APA Newsletters

Volume 04, Number 1 Fall 2004

NEWSLETTER ON PHILOSOPHY AND LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ISSUES

apa
The American Philosophical Association
University of Delaware
Newark, DE 19716

 ISSN: 1067-9464

APA NEWSLETTER ON

Philosophy and Lesbian, Gay, Bisexual, and Transgender Issues

Carol Quinn, Editor | Fall 2004 | Volume 04, Number 1

FROM THE EDITOR

Carol Quinn
The University of North Carolina at Charlotte

I invite you to enjoy this special issue on gay marriage.

Contributions Invited

The editor encourages contributions to the *Newsletter*, especially essays that might fall through the cracks elsewhere for being untraditional in scope or content. Pieces may range from opinion pieces to book reviews to short articles. Commentary on issues important to professional life—teaching, research, and service—are especially welcome. Early contact with the editor is strongly encouraged. Please contact Carol Quinn at Department of Philosophy, 9201 University City Blvd., University of North Carolina at Charlotte, Charlotte, NC 28223.

FROM THE OUTGOING CHAIR

Mark Chekola
Minnesota State University–Moorhead

My three-year term as chair of the APA Committee on the Status of Lesbian, Gay, Bisexual and Transgender People in the Profession was finished at the end of June. Mary Bloodsworth-Lugo became chair on July 1.

During the past year, we sponsored programs at all three APA meetings. At the Eastern Division meetings in Washington, D.C., we sponsored two sessions on Queer Theory and Continental Philosophy: I: Making Queer in the Canon, and II: Queer Registers: Body, Performance, and Politics. At the Pacific Division meetings in Pasadena, we co-sponsored a session on Philosophy of the Body and Queer Issues with the Society for Lesbian and Gay Philosophy. At the Central Division meeting, in Chicago we co-sponsored a session on Philosophy of Mind and Queer Issues with the Society for Lesbian and Gay Philosophy.

Committee members present at the APA meetings in Washington and Pasadena met together. At the Eastern Division meeting, I participated in the Inclusiveness Committee's meeting. A main topic was a statement on inclusiveness that will be proposed for adoption by the board of the APA. Plans are to have it appear on publications and at APA meetings, including on the rooms where hiring interviews are conducted.

During the year, I forwarded to an email list notifications of job openings sent to me by departments and institutions specifically welcoming LGBT applicants.

The Publications Data Project carried out by the Committee has been supplemented with the addition of data on two key journals in Continental Philosophy, Man and World/Continental Philosophy Review and Philosophy Today. With the support of the Inclusiveness Committee Chair Lucius Outlaw, Jr., the report has been sent to the Committee on Lectures, Publications and Research with a request for that committee to review it and to recommend ways in which the issue of the underrepresentation of LGBT scholarship in many of the journals reviewed can be raised within the profession. Though an earlier version of the report was included in last Spring's *Newsletter on Philosophy and Lesbian, Gay, Bisexual, Transgender Issues*, I am including a copy of the final report at the end of this column because it has the addition of the Continental journals and because the online publication of the *Newsletters*, starting with this issue of the *Newsletter*, will give people easier access to the report.

There are several changes in membership of the Committee to be noted. In addition to my term ending, the terms of Joseph Sartorelli and Kayley Vernallis have ended. Jacob Hale resigned from the Committee, and Talia Bettcher has been appointed to finish out the year left in Hale's term. New members of the Committee as of July 1 include: Mary Bloodsworth-Lugo as chair, Marcos Bisticas-Cocoves, Raja Halwani, and Richard Noonan. Thank you to the former Committee members for their service on the Committee, and best wishes to the new members! In addition, I would like to thank Carol Quinn for her wonderful work as editor of the *Newsletter on Philosophy and Lesbian, Gay, Bisexual, Transgender Issues*.

Featured Essay

Andy Wible

Muskegon Community College

Review

***Virtuous Liaisons: Care, Love, Sex and Virtue Ethics, R*aja Halwani, Open Court: Chicago, 2003, 315 pages**

Liberals in the population often tell us "live and let live" when it comes to sex. Liberal professional philosophers, such as Alan Soble and Charles Fried, argue that as long as we don't harm others, then morally we can do what we want. But when we engage in promiscuity, open relationships, and sex work, are we living well? Raja Halwani in his book *Virtuous Liaisons: Care, Love, Sex, and Virtue Ethics* argues against many Aristotelian ethicists such as G.E.M. Anscombe and Roger Scruton, to say yes: Our lives can flourish when engaging in such activities.

But Halwani's book is not just about loveless activities. The first two chapters of his three-chapter book are about care and love. He argues for the importance of care and romantic love in virtue ethics. Both have an important, but different role in virtue ethics. Care is a virtue and romantic love is an important external good like friendship. A better understanding of care and romantic love allows for a more robust virtue ethics and justification for why a virtuous person can be promiscuous, have an open relationship, or be a sex worker.

Halwani's first and strongest chapter examines care. His conclusion is that care is best understood as a virtue within neo-Aristotelian virtue ethics. Halwani argues for this position by looking at the inadequacy of Nel Nodding's ethics of care. Her ethics of care says that right and wrong is determined by the caring relationship involved. Care occurs when there is "engrossment and motivational displacement" toward an intimate. The person who cares adopts the goals of the cared for (motivational displacement) and helps the cared-for achieve these goals.

But do we have a duty to others *only if* we care for them? Do we have any moral obligations to strangers? Halwani does claim that, of course, we have moral duties to stangers and our caring relations with friends, siblings, spouses and the like can be overridden by the claims of strangers. It is morally wrong to trip the unknown leader of the cross-country meet so your child can win. Halwani then goes on to argue that conflicts between our duties to intimates and strangers are actually rare. Usually feeding one's children helps the ones we care about and does not conflict with justice and the rights of others. Here I think Halwani is mistaken. It seems better to say that people rarely recognize the conflicts. Peter Singer and Peter Unger make persuasive arguments that the conflict occurs constantly. More of what we do and buy should be directed toward those more in need.

Second, do we have obligations to a person *if* we care for them? Do we have obligations to evil people that we care about? Halwani rightly agrees with Victoria Davion that we do not. Other moral values should trump care in many instances. We should not help the racist relative support her views, and we should not help our spouse cover up a crime that he or she committed.

Consequently, care cannot be the sole guide of our moral life. Halwani argues that care should instead be one of the virtues that virtue ethics comprises. Putting care with these other virtues helps to overcome the objections above that a care ethics is not sufficient as a moral theory. The other virtues can override care when there is good reason to do so. But why think care should be a virtue? Virtues are dispositions to act and feel emotions correctly and having these virtues allows one to flourish as a human being. Care is a virtue because we are dependent creatures and hence we need intimate relationships. Halwani believes we are damaged goods if we do not have care in our lives. The person who has the disposition to care acts rightly toward others (by feeding them, helping them feel better, etc.) unless there are overriding conflicts with other virtues. Halwani seems right that care is important, but it must not stand alone. It should be integrated into another moral theory, and virtue ethics is one theory that is able to accommodate it. Of course, there still may be questions about whether virtue ethics is an adequate moral theory itself. But Halwani's main point is that it can and should accommodate care.

Halwani next turns to the related or sub-topic of romantic love. Romantic love is affection and care for the beloved that characteristically involves a sexual component. Care is then a part of romantic love, because love involves caring for the one loved. So, is romantic love a virtue like care? Halwani concludes that romantic love is a longstanding emotion that is enabled by the virtues, and so not a virtue itself.

Halwani defends this position in two ways. He first does so by showing that romantic love is an emotion, and emotions are not virtues. Virtues are dispositions to act or feel emotion, but emotions are the actual feelings. Romantic love is an emotion we have toward another. Yet, we often seem not to have emotions, but still claim that we are in love. Halwani says romantic love is hence best understood as a "longstanding emotion" that need not always exhibit itself (117). Longstanding emotions are therefore dispositional. Not all dispositions are virtues, but romantic love being a disposition certainly counts in its favor for being a virtue.

Romantic love is also defended as an emotion and not a virtue because, like care, it is not always beneficial. People in love often commit immoral acts for their beloved that they would normally never do. People will steal, lie, and even kill for the ones they love. The response could be to put romantic love with the other virtues, as was done earlier with care. Romantic love just needs to be balanced against the other virtues such as practical wisdom. Yet Halwani believes the two are different and says, "Even if we are discussing romantic love as being directed by practical wisdom, its effects on the agent's rationality and sociality are ambivalent. They could lead human beings to desire isolation from society so as to create a world for themselves and their beloveds" (120). Halwani is right that isolation could be a bad thing if it keeps them from other important relationships, but it seems that it is practical wisdom's job to keep this from occurring.

Halwani's solution is to say rather that romantic love is moral when it is enabled by the virtues. He says, "When romantic love issues from a virtuous character, it is enabled because it is given a truly moral form (147)." Romantic love is an external good like friendship. It is important for flourishing, but it is not a virtue. A virtuous person is made better by using this external good in the right way.

