

Kids are jumping on it . . . [counselors] are saying, "What are we going to do with all these kids proclaiming they are bisexual or homosexual when we know they are not?"

If the law recognizes homosexual marriages as the legal equivalent of heterosexual marriages, it will have enormous repercussions. Consider just two: sex education in the schools and adoption. The sex education curriculum of public schools would have to teach that heterosexual and homosexual marriages are equivalent. "Heather Has Two Mommies" would no longer be regarded as an anomaly; it would more likely become a staple of a sex education curriculum. Parents who want their children to be taught (for moral and utilitarian reasons) the privileged status of heterosexual marriage will be portrayed as intolerant bigots; they will be at odds with the new law of matrimony and its derivative curriculum. Homosexual couples will also have equal claim with heterosexual couples in adopting children, forcing us (in law at least) to deny what we know to be true: that it is far better for a child to be raised by a mother and a father than by, say, two male homosexuals.

The institution of marriage is already reeling because of the effects of the sexual revolution, no-fault divorce, and out-of-wedlock births. We have reaped the consequences of its devaluation. It is exceedingly imprudent to conduct a radical, untested, and inherently flawed social experiment on an institution that is the keystone in the arch of civilization. That we have to debate this issue at all tells us that the arch has slipped. Getting it firmly back in place is, as the lawyers say, a "compelling state interest." ♦

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Bennett, W. J. (1996, May 23). "A Man and A Woman Are Needed for the 'Honorable Escape.'" *St. Louis Post Dispatch*, 7E. Reprinted by permission of William J. Bennett.

## State Has No Compelling Reason to Bar Same-Sex Unions

*Scott Miller*

In 1775, Thomas Jefferson said it was necessary for the American colonies to write a Declaration of Independence "to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent." As we now face another crisis in our country's growth—the battle over equal rights for gays and lesbians—it seems common sense is the commodity in smallest supply. People on both sides need to stand back and look at the situation rationally, without insults, without false accusations.

Most Americans would agree with the Declaration of Independence that all people are created equal and deserve equal rights—unless there's a compelling reason to deny them rights (for instance, people convicted of crimes do not enjoy all the rights of other citizens). So all the clamor about gay marriage and other gay issues boils down to one concept: Gays and lesbians should have the same rights as straight people, unless there's a compelling reason to deny them those rights. In other words, there's no need to formulate arguments in favor of gay Americans having equal rights; they're Americans, after all. It's only necessary to figure out if arguments against equal rights for gays are legitimate.

Many of the religious extremists' arguments against equal rights for gays are based on one central idea, that the Bible says homosexuality is wrong. First, not all Americans are Christians or believe in the

Bible. Even though our founding fathers were Christians, they were very careful in the Constitution to make our government a secular one, completely separate from the church. No matter what your moral beliefs, same-gender marriage and other gay issues are about the laws of America, not the laws of God. The Bible has nothing to do with passing laws, and Bible quotes are irrelevant in this arena. No one is asking for moral approval of gay marriage. No one is demanding that churches perform gay weddings (though thousands already do). We're only asking for legal recognition of something that already exists. It's not a moral issue. It's a legal one.

Yet even for those who don't accept that argument, another one is just as important: Only certain Christians believe homosexual acts are wrong. And though religious extremists attack gays invoking Leviticus, they conveniently ignore the other rules in Leviticus about putting to death adulterers and children who talk back to their parents; the detailed instructions on animal sacrifice, the rules against wearing more than one kind of fabric or paying workers less often than every day and much more. Apparently, they follow the Bible only when it suits them.

Another argument against gay equal rights is that homosexuality spreads AIDS. This one's a no-brainer. Homosexual acts do not breed disease; unsafe sex breeds disease, for anyone of any orientation. World-

wide, far more heterosexuals than homosexuals are infected with HIV today. In 1993, 48 percent of American AIDS cases were gay men. That percentage is much lower today. And because lesbians almost never contract AIDS, that means more than half of American AIDS cases were heterosexuals.

Some politicians are trying to induce panic by warning that, if we allow gays to marry, soon people will be marrying in threesomes or marrying their pets. Some folks even predict we'll soon have to legalize pederasty and bestiality. This is a smoke screen at best, rampant paranoia at worst.

The truth is simple. Right now in America, some couples can already get married and others can't, the distinction based only on their gender—a woman can marry a man, but a man can't. That certainly mucks up "and justice for all," doesn't it? Since there is no group of citizens who can currently marry in threes or who are legally allowed to molest children, no one is asking for those things to be legalized. Gays and lesbians aren't asking for a new right; they're asking for a right 90 percent of the population already enjoys.

Two of the most bizarre arguments are that gays will recruit children and, along with that, if gays marry and adopt children, their children will turn out gay. For those who believe people can choose to be gay or can be "recruited" into being gay, I have one question—who would ever choose this?

Today's society makes it tough to be gay. It's easier than it was 20 years ago, but it's still no picnic. Even if gays wanted to recruit, how could they? To quote a gay comedian, "What are the selling points?" We have no rights, and everybody hates us. Sign up here. The people who make these arguments just aren't thinking.

There's one point everyone seems to miss about children growing up in a gay household. Almost all the gays and lesbians living today grew up with straight parents. One look at the real world proves that straight parents are much more likely to raise gay kids than gay parents are.

The most often articulated of the arguments is that gay marriage will destroy the family and the institution of marriage—though no one has ever made this claim and actually backed it up. The extremists make the doomsday prediction that gay marriage will literally destroy society, but they can never say how this will happen because they don't know. And because it won't happen. People said the Emancipation Proclamation and the legalization of interracial marriage would both destroy America. Neither did.

To many people, homosexuality is about sex. But it's not. Being gay isn't just about sex any more than being straight is. Gays and lesbians don't have stronger sex drives. They don't have sex more often than straight people. Straight folks also have bars where they go to find sex. Straight people have pornographic videos, movie houses, magazines. In fact, 99 percent of child molestation is committed by heterosexuals. Many of the high-profile religious leaders today seem to have an almost adolescent preoccupation with sex. Everything boils down to sex for them—equal rights for gays. Hollywood, the Internet, the media, you name it. And they think everyone else is similarly obsessed. We're not.

Gays and lesbians want to be as free as their heterosexual friends to be open about their love. We want to wear wedding bands, have pictures of our spouses on our desks at work, bring our spouses to work functions, parties, award dinners, etc. When straight people wear wedding rings, talk about their spouses and kids, do we criticize them for flaunting the fact that they have straight sex? Does anyone ever ask them why they don't "leave it in the bedroom where it belongs"? No, marriage isn't about sex; it's about commitment. Whether it's gay or straight. Period. It's just common sense. +

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Miller, S. (1996, May 23). "State Has No Compelling Reason to Bar Same-Sex Unions." *St. Louis Post-Dispatch*, 7B. Reprinted by permission of Scott Miller.