Second, he gives examples of people who are virtuous but do not have romantic love. People are not morally defective without romantic love. A person can be single her whole life, and yet live a caring and moral live. She can get love and care

through friendships. Halwani says, "what is important about romantic love is shared by friendship" (168). He believes one problem is that modern culture does not support these intimate friendships and people are forced into romantic love. A culture that supports intimate friendships would not require everyone to engage in romantic love. The companionship and intimacy would still be present even if the sex is not. Halwani seems correct here, that you *can* have a flourishing life without romantic love, but I believe there may be circumstances where romantic love is rationally required. It seems if you are single and do meet another adult single person to whom you are attracted , whom you care about deeply, and who reciprocates your feelings, then it would be wrong to not have romantic love for her. You would be irrational and maybe immoral to just have a friendship or nothing at all. It seems other virtues are like this. You could live virtuously without being generous if you never came in contact with another, but once you do have certain types of contact, then that virtue should be upheld. Once again, the way we should think about romantic love is similar to the way we should think about virtues, if not the same.

Halwani's last chapter provides practical application of the previous theoretical work. Although he is elusive on this point, it helps him to show that romantic love is not a virtue to justify that a person can have sex without love and still be a virtuous person. Promiscuity, open marriages, and sex work are each defended from the virtue-ethics perspective. He begins by examining the virtue of temperance, which is what moderates our desires for food, drinks, and sex. Halwani makes a nice distinction between two concepts of temperance. Temperance (T1) is moderation that is good for the agent. An agent who does not eat too much or too little is being temperate. The second concept of temperance keeps the agent from doing wrongful acts to others (T2). Here an agent who does not eat someone else's food or does not have sex with a friend's spouse is temperate.

Halwani believes that the promiscuous person can be temperate in both senses. In regards to T2, it is hard to see how being promiscuous is wrong, for it does not harm others. It is wrong to be promiscuous with the wrong person, such as having sex with a friend's spouse. But since Halwani assumes the person is otherwise virtuous, this would not be a problem. A virtuous person would see that other values override the desire for sex. A promiscuous person can also be virtuous according to T1. Kristjan Kristjansson argues that promiscuity causes bad habits and will not allow a person to have romantic love. Halwani criticizes this position by showing that Kristjansson relies on biased data from his classes, and even that data does not show that promiscuity causes a person to have a loveless life. For example, there could be a common cause of the promiscuity and a lack of a romantic love, such as deep depression. Kristjansson and others also seem to put too much emphasis on monogamy, according to Halwani. So he uses an example of a man who is promiscuous but virtuous: Firas, in his example, does not let sex control his life, but enjoys sex, and hence engages once a week or so in one-night stands. Firas does have close friendships that supply him with intimacy. He also does not seem to be so damaged that he could not later have a monogamous relationship. Halwani says, "And whatever happened to the old nugget of wisdom that one should experiment sexually before one sexually commits to another" (216)?

Open relationships are argued for in essentially the same way as promiscuity with T1 and T2. One important difference is that another person is involved, and there needs to be agreement about such relationships. If there is agreement of all parties about what is at hand, the open relationship is not interfering with the romantic love of the couple, and if it is done for the right reasons (spicy sex and not for reasons like revenge), then it is morally permissible as part of a rational and virtuous life plan. Halwani does offer one exception—that extra-marital relationships which involve vulnerability and intimacy should not take place—because they are more likely to threaten the romantic love of the spouses. The odd, but I must admit justified, conclusion is that adultery is morally permissible if it is agreed to and the spouse or spouses don't care about the person they are having sex with.

Sex work (from phone-sex work to prostitution) can get in the way of human flourishing, but like promiscuity and open relationships Halwani believes the problems are due to outside attitudes rather than anything inherent to sex work. Also, arguments that contend sex work is the equivalent of slavery are unfounded. Sex work is not different from other occupations. Like the plumber, the sex worker is using her body to provide services for clients. Halwani supports this position with evidence from actual sex workers who claim they do it mainly for the money. They chose this job over other alternatives. The second type of temperance is respected because sex work, like promiscuity and open relationships, need not involve any morally wrong objectification and so does not violate the virtues of justice and respect. The sex worker and the promiscuous client are in a business relationship. Most of the time the sex worker wants money and the client wants services only a full-fledged human being can provide. Halwani is correct that sex work need not objectify women or workers any more than other jobs.

But there might be another objection for sex work still going against T2 which Halwani does not consider. The objection goes something like the following. Clients are usually doing something morally wrong when they visit sex workers. Clients are often lying and cheating to spouses about their activities. Hence, sex workers are morally wrong to aid such activity. Halwani says that it is wrong to have sex with a friend's spouse when being promiscuous, so shouldn't it also be wrong for a sex worker to have sex with someone's spouse? An analogy could be made to a pawnbroker who knowingly takes stolen goods or takes goods without inquiring as to whether the goods are stolen. Since pawnbrokers are often confronted with stolen goods, pawnbrokers have a moral obligation to ask such questions. Whether and how such questions could be asked in sex work is an interesting question. "Would you please sign this waiver stating that you are not violating a monogamous commitment?"

The main criticism to his overall approach is that he could have done more to integrate the three chapters. His book is presented more as three different chapters that are tangentially connected. However, the chapters do depend on one another. Care needs to be justified as a virtue for it to enable romantic love as an important moral concept and then it is important for Halwani to show that romantic love is not a virtue to defend his claim that sex without love can be a virtuous. There is a schema there. Halwani just should have been more explicit and reminded the reader of the synthesis throughout the book's chapters. Without it, one wonders why he presents all this work on love and care, when he concludes by talking about activities where these are absent.

Nevertheless, Halwani's work is well-researched and well-argued. His analytic approach painstakingly considers position after position, and then offers devastating criticism of each. His criticisms of Michael Slote on care and Bonnie Steinbock on adultery are particularly good. These criticisms and his corresponding arguments make this book an intellectual advancement in the field. He is correct that care must be

incorporated by virtue ethics and that romantic love is crucial to a flourishing life. Then like a spy working from the inside, Halwani supports many controversial sexual lifestyles from a position that usually criticizes them. Hopefully, he will create more acceptance of different sexual lifestyles within that community and supply more justification than the liberal "live and let live" position.

ARTICLES

Equality, Civil Unions, Gay Marriage: Some Thoughts on Heterosexual Supremacy

Richard D. Mohr

This article is extracted from *The Long Arc of Justice: Lesbian and Gay Marriage, Equality, and Rights* forthcoming from Columbia University Press, 2005.

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Are gay couples treated equitably by civil-union arrangements that give to same-sex couples rights, privileges, and benefits that are identical to those that legal marriage gives to different-sex couples. No.

A law is inequitable if it degrades, insults, or humiliates some group.[1] A law does not violate equality simply by virtue of its distributing some benefit or opportunity differently between two groups. As important, and what is key here: nor will a law necessarily be an equitable treatment of two groups in virtue of its distributing the same benefits and opportunities to each of the groups.

A differential distribution violates equality only if the distribution draws on or enhances society's perception that the members of one group are worthy of less moral regard than members of another. So, for example, an affirmative action program which gives some benefits and opportunities to blacks which it does not give to whites would be inequitable only if the differential distribution would be socially read as deriving from or reinforcing social structures that hold white people in lesser moral regard than blacks—an impossibility in current American culture.

On the other hand, an identical distribution will be inequitable if it socially serves as a means of insulting, humiliating, or degrading one of the groups. Such is the case in most separate-but-equal schemes.

To determine whether a distribution insults or degrades a group, one has to look at the social context of the distribution. In some societies, a flicked middle-finger might be a serious insult, in others, it might be a meaningless gesture, in still others, it might be a sign of greeting. More specifically, whether the flicked finger is an insult depends on how the culture *reads* the symbolism of the gesture. It does not turn on whether the target of the gesture reads it as an insult. Indeed the target need not even know that he has been insulted—he can be insulted nonetheless. Thus we say that a person can be insulted behind her back, or even beyond the grave.

The U.S. Supreme Court got this all backwards in the 1896 case *Plessy v. Ferguson* with which "separate but equal" was established as the law of land for over half a century. The Court was wrong, almost certainly disingenuous, when it claimed that if blacks were insulted by being forced to sit in racially segregated railway coaches, the insult was the result of their sensitivities, not of the Louisiana law's mandating the segregation.[2] The Louisiana legislature knew how the segregation would be socially read and the law was passed for that very reason. This segregation, like anti-miscegenation laws, gave blacks and whites the same opportunities—blacks could not marry whites or sit in their coaches, whites could not marry blacks or sit in their coaches—but such identical treatments were inequitable because, socially viewed, the identical distributions were still means of society viewing blacks in lower social regard than whites. So the Supreme Court correctly ruled in 1967, when it finally declared anti-miscegenation laws unconstitutional violations of equality.[3]

Now consider states like Vermont which have established licensing schemes which give homosexual couples exactly the same benefits and opportunities as they give heterosexual couples—except for the name "marriage" on the licenses issued to secure the rights and benefits. The licenses for gay and lesbian couples instead have "civil union" written on them. Is this licensing scheme an equitable treatment of gay men and lesbians?

It would not be an equitable treatment of lesbians and gay men, even if it were to give *more* privileges and benefits to them than to heterosexuals, just as it would still be inequitable to require blacks to sit at the back of a bus even if the bus had a "rear exit only" requirement that gave blacks the opportunity to exit the bus out the back door first. The reason is that the culture reads the ritual of placing blacks at the back of the bus as degrading to blacks.

So too, reserving the sacred sign "marriage" for heterosexuals when homosexuals are offered separate-but-equal civil unions, serves—and *only* serves—to degrade gay men and lesbians by denying them one of the chief social forms by access to which America marks out membership in full humanity. It is not just a word that is at stake, it is a highly symbolic civic ritual that civil-union schemes deny gay men and lesbians. And the more politicians of all stripes call the *institution* of marriage itself sacred, rather than the love within a marriage or the couple's sacred valuing of their relationship, the more inequitable the separate-but-equal scheme becomes.

In December 2003, the Massachusetts legislature asked the Massachusetts highest court if a civil-union arrangement that gave lesbian and gay couples all the rights and benefits of marriage, only just not the name "marriage," would meet the standard for equal treatment laid out in the court's November 2003 decision giving gay and lesbian couples the right to marry. The Court by a four-to-three vote answered, "No."[4] To the bewilderment of the dissenting judges, the Court clarified that, as far as equality was concerned, the civil-union scheme was a more inequitable treatment of gay and lesbian couples than the state's past refusals to grant them marriage licenses, despite all the goodies that come along with civil-union status, goodies which lesbian and gay couples did not have under the state's marriage laws. The reason: The state's past refusal to give marriage licenses to gay and lesbian couples was based on a statute that, when it was drawn into Massachusetts law from the English common law in 1810, was not established with lesbians and gay men in mind. The Massachusetts marriage law did not intentionally draw distinctions on the basis of sexual orientation. By contrast, the civil-union scheme was *intentionally* drawn to distinguish heterosexuals from gays, and since all the rights and obligations of unions and marriages would be the same under the scheme, the distinction was *wholly* drawn to differentiate gays from heterosexuals. The differentiation itself is one thick with social significance: "The [civil unions] bill would have the effect of maintaining and fostering a stigma of exclusion that the Constitution prohibits.

It would deny to same sex "spouses" only a status that is specially recognized in society and has significant social and other advantages. The Massachusetts Constitution does not permit such invidious discrimination, no matter how well intended."

All this is true, but one could press even farther. The law claims—and so does any society that accepts the law's claim—that marriage is the only legally acknowledged relation between the sexes. Through marriage, the law *creates* the legal relation between the sexes; the law, in short, *creates* heterosexuality legally speaking. Without legal marriage, males and females would be as related to each other at law as mangos and tangos. Marriage more generally—religious, social, as well as, legal marriage—needs to be understood as an institution that creates a social status, in particular heterosexual status—and then ratifies that status. Marriage—the legal and social ritual—doesn't lay value on something that already exists. It draws into being a social form, even as it ratifies that very form. Marriage, in short, is an initiation ritual.

A typical initiation ritual takes a male and turns him into a Man. Biology and non-ritualistic behavior could not do that. So too biology and non-ritualistic behavior could not turn a person into a Heterosexual. Indeed Don Juan, Casanova, and Lothario, those frisky male seducers of endlessly numerous ladies, are now taken as cultural symbols for homosexual denial rather then heterosexual affirmation. Not biology, not behavior, rather marital status is the essence of heterosexuality. And the required ritual of marriage, getting wed—the legally, socially, religiously required ceremony of solemnization—is the initiation rite that both confers that status and endues it with value.

So the social and political stakes in marriage turn out to be much higher than even the Massachusetts court realized. It is not just any old non-material benefit that gay men and lesbians are being denied by civil-union schemes, important as such a non-material benefit might be, say, access in a theater to the even numbered seats which are thought to be particularly dear to the gods, even though the view of the stage is just a good from the odd-numbered seats. Rather in civil-union schemes, all of the sanctity and holiness associated with *heterosexual status per se* as created and ratified by the ritualistic solemnizing of marriages would be denied to gays and lesbians *by law*; and even more than that, as intentionally and wholly designed to symbolically differentiate heterosexuals from gays around the very institution which, in the eyes of the law and society, heterosexuality is established. The separate-but-equal civil-union scheme flags to society that to let lesbians and gays marry would be not just to besmirch the sanctity of heterosexuality, but more so to destroy Heterosexuality itself. Analogously, if a colonial ruler—in the guise of a Platonic Guardian or activist judge—imposed a new order of equality mandating that henceforth both males and females must go through the initiation rituals of Manhood, then for those upon whom the new order is imposed, the new order would destroy Manhood, would destroy what it is to be a Man.

Civil-union schemes then are instruments in the institutionalization of Heterosexual Supremacy just as, in the racist's mind, letting a black man marry a white woman would not just besmirch Whiteness, but would also destroy the very ritual, pure-blood marriage, by which Caucasians are initiated into Whiteness, are made White, and so further would destroy Whiteness itself, what it means to be White. The parallels here between the justice of gays and blacks is more uncanny than even most lesbian and gay activists realize. In 1967, when the Supreme Court ruled anti-miscegenation laws unconstitutional violations of equality, it did so on the ground that such laws were "measures designed to maintain White Supremacy." A future Court should declare civil-union schemes violations of equality on the ground that they are measures designed to maintain Heterosexual Supremacy.

It goes almost without saying that the enormous political resistance to lesbian and gay marriage lies in the masses' conception of themselves as heterosexual. If gays could get married, heterosexuals would no longer be Heterosexuals. They would just be people. Horrors.

Endnotes

1. The view that equality is primarily a principle of non-degradation is defended in the chapter "Equality" in *The Long Arc of Justice: Lesbian and Gay Marriage, Equality, and Rights* (New York: Columbia University Press, 2005).
2. *Plessy v. Ferguson*, 163 U.S. 537 (1896).
3. *Loving v. Virginia*, 388 U.S. 1 (1967).
4. *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003); In re Opinions of the Justices to the Senate, 802 N.E.2d 565 (Mass. 2004).

Gay Marriage and Bisexuality

Kayley Vernallis

As a bisexual woman married to a man, I congratulate those of my gay and lesbian brethren who can now enjoy the legal and social benefits of marriage. A commitment to tolerance, an appreciation of diversity, and recognition of individual rights, are democratic ideals. Let us hope that Canada and Massachusetts continue to lead the way, and that our heterosexist opponents will not triumph.

On a political and theoretical level, however, I am ambivalent about the discourse surrounding gay marriage. I am thrilled, of course, that at least some of my gay and lesbian friends can marry. I do feel less guilty about the fact that I have been able to acquire social legitimacy, immigrate legally, and save thousands of dollars in medical insurance *simply* because the person I last fell in love with was someone of the *opposite* gender. Yet during recent public debate about gay marriage, I have experienced a greater sense of invisibility with regard to my bisexual identity. I feel as if I should keep quiet. No one, it seems, wants to think hard about what bisexuality is and how the legal concept of marriage might need to be changed so that it does not discriminate on the basis of *bisexual* orientation. Is the legalization of same-gender marriage sufficient to protect bisexuals (in regard to marriage) against discrimination on the basis of sexual orientation? Do bisexuals have a right to form marriage unions of three individuals (what I will call bi-marriages)? Do the reasons for extending marriage to homosexuals also apply to bisexuals? Do the moral and legal grounds for extending marriage to gays and then to bisexuals depend upon the presumption of a right to the forms of sexual-flourishing that are distinctive to each kind of sexual orientation? Is bi-marriage a mere extension of marriage, or is it a radical reconceptualization? I cannot answer these questions in this short essay; for they require, among other things, a conceptually sound understanding of bisexuality, sexual flourishing, and of the love/affection-based ideals of marriage currently operating in contemporary culture. I will, however, accomplish two more restricted goals. I will address the absence of public debate regarding bisexuality and marriage. Then I will show how different, admittedly simplified, models of bisexuality lead to different forms of bisexual marriage, given certain presuppositions we hold about

contemporary marriage, especially those that are relevant to the extension of marriage to homosexuals, and hence to bisexuals as well.

Silence on the topic of bisexuality and marriage can be explained by an array of motives. Some people think that current debates about marriage are irrelevant to bisexuality because bisexuality is not a real sexual orientation. Many heterosexuals and homosexuals believe bisexuals are merely confused individuals or cowards. Bisexuals do not have a right to bi-marriage because bisexuals don't exist. Others believe that there are bisexual individuals, but that it is dangerous to raise the question of bisexual marriage rights because it will encourage conservatives to rally the public around slippery slope arguments: if gay marriage is legalized, then there will be no way to legally forbid bisexuals from forming legal threesomes, or to forbid the forms of polygamy practiced by renegade Mormons; indeed, pet-human marriages will follow; and pretty soon, it will be the end of civilization. The gay and lesbian community is thus complicit in sustaining silence about bisexual marriage rights. Many feminists do not welcome the idea that bisexuals have a right to form bi-marriages, because they fear that there will be no longer be legal grounds to exclude sexist polygamous practices.

Obviously, certain groups have vested political interests in dismissing bisexual marriage and silencing discussion about it. However, I suspect the majority of people who support gay marriage readily dismiss bi-marriage because they think it is psychologically unworkable. For instance, they will note that jealousy and rivalry expand exponentially in threesomes or foursomes, making bi-marriages extremely unstable. In addition, while we are all familiar with cases in which *x* is in love with both *y* and *z* and that *y* and *z* are each be in love with *x*, the chances that *y* and *z* would also be in love with each other (even if they are both bisexual) is extraordinarily small. Romantic love seems just too fickle and unpredictable. (Just imagine two of your past lovers getting along, let alone being in love with one another while they are in love with you.) Indeed, one might point out that the near non-existence of marriage-like unions between three people in our culture shows that such unions are such anomalies as to be a kind of reduction of the idea. Let bisexuals demonstrate a solid historical practice of bisexual-based marriage-like unions; then society will consider extending heterosexual and homosexual marriage to include bi-marriage.[1] In response, an advocate of bi-marriage may point out that very powerful social forces work against marriage-like bisexual threesomes, and she will argue that the legalization of bi-marriage will foster informal social support for such unions. But the opponent of bi-marriage will retort that gays and lesbians have been able to form a significant number of marriage-like unions in spite of heterosexism. The failure of bisexuals to form stable marriage-like threesomes must be a function either of the inherent instability of threesomes or of a general lack of character on the part of bisexuals.[2] Some bisexuals' claim to need two concurrent lovers (one of each gender) to "be who they are" is really a selfish refusal to make the kind of the sacrifice in sexual fulfillment that heterosexuals and homosexuals undertake when they forego variety and novelty in sexual encounters in favor of fidelity in monogamous relationships and marriage.[3] Mature bisexuals, it will be claimed, can happily accommodate themselves to homosexual or heterosexual twosome marriages.

A variety of motives conspire to suppress public debate about bisexual marriage. But even some of the knee jerk dismissals of the idea of bisexual marriage exhibit reasoning that goes beyond the simple thought that bisexual marriage would involve a threesome but marriage should only involve a twosome. The attachment to twosomes (at least once we accepted that marriage does not have to be between a man and a woman and that gay and lesbians can form marriages) is explained by the fact that we are confident that a twosome configuration can embody the principles or ideals that we associate with contemporary marriage. The hasty dismissal of bi-marriage rests, at least in part, on the view (perhaps arrived at in a prejudiced manner) that bi-marriage cannot embody such ideals. Whether individuals in bi-marriages can actually live out those ideals or whether respect for bisexual rights might even require us to abandon some of those ideals are questions that must be left for another day. But we can make a useful beginning by showing that bi-marriage can be logically compatible with those ideals. Let's start by setting out some of the ideals or principles we hold in regard to contemporary marriage, particularly those that seem at work in the extension of marriage to gays and lesbians:

1. Marriage unions are the product of adult partners' rational choice, reflecting their individual desires. Marriage decisions should not be in the hands of parents or community.
2. Marriage should be based upon love, affection, and respect between spouses. Feelings of love, affection and respect should be transitive. It isn't morally right for one partner to marry for love while the other partner marries for money.
3. Marriage should involve a serious commitment to long-term shared duties, including significant financial, medical, social and legal responsibilities.
4. Marriage depends upon and supports forms of individual sexual expression and forms of sexual intimacy that support love, affection, and respect between spouses. Sexual expression should also support the long-term stability of the marriage. Sexual exclusivity/fidelity generally best achieves these goals.
5. Marriage does not require procreation, but marriage should provide the kind of emotional and financial stability that promotes positive social and emotional development in children.

I will not defend this list in any detail, but I would like to note in passing a couple of salient points. The fact that the extension of marriage has been proposed for gays and lesbians, and not, say, to widowed or divorced parents and their children, or even to individuals who are merely friends, demonstrates that we think of sexual expression and sexual relationships as central to marriage. The extension of marriage to gays is based upon the fact that gay partnerships can manifest the features identified in 1-5 and the belief that it is unjust to deny the right to marry to gays and lesbians simply because their sexual object choice differs from heterosexuals. What is wrong with polygamy, even though it is a stable social form that also supports the raising of children in many places in the world, is that its extant forms tend to support male superiority, reduce women's autonomy, involve sexual relations between adult males and female children (who are not old enough to consent), and so violate the principles of individual choice and transitivity. But there may be legitimate forms of polygamy, perhaps bisexual marriages, which do not violate the principles above. It would be unfair, surely, to outlaw all marriages between more than two individuals simply to eliminate sexist polygamist practices: otherwise we ought to have already abandoned marriage altogether given its history of oppressing women even in monogamous male/female marriages.

Let's now turn to different models of bisexuality to see what forms of marriage they generate and whether they are

consistent with 1-5 above. Let me set out four simplified models.[4]

> *Bisexuals don't exist. Everyone is either heterosexual or homosexual. Bisexual individuals are usually homosexual individuals who do not have the courage to say so. (non-existence model)
>
> *Bisexuals are individuals who fairly consistently engage in sexual acts with members of both genders. The acts need not involve simultaneous sexual acts with members of both genders but some rough standard of concurrent sexual activity with both genders is required. I have no firm intuitions here, but perhaps one must have had sex with one member of each gender every few years. (behavior-based model)
>
> *Bisexuals are individuals who are sexually attracted to members of both genders *on the basis of* their *gender*, and would be disposed to act on their desires in some circumstances, without necessarily acting on either of them. Here an individual might be attracted to an individual partly in virtue of an individual's having a penis and expectation about the style and tempo of love-making afforded by the presence of a penis and typical gender socialization. (desire/disposition-based model)
>
> *Bisexuals are individuals who are sexually attracted to members of both genders *independently* of gender, and would be disposed to act on their desires, without necessarily acting on her sexual desires. One is sexually attracted to the individual's personality or some other non-gendered attribute such as eye-color or physical grace. Whether one's partner has a penis or a vagina is irrelevant. Indeed, whether one's partner is affiliated with male, female, trans., or intersex gender is irrelevant. (gender-non-specific model.)

These different models of bisexuality sanction different forms of marriage. If bisexuality does not exist, and there are only heterosexual and homosexual individuals, there is no such thing as bisexual marriage and the extension of marriage to homosexuals will provide all the protection of a person's rights with regard to sexual orientation. If bisexuality is gender-non-specific then there is no need to recognize some form of marriage as a distinctively bisexual marriage. The extension of marriage to gays provides bisexuals all the protection of a person's rights that are required with regard to sexual orientation. Laws that permit two individuals to marry without regard to gender will protect a bisexual no matter what the gender of the other marriage partner.[5]

The more interesting cases arise from the behavior and disposition models. If bisexuality is defined in terms of bisexual behavior, then it seems that bisexuals must either cease being bisexuals if they wish to marry and at the same time live up to the ideal of sexual fidelity associated with contemporary marriage or preserve their sexual orientation and reform marriage in such a way that their dual object choice is made compatible with ideals of sexual expression, sexual intimacy, and sexual fidelity. Now, the first option seems problematic. For why should you have to give up your sexual orientation to marry or to be in a sexually exclusive relationship? What if you want to make a life-long commitment that involves some form of sexual exclusivity and receives social and legal benefits? As one person was quoted as saying, "How could someone who wants to be in a long-term committed relationship still call themselves bisexual…without some infidelity coming into the picture?"[6] It seems that bisexuals' sexual orientation makes them constitutionally unable to fulfill marriage vows. Many bisexuals will feel like failures when confronted with this reality. Many heterosexuals and homosexuals will feel confirmed in their negative judgments about bisexuals as necessarily "bedhoppers." Given these psychological and political ill effects, bi-marriage is seriously worth pursuing.

A bi-marriage is the legal formation of a threesome marriage. *Bi-marriage is the legal joining of three individuals, at least one of who is the opposite gender of the other two*. We can assume that the three individuals freely chose to marry, love, and respect one another (x loves y and z, y loves x and z, z loves x and y), are sexually exclusive (they do not engage in sexual activities with anyone not within the marriage partnership), have made a long-term commitment to one another, and can provide a stable home for children. There are several difficulties with this model of bi-marriage, however.

Let's start with the problems that arise for the behavioral model of bisexuality. First, it is not possible to maintain both the requirement that all members be bisexual and that all members maintain sexual exclusivity within the marriage. Whichever individual is the sole representative of his/her gender in the threesome (the gender-minority individual) cannot maintain bisexuality and sexual exclusivity. For if x is a woman, and both x and y are men [F(x), M(y), M(z)], then x cannot remain a bisexual after she marries unless she violates the requirement of sexual exclusivity. It seems unfair to require x (a bisexual) to change her sexual orientation to participate in a bisexual marriage. We can solve the problem by permitting x's pre-marriage orientation to be heterosexual, but it seems odd, I admit, for bi-marriage to logically require at least one of its members to be heterosexual! It seems to go against the spirit of bi-sexual marriage, which was to extend to one group (bisexuals) the entitlements available to heterosexuals and homosexuals. Now, it seems that a heterosexual gets an additional entitlement (she can legitimately have two sexual partners within marriage) that she would not receive under traditional two-person monogamous marriages. If this is not sufficiently odd, consider the problems that arise if we tweak the scenario above F(x), M(y), M(z) permit both x and z to be heterosexual. Here x and y are in transitive relationships with the other members, but z is not. For now z is sexually intimate and in love with x but not y. Exactly the same problem arises if we permit z to be gay. Z is sexually intimate and in love with y but not x. Although sexual exclusivity can be maintained on these scenarios (no one has sex with anyone outside the marriage), we have given up transitivity (the idea that each member loves every other member, and in each case, that love is based upon sexual intimacy). On the behavioral model, the only way to guarantee that the bisexuality of each member, sexual exclusivity, and transitivity can be maintained is if we expand the marriage to four persons (two of each gender). The advantage of this proposal is that no member will need to make a sacrifice in the full expression of her sexual identity and hence all members will be theoretically equal to one another in their choices (so there is more reason to regard all members as haven chosen autonomously). On the other hand, this four-person model dictates that each member will have two opposite-gender partners but only one same-gender partner. Although this ratio may not reflect some bisexuals' preferences, the foursome model has the virtue that it does not deny any individual's sexual/expressive capacities and it increases the opportunity for variety in sexual partners. Assumptions about the potential instability of the model will not be examined here.

How do the problems discussed above in regard to the behavior-based model apply to the desire/disposition-based model of bisexuality? The results are not quite the same. We

found above that it was not possible for all three members of the marriage to be bisexual and to maintain sexual exclusivity. Under the desire/disposition model, it is possible for all three members of the marriage to remain bisexual and maintain sexual exclusivity. However, the person in the gender-minority role (say, the only woman in a marriage with two men) must be willing to *forego sexually-based love relations with women* to remain in the marriage There is no logical inconsistency in her remaining in the marriage (since the desire/disposition model does not require you to act on your sexual desires toward both genders to be a bisexual), but one might argue that the choice to forego satisfaction of same-gender desires involves a loss of sexual-flourishing. It involves a kind of sacrifice that heterosexual and homosexual individuals do not undergo when they choose to be sexually exclusive. I cannot develop this argument here but I think it is very significant, and I think part of our sense that the moral and legal grounds for extending marriage to gays and then to bisexuals depends upon this idea of a right to the forms of sexual-flourishing that are distinctive to each kind of sexual orientation. It might be urged by opponents of bi-marriage that since proponents of bi-marriage find it morally acceptable that the gender-minority individual in a married threesome be required to forego sexual intimacy with others of the same gender, there is no need to make special accommodations for "bisexual marriage" at all. For if closing off one class of sexual objects is morally acceptable in the case of a bisexual who is in a gender-minority position in a bi-marriage, it should be morally acceptable for bisexuals in traditional heterosexual or homosexual two-person marriages. However, while it is true that not every member of a bi-marriage can be bisexual and fully flourish sexually under bi-marriage, if a *particular* gender-minority member is not willing to forego that form of sexual flourishing, she would be at least *legally entitled* to form a bi-marriage in which she and another woman form the gender-majority, thus guaranteeing that she can be concurrently be sexually active with both genders and achieve sexual fidelity within the marriage. And it is possible that no bisexuals would have to forgo full sexual flourishing within marriage if the gender-minority individual is heterosexual (of course that option seemed a little unsatisfying). But without the option of bi-marriage, no bisexuals can preserve sexual exclusivity within marriage and be sexually intimate with members of both genders. As to the problems with transitivity, they are the same as they are on the behavioral model. There can be no more than two heterosexuals, or no more than one heterosexual and one homosexual in the marriage without violating transitivity. Marriages of foursomes will, at least in principle, make it possible that all members of the marriage can be bisexual, sexually flourish through sexual intimacy with members of both genders, be sexually exclusive, and have their sexual/love bonds remain transitive.

Although no real insight is involved in setting out these various options as I have done in this paper, it may be surprising for some readers to see how complicated it can become to enable bi-marriages (and foursome marriages) to jointly satisfy some of guiding presuppositions/principles of heterosexual and homosexual marriage *even if* we have already extended the notion of sexual exclusivity within marriage from the traditional twosome to include three and four-somes. There are solutions, of course, such as abandoning the principles of sexual exclusivity and transitivity within marriage. Richard Mohr, for instance, believes one of the contributions that gay married couples can make to the institution of marriage is the modeling of deep commitment to one's spouse while engaging in satisfying extra-marital sexual relations.[7] The presumed instability that occurs when the principles of fidelity and transitivity are applied to three and four-somes can be met by making divorce illegal. Perhaps the very ideal of romantic love is inconsistent with stability. That was certainly Mary Wollstonecraft's verdict in 1792 when she declared: "Love, by its very nature, must be transitory."[8] In contrast, she urged that "the security of marriage" requires that love be replaced by "the calm tenderness of friendship." Reflecting on the possibilities of bisexual marriage should, at the very least, make us confront the ideals of marriage that inform our current practice.

There is no doubt that the recent extension of marriage to gays has significantly reduced some of the injustice experienced by bisexuals, since such individuals can now marry same-gender partners. But has the recent extension of marriage rights to homosexual couples remedied discrimination on the basis of *bisexual* orientation? Where is the serious public debate?

Endnotes

1. Of course, this line of reasoning will not satisfy proponents of bi-marriage. A group does not have to model a practice before it is given the right to participate in it. The extension of marriage to cross-race couples presumably did not depend upon the existence of a stable practice of marriage-like unions between blacks and whites. It involved intuitions about treating people equally. In some cases our intuitions about equal treatment require us to make special accommodations for some groups. Equal treatment for physically challenged individuals does not stop at eradicating laws that make it illegal for a disabled person to enter. We now know that equal treatment and non-discrimination involve such things as requiring businesses and government to build wheelchair ramps etc. So ending discrimination against bisexuals in regard to marriage need not require the demonstration of a past practice, and it may require special accommodations, such as making it legal for three or four people to marry.
2. This is a quite interesting question, in part because it invites a sort of Foucaultian response. Foucault insists that we see oppression not as a force from above that interferes with something's natural state or development. Rather, social forces, including oppression, are also productive and historically conditioned. Sexual orientation, for Foucault is socially constructed. Indeed, homosexuality as an identity did not appear until the 1800s. How might a Foucaultian explain the fact that repressive forces have produced gay and lesbian marriage-like unions but not bisexual bi-marriage-like unions?
3. I think that this is a mistake. I think that bisexuals who commit to monogamous relationships do make a greater sacrifice than homosexuals and heterosexuals do when they commit to monogamous relationships. See my "Bisexual Monogamy: Twice the Temptation but Half the Fun?" "Bisexual Monogamy: Twice the Temptation but Half the Fun?" *The Journal of Social Philosophy* (vol.XXX, no.3, Winter 1999).
4. I realize that these models are quite problematic. For instance, no mention is made of the way in which societies socialize individuals into sexual orientations. Except for gender-non-specific bisexuality, the framework presented presupposes that gender is somehow prior to and more basic (natural) than sexual orientation. But this view has been seriously challenged by writers such as Monique Wittig, who defines woman as someone in a heterosexual relationship with a man. These models fail to take account of how individuals' self-identifications and the attributions of others shape and define one's gender affiliation as well as only sexual orientation. All of these complexities, and proper corrections, need to be taken up at some point—but unfortunately not in this brief paper.
5. Presumably trans and intersex individuals will be able to marry another individual of male, female, trans or intersex even under the current extension of marriage to gays and

lesbians. But rather than using language that permits "a man and a woman," "a man and a man," or "a woman and a woman" to marry, the laws should permit two individuals to marry "irrespective of gender affiliation."

6. See Amber Ault, "Hegemonic Discourse in an Oppositional Community: Lesbian Feminists and Bisexuality," *Critical Sociology*. Vol. 20, No.20 (1994): 107. The quote comes from one of Ault's interviewees. Over 30% of her lesbian subjects expressed negative attitudes towards bisexuals.
7. Richard Mohr, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights* (Boston: Beacon Press, 1994).
8. Mary Wollstonecraft, *The Vindication of the Rights*.

The Institution of Marriage

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This essay examines Claudia Card's argument against same-sex marriage. Although she believes the current trend to ban same-sex marriage is discriminatory, Card is skeptical about whether marriage is a better way of life for lesbian, gay, bisexual or transgender persons.[1] She raises four specific problems. First, the social and economic advantageous associated with marriage may pressure some individuals to marry. Second, same-sex marriages will further marginalize nontraditional (i.e. non-monogamous) relationships. Third, since divorce regulations can make dissolutions extremely difficult and expensive, some spouses may feel trapped in a loveless and potentially violent relationship. Finally, the legal right to access granted to spouses can make it very difficult for victims of abuse to defend themselves in a court of law. When marital regulations provide legal shelter for abusive spouses, Card claims that the gay and lesbian community is better off without marriage. Indeed, instead of marriage contracts, she suggests that couples who want a contractual relationship should create their own renewable contracts.

In what follows, I offer brief responses to Card's first two points. The thrust of this essay is to take issue with Card's renewable contracts and her treatment of state regulations. Specifically, it is unclear how these renewable contracts will actually work or how they would differ from traditional marriage contracts. In addition, I am uncertain as to where Card stands on the regulation issue: is regulation in intimate partnerships necessarily harmful or can it protect spouses from abusive partners?

Proponents for same-sex marriage argue that lesbian and gay couples should have the same rights as heterosexual couples to receive spousal benefits. Approximately 1,400 legal rights are conferred upon married couples in the United States. Typically these are comprised of about 400 state benefits and over 1,000 federal benefits.[2] But Card argues that marital privileges pressure some individuals into marrying for reasons other than love: "When spousal benefits are major, they offer an ulterior motive to turn a love relationship into a marriage, even to pretend to care for someone, deceiving oneself as well as others."[3] When economic and other social benefits are associated with marriage, partners (but especially women or those who lack independent income) may be pressured into marrying for economic security and an improved way of life. For Card, "marrying under such conditions is not a totally free choice."[4] So, same-sex marriage advocates who demand access to spousal benefits are introducing new pressures and ulterior motives to the gay and lesbian community.

I agree with Card's overall point: basic benefits, such as health care coverage, should be available to everyone and not just married persons. To be sure, as long as these benefits are not made universal then the pressure to marry will remain. But it seems to me that the discriminatory nature of marital benefits is not specifically lesbian or gay in nature, nor does it concern the problems associated solely with marriage as a social institution. The widespread need for affordable insurance premiums and adequate Social Security or pension plans is a broad social issue and need not be connected to the advocacy of same-sex marriage. That is, granting married persons certain rights and benefits as opposed to those who are not married is a symptom of a much larger issue, namely, the nation's controversial distribution of certain social goods.

Turning her attention to Richard Mohr's discussion about the marital requirement of monogamy and how it goes against the experience of some gay men in relationships, [5] Card implies that the push for legalizing same-sex marriage would further marginalize non-traditional relationships where sexual exclusiveness is not expected. In other words, same-sex marriage would reinforce the idea that monogamy is the only acceptable or legitimate type of relationship. Those who choose not to live in more "appropriate" partnerships would be excluded from social acceptance.

However, I am not entirely convinced that legalizing same-sex marriages will necessarily promote greater homogeny. Perhaps the legal status of same sex relationships will have a liberalizing influence on our culture rather than an increase toward conservatism. A proponent of same-sex marriage, Angela Bolte concurs:

> The legalization of same-sex marriage would bring what had once been determined to be 'other,' that is, what had been determined to be separate and inferior, into the mainstream. In other words, legalizing same-sex marriage would allow one form of difference to be included in what is deemed acceptable. By broadening the definition of what is considered acceptable, other forms of difference could become more acceptable. [6]

And so, it is not obvious that legalizing same-sex marriage would necessarily reinforce traditional heterosexual understandings of what it means to be a "couple." Of course, I do not want to imply that same-sex marriages will automatically eliminate homophobia and heterosexism. However, because attitudes can and do change, granting lesbians and gays marital status can be a positive step toward greater social justice and acceptance of diversity (or difference).

Card goes on to argue that the more serious problems associated with marriage are the difficulties of a nonamicable divorce and the right to access granted to a spouse. Given the financial costs and in some instances custodial difficulties (e.g., shared property, alimony, child-support payments, difficulty regarding access to children, etc.) many couples may prefer to remain in a loveless marriage than to undergo the stressful process of divorce legislation. If spouses can financially devastate one other or cause great suffering and harm by taking away children, property, and other assets, then there is an ulterior incentive to stay in an emotionally disastrous union. When couples stay together because they rather not deal with the difficulties of a nonamicable divorce, their relationship can easily sour. And staying in a loveless marriage, where resentment and hate grow, increases the potential for domestic violence and even murder. In light of such intrusive and complex divorce regulations, Card believes that "it would be better to deregulate marriage than to regulate same sex unions."[7]

Furthermore, the right to access facilitates violence in the home. According to Card, "Legal rights of access that married partners have to each other's persons, property, and histories make it all but impossible for a spouse to defend herself (himself), or to be protected against rape, battery, stalking, mayhem, or murder by the other spouse."[8] When the state assumes that spouses have only the best intentions for one another, a victim of abuse may find it terribly difficult to prove that she or he feels terrorized or threaten by their spouse. We can easily imagine the difficulty of convicting a husband, for instance, of threatening to kill his wife or stalking her while she is away from home. But when certain forms of abuse take on no visible sign, it can be almost impossible in a court of law to persecute a spouse, even though the victim feels trapped, and her life becomes intolerable and filled with fear. Card notes, "Without clear and convincing evidence of abuse, one whose spouse will not agree to divorce may be trapped in a relationship from which, eventually, the only avenue of exit appears to be murder."[9] Unmarried victims do not have the same burdens of justification as married spouses. In legal terms, unmarried partners have less access to one another (and cohabitation is not required). This greater degree of autonomy, Card argues, affords the victim with more legal protection from abuse and violence: "Because it is enough that they choose to deny access, it matters less that they probably cannot prove abuse."[10] It is important to note that Card is not arguing that marriages are violent. Rather she is pointing out how the rules of marriage (i.e., the difficulties of a nonamicable divorce and the right to access) can facilitate abuse when they provide a legal shelter for violent partners.[11]

To illustrate the state's lack of concern for victims of bad marriages, Card shows that it is easier to retain a marriage license than a driver's license. Compared to the regulations for obtaining a driver license, Card points out that the "prerequisites for marriage licenses are astonishingly lax."[12] A marriage license—a life long contract that gives the legal right to cohabitation and access to each other's person, property, and histories (including financial statuses) —requires no criminal history checks, no demonstration of marriage laws, and no knowledge of relationship skills. History of criminal violence does not bar one to have relatively unprecedented access to another person. In other words, there are no legal checks to mitigate violence or terrorism in the home, and "the consequence is that married victims of partner battering and rape have less protection than anyone except children, the very elderly, and the severely dependent."[13] Marriage, it seems, is an institution where you enter at your own risk. And this is brings us to the crux of Card's argument: the rules of marriage are such that it is far too easy to enter but extremely difficult to leave.

To remedy this problem, Card proposes renewable contracts. Instead of marriage contracts, with its lifetime or open-ended commitment, couples that want a contractual relationship (in order to ensure a fair division of assets upon dissolution) should make a renewable contract that defines the relationship on their own terms. The renewal would be warranted once the partners make the case to each other that they should continue the relationship. According to Card, "this practice would shift the burden of justification from breaking up to continuing, and justification would address the other partner (or partners) rather than the state…This is such a drastic change from marriage that many would, rightly I think, refuse to call it marriage"[14] Because they are easier to terminate than marriage contracts, Card's renewable contracts would offer hope to abused partners.

At first blush, Card's proposal seems promising. I like the idea of partners "customizing" their unique relationships. But I am unclear as to how these renewable contracts would actually work or how they would be an improvement over the current system. Consider for instance that without state regulation, some partners may be duped into a contract that is, unbeknownst to them, not in their best interest. Of course, these contracts are renewable and so one can eventually leave the unfair partnership. But while the contract is in effect, what can one do? Without some third, neutral party or standard measure, these contracts could be just as disastrous, if not more, than state-sanctioned marriage contracts. Perhaps couples could hire legal assistance to draft fair and well-informed contracts. However, this would require some expense on the part of the couple. Not all would be able or willing to accommodate this requirement. But suppose a team of lawyers were employed to write up a renewable contract. For the contract to have legal worth and effectiveness, the civil courts would have to officially recognize and enforce its conditions. This being the case, the civil courts are not going to accept just any contract. It would have to abide by certain already existing laws and procedures.[15] Indeed, it seems to me that these contract lawyers would have to follow some kind of standard or model and I suspect it will be marriage itself. This certainly seems to be the case with domestic partnerships and civil unions. Most domestic partnerships laws, like marriage, require the partners to (officially) live together and to share certain financial costs.[16] Although domestic partnerships and civil unions entail fewer social and economic benefits than marriage, they nevertheless tend to be modeled after existing marriage contracts. Whether it is Card's "renewable contracts" or "domestic partnerships" or "civil unions," it seems to me that there is no *fundamental* difference between these forms of legalized partnerships and marriage contracts.

While I agree with Card that marital regulations can make divorce a difficult option for some married couples, it seems to me that eliminating state regulations might bring more harm to individuals. In the event of a divorce or dissolution, sometimes a third (neutral) party is necessary to resolve agonizing and complex disputes concerning child-custody arrangements, property allocations, and the fair distribution of assets. Sometimes couples cannot solve these matters on their own especially if one of the partners poses a threat to the other's safety, is deceptive or just plain vindictive.

Card's concerns about spouses feeling overwhelmed by the emotional and financial costs of divorce and about the increase in violence when couples stay together in a loveless marriage are certainly warranted. That being said, I fear that couples would still be at significant risk of harm if marriage contracts and divorce proceedings were not mandated by a third overriding legal party such as the state. While divorce regulations may be cumbersome and expensive, it is unclear whether a lack of state/federal regulation would outweigh the potential benefit that third party intervention could bring to the issue of fair and equitable dissolutions.

Currently many same-sex couples have no legal access to employee-based health benefits, no enforceable standard for child custody arrangements in the event of a terminated union, no tax benefits, no enforced property settlements; and in the event of a death (and no stated will), lesbian and gay couples have no inheritance rights or Social Security survival benefits and no legal right to sue for wrongful death on behalf of a partner. Consider the following true story.[17] Louise Rafkin's partner of six years died suddenly. Devastated by her lost, Rafkin was also shocked to discover just how the powers that be recognized—or not as the case may be—her relationship. Though Rafkin was registered at her partner's work as her

domestic partner, Rafkin was not legally allowed even the basic courtesies. To make arrangements for her body, Rafkin needed to get written permission from a member of her partner's family, the closest of whom lived several states away. Because her partner's will was not located, Rafkin was stripped of all dealings with any aspect of her partner's property. California's probate law dictates that upon death all arrangements and inheritance are left to a spouse. So, without a legal "spouse," all powers and inheritances are awarded to the parents. Rafkin's partner's estate fell by default into the hands of her father, a man who lives in the Middle East and who not only showed no interest in attending the funeral services, but also never inquired about the arrangements made for his daughter remains. He made it clear that he did not recognize Rafkin as his daughter's partner or heir. Indeed, with a probate lawyer by his side, the father asked Rafkin to make a list of what in the house was *his daughter's*. Rafkin has been ensnared in a lengthy and costly court battle ever since. Because of the insurmountable harm inflicted on her emotional and financial self, she now vows to fight for the legalization of same-sex marriage.

Rafkin's experience, I think, shows that gay and lesbian partners may need some degree of state protection. I am not proposing that governmental regulation is always fair and effective in intimate partnerships. Laws are not perfect. They have failed to protect spouses and their children from abusive partners, and they have discriminated against same-sex parents seeking legal custody of children (sometimes their own biological children). Again, Card's insistence about the limitations of marital laws is more than reasonable. Be that as it may, it seems to me that regulation is necessary to provide some degree of legal protection from, in this case, homophobia and heterosexism. Rafkin's story shows that when gay and lesbian couples are left to their own devices in a homophobic world, with no state protection, they run the risk of emotional, physical, and financial harm. Indeed, it seems that Card herself recognizes this risk and the need for legal protection when she explains how the lax requirements for retaining a marriage license may facilitate spousal abuse. As I understand it, Card's discussion calls for more regulation when it comes to people retaining marriage contracts. In this case, it appears that Card's position on regulation is favorable. [18]

This brings me to my second point. On the one hand, Card argues that marriage laws are too stringent and dangerously intrusive in terms of a quick dissolution or when the state grants spouses virtually unlimited access to one another. On the other hand, she goes on to claim that the state does very little to protect spouses from potentially abusive partners. When the regulations for entering a marriage are dangerously complaisant, Card implies that the state fails to mitigate the potential for "terrorism in the home." So, it is not clear to me where Card stands on the regulation issue: can it protect potential victims or is it necessarily "evil"?

I have argued that it is unclear how Card's proposed renewable contracts would actually work or how they would fundamentally differ from traditional marriage contracts. In addition, I have shown that Card's position on state regulation in intimate relationships is seemingly inconsistent: at one point she argues against regulation on the grounds that it hinders a quick dissolution (or divorce) and limits autonomy; yet, she goes on to imply that more regulation is needed when people seek out marriage contracts. As I see it, Card's analysis reminds us of the long time difficulty of finding the proper balance between individual freedom and governmental interference for the sake of protecting individuals from harm.

Endnotes

1. Claudia Card, *The Atrocity Paradigm: A Theory of Evil* (Oxford University Press, 2002), Chapter 7. It is important to note that her argument is against marriage in general and not exclusively same-sex marriage.
2. Among these are joint insurance policies for home, auto, and health; inheritance automatically in the absence of a will; benefits such as annuities, pension plans and Social Security; joint adoption and joint parenting.
3. Card, 152.
4. Card, 150.
5. Richard D. Mohr, *A More Perfect Union: Why Straight America Must Stand Up for Gay Rights* (Boston: Beacon, 1994).
6. Angela Bolte, "Do Wedding Dresses Come in Lavender? The Prospects and Implications of Same-Sex Marriage," in *Social Theory and Practice*, vol. 24, no 1 (Spring 1998), 111-129.
7. Card, 149.
8. Ibid.
9. Ibid.
10. Card, 154.
11. This point leads Card to conclude that the institution of marriage is evil: "Institutions are evil when it is reasonably foreseeable, by those with power to change or abolish them, that their normal or correct operation will lead to or facilitate intolerable harmful injustices" (140).
12. Card, 159.
13. Ibid.
14. Card, 157.
15. I would like to thank Victoria Davion for bringing this point to my attention.
16. Card favors domestic partnership arrangements. However, she is uncomfortable with the cohabitation requirement.
17. "Marriage: A Privilege or a Right?" *San Francisco Chronicle*, Sunday, January 20, 2002, p. 6.
18. Although she claims that such regulation would be "at the cost of considerable state intrusion into our lives." (159)

"Same-Sex": Oppression at the Speed of Light

Jason Matherly

The all-pervasiveness of utility possesses a singular look: invisibility. What we cannot produce a use-value for we must pass over in silence. Contemporary life, operating outside of representation, requires of us the perpetual production of that very thing absent from us. Production of the other, production of meaning: total saturation. And in the absence of uselessness, of meaninglessness? Life today possesses the lackluster sheen of a ceremonial gesture.

Thus it happens that the debate surrounding the institution of marriage presents a particular interest, since it embodies the ceremonial condition both in its being a ceremony as such and in its symbolic situation with reference to language. On the one hand, we have a religious context in which marriage is the symbolic union under God, gendered in the name of the Father. On the other hand, in the legal sphere, we have the language of "same-sex" to concern ourselves with. It is, of course, a term charged with the question of gender—but no more so, perhaps, than the rest of our linguistic cache. In any case, we find ourselves ultimately faced with a central, daunting concern: gender and identity as related to *power*. But these symbolic circumstances are, of course, necessary to be spoken of in terms of the ceremony.

That which signals our debt to the Law, that which "religion has taught us to refer to as the Name-of-the-Father,"[1] is that mechanism which governs operations of the symbolic order, structuring interactions including those of gender ideals. With regards to our contemporary social structure, strangled and strangling with symbolic-production, this presents a singular problem: how is one to identify a reference to that beyond language which constitutes the pact without which love cannot be realized? Although there exists in the guise of marriage a unifying bond, it is emptied of its significance in our inability to obtain such a reference—but it is of course at once flooded with that which we produce therein. Where it was an acceptance of the Name-of-the-Father, it is today the production in which we come to a simultaneous affect of sanity and psychosis, not to mention neurosis and perversion. Precisely, it is the production of effects—*special effects*.

"The genitalia," writes Jean Baudrillard, "is but a special effect."[2] Likewise sexuality, gender identity, even sexual difference. Where social, psychological, and cultural law was once placed in a structural context, today we find ourselves embedded in a deterritorialized reign of power. And this mode of oppression is distinctly reflected in the demands of ceremonial "rights," found, for example, quite literally in the sphere of governmental law.

The legal language of "same-sex" holds not so much a particular linguistic value as it does a general image, and therein lies the very object of our desire. On a cursory level, we may ask why this should be a particular matter of homosexuality when, after all, a biological male identifying as a female lesbian can marry a biological female who also identifies as lesbian. But neither can it be merely a matter of gender, since it is the *image* we desire and the challenge of reversal which seduces us.

No longer a matter of raw psychoanalysis, no longer a matter of raw production—today the issue becomes one of bodily fragmentation and the speed of information. As Paul Virilio points out, "it is not the *medium* which is the message, but merely *the velocity* of the medium."[3]

The current debate over same-sex marriage is being carried out on waves moving faster than any other debate of its kind has ever been. And just as the body playing out life in real-time upon the screen becomes little more than a fragmented image of a body "operating within the space of an entirely virtualized geographical reality,"[4] the debate becomes less a "real" debate than an impression of a debate glimpsed as a speed trail left at 186,282 miles per second. Perspective, it seems, just is not what it used to be.

And so, regardless of any outcomes—which it seems are now neither here nor there— we find ourselves at an unfixable point, out in space. True, the underlying forces of power are always inevitable and invisible, but one can still imagine, perhaps, a balancing act being carried out with the use of critical eyes. The hope—if hope we must resort to—is that those eyes are not blinded by the speed of things.

Endnotes

1. Jacques Lacan, *Ecrits: A Selection* (New York: W.W. Norton, 1977), 199.
2. Jean Baudrillard, *The Ecstasy of Communication* (New York: Semiotext(e), 1988), 32.
3. Paul Virilio, *The Information Bomb* (New York: Verso, 2000), 141.
4. Ibid, 16.

Parable of America

Dr. Samuel Bolivar George, III

Once upon a time, there was a small village in our land; the village was named "America." Because the village was so small, there was only one church, America Baptist Church.

One fine day at choir practice, Steve asked why all the baptisms at ABC were by full immersion. "Surely some people are too scared of the water to go all the way under," he said. The choir members suggested Steve go to the Board of Deacons.

Unfortunately, the deacons were not pleased with Steve's question. They said only deviant people even considered such things. Baptisms were always by full immersion and that was the way it had always been. In truth, one of the deacons had been sprinkled as a child in another village, but it was a secret he was determined to take to his grave.

"I don't want to be fully immersed, I want to be sprinkled," declared Steve. "No one else wants to be sprinkled," replied the deacons, "so why must you be so difficult?" Steve started asking the people at ABC and discovered about 10% agreed with his views on baptism and other things, too.

Steve and his friends decided if they did not fit in with the way things were done at ABC, they would form their own church, to be named America Methodist Church. There was an old, abandoned community center downtown that had been an eyesore for many years, but Steve and his friends thought that with some loving renovation it would make a splendid home for the AMC.

Steve asked the Town Council if he could buy the community center from the town so that AMC could renovate it and make it their beautiful new sanctuary. Sadly, though, all of the members of the Town Council were also members of ABC; they declared that Steve did not have the right to submit a bid on the property.

Steve and his friends were upset they had been denied their opportunity. Leslie suggested talking to the American

Civil Liberties Union, which they did. With the help of the ACLU, Steve and Leslie and the other prospective members of the AMC sued the Town Council for the right to purchase the property. Although Steve was no longer alone, he was being called "unpatriotic," "ungodly," and many other unkind things. Some people would no longer talk to him in public, and he started receiving hate mail.

During the trial, people said many things. The chair of the deacons claimed that it would weaken the institution of baptism at ABC if Methodists were allowed to sprinkle. Leslie answered that the folks of ABC were quite welcome to continue to practice baptism as they saw fit, but the folks of AMC should be entitled to do it their own way. The judge listened carefully to what both sides said and eventually ruled that Methodists were entitled to the same rights as every other person in America and that Steve and Leslie and the others had the right to bid on the abandoned community center.

Elections for Town Council were held not long after the judge issued her ruling. Steve decided he would run for election on a pro-AMC platform. However, the Mayor declared he thought that America should have only one church and proposed that the Town Council pass a "Protection of Baptism" act that would designate America as a sprinkling-free zone and turn the old community center into a Sanctity of Baptism Memorial. Many people who personally agreed with baptism by immersion thought that the Mayor and Town Council were going too far in trying to contradict the judge and restrict the rights of the Methodists. However, 56% of the people who went to the polls agreed with the Mayor, and to this day, America has only one church.

Brief Refutations of Some Common Arguments Against Same-Sex Marriage

Benjamin A. Gorman

In recent months, there has been a renewed interest in the question of whether or not same-sex couples should be allowed to marry. The ruling of the Massachusetts Supreme Court, the same-sex marriages performed in California, New York, and Oregon, and the recent vote in the U.S. Senate, have all served to bring this issue into the national consciousness. This renewed interest has spurned a national debate. I have seen and heard a number of arguments proffered by conservatives on television, radio, and in the print media, each attempting to show why same-sex marriage should not be allowed. There have been a number of philosophy papers published on this topic, which all seem to deal with interesting philosophical issues relating to the acceptability of same-sex marriage. Unfortunately, these discussions do not deal with the issue as it is seen in general society. Since it is my opinion that there is no good reason why same-sex marriage should not be allowed and that there is no adequate reason for same-sex couples to be treated any differently than my wife and me, I feel that it is necessary to refute some of the arguments that are circulating in the general public.

Here I will discuss several of the arguments that I have heard, and I will attempt to show why each of these is inadequate. This paper will be broken into several small sections. In each, I will deal with a different argument against same-sex marriage and show why it is faulty. In a brief final section, I will discuss some conclusions that can be drawn from the discussion.

I. The "Religious" Argument

One argument I have heard deals with the religious nature of marriage. The argument runs something like this: marriage is a religious institution; it deals with the union of a man and a woman before the eyes of God; most churches do not recognize same-sex marriage and the Bible states that homosexuality is a sin; therefore, same-sex marriage should not be allowed.

There is a kernel of truth in this argument. Marriage is, in fact, a religious institution. This seems to be an obvious statement. Where this argument goes wrong is that it does not seem to recognize that marriage has more than one meaning. If marriage were only a religious institution, then the only way to get married would be by a religious figure. This, of course, is not the case. People can be married by a justice of the peace or by a judge. Neither of these is a religious figure, yet the state recognizes marriages performed by them. So it seems that, at least according to the state, marriage is more than a religious institution. We can say, then, that marriage is (1) a religious institution and (2) a legal institution.

More needs to be said about what it means for marriage to be a religious institution. We can imagine a church (say, Church X) that refuses to recognize interracial marriage. If the state tried to force Church X to change its position on interracial marriage, Church X might appeal to the first amendment and say that the state has no right to force it to recognize interracial marriage. We can certainly tell Church X that we do not like its practices, but the state has no standing to require that it recognize interracial marriage. Similarly, the state has no means to require that a given church recognize same-sex marriage. We may not like it, but we have no room to complain. The state cannot force a religious institution to change its basic tenets.

Although the state cannot demand that a given church recognize same-sex marriage, it does not follow from this that the state should not recognize same-sex marriage. Think again of the interracial couple that wants to get married. Although the state cannot require Church X to recognize their marriage, it can be demanded, however, that the state recognize it. It is apparent that it would be an overt act of discrimination for the state to deny an interracial couple the right to marry. The fourteenth amendment requires that each person enjoy equal protection under the law. This protection includes protection against discrimination. From this it follows that the interracial couple can demand that the state permit them to marry. Otherwise, they would not be receiving equal protection.

Since it has been shown that the state must recognize the marriage of an interracial couple, it seems that we can make the same argument regarding same-sex marriage. The state cannot compel a church to recognize same-sex marriage, but the state can be compelled to recognize it. Any limitation on the right of a couple to get married seems to be an overt act of discrimination. This includes a same-sex couple. Unless we are willing to allow the state to discriminate against people simply on the basis of their sexual orientation, we must demand that the state sanction same-sex marriage.

The point, then, is this: when one is speaking of marriage as a religious institution it might be acceptable to say that same-sex marriage should not be allowed. However, when one is speaking of marriage as a legal institution, it must be said that the state should recognize same-sex marriage. Otherwise we are supporting state-sanctioned discrimination. For the remainder of this paper I will be discussing marriage as a legal institution.

II. The "Society is Against It" Argument

Another argument that has been presented is that the citizens of the United States do not want to allow same-sex marriage. According to this argument, since most Americans do not support same-sex marriage, it should not be allowed. While I am not sure that most Americans do not support same-sex marriage, we can imagine a world where most Americans do not. The question to be asked, then, is this: in the possible world where most Americans do not support same-sex marriage, would that be an acceptable reason to prohibit same-sex marriage? The answer to this question is no. Imagine a possible world where most Americans support discrimination against ethnic minorities. Would it be acceptable for the government to discriminate against ethnic minorities if that were the will of the people? I hope that everyone reading this would say that it would be unacceptable for the government to act in such a way. Simply because the majority of people want to discriminate against a particular group does not mean that such discrimination should be performed. It would be unjust for a government to discriminate against a group of people based on accidental factors. Similarly, even if the majority of people supported discriminating against same-sex couples (which I think is not the case), that is not an acceptable reason to allow such discrimination. Thus, we cannot discriminate against same-sex couples based on the supposed will of the people. To do so would be unjust.

III. The "No Benefit" Argument

It has also been argued that there is no reason to for same-sex couples to get married because they can gain no additional benefit from it. It is argued that monogamous same-sex couples can have commitment ceremonies, can get the necessary legal documents to allow for hospital visits in the case of accidents and terminal illness, can include each other in their wills, and can even create legal agreements to allow for a distribution of wealth and possessions if there should be a split. Given this, the argument claims, there can be no added benefit for a same-sex couple to be married. A same-sex couple can have all of the same rights as a heterosexual couple. Thus, there is no reason to allow same-sex marriage.

I suspect that the easiest way to refute this argument is to appeal to the interracial couple again. Would it be acceptable to say to an interracial couple that they can have a commitment ceremony and all of the necessary legal documents to make it as if they were married, but not actually married? Would this solution be sufficient to avoid discriminating against the interracial couple? I think that we would all agree that the answer is no. If we treat people differently based on their accidental properties such as race, age, or sexual orientation, we are treating them unjustly. It does not seem to matter that you can find a way to make it as if you were married, but not actually married. To deny same-sex couples the right to marry is simply discriminatory. That they can get legal documents and have commitment ceremonies does not seem to be enough.

I suspect (though I am not positive) that there is something to be added to a relationship by getting married. Some people claim that being married is really no different from being in a monogamous relationship. The only difference is that there is a piece of paper stating that both people agree to be monogamous. I suggest, however, that being married in the eyes of the state might add something to a relationship. Further, prohibiting same-sex marriage has the effect of saying that same-sex relationships are not as meaningful and important as heterosexual relationships. Ultimately, however, none of this matters. Prohibiting same-sex marriage is discrimination, and discrimination is unacceptable.

IV. The "Procreation" Argument

Another argument I have heard deals with the purported purpose of marriage. It is claimed that the purpose of marriage is to have children. Since same-sex couples cannot have children, they have no reason to be married. There are two obvious flaws with this argument. First, many same-sex couples do have children. Second, having children is not the only purpose of marriage. Even if these were both true, the argument can still be refuted. Let us grant, for the sake of argument, the following two premises: (1) same-sex couples cannot have children, and (2) the purpose of marriage is to have children. From these premises it follows that only couples that can have children should be allowed to be married. Imagine two heterosexual people, both of whom happen to be infertile. Is it acceptable to say that they should not be permitted to get married since they cannot have children? I'll go out on a limb and say that everyone would agree that an infertile heterosexual couple should be allowed to get married even though they cannot have children. The obvious implication here is that we cannot deny a same-sex couple the right to marry simply because they cannot have children.

It might be argued that there is a difference between being an infertile couple and being a same-sex couple. One might argue that the infertile couple does not choose to be infertile, but a same-sex couple chooses to be in a relationship that does not allow for procreation. There is increasing evidence that sexual orientation is not an active choice, but rather something that you are born with. So an easy response to this objection is to say that a same-sex couple does not choose to be in a relationship that does not allow for procreation.

This response is not, however, necessary to show that it is wrong to discriminate against same-sex couples based on their ability to have children. Even if we grant that a sexual orientation is a choice; that is still not sufficient to show that they can be prohibited to marry. Imagine for a moment that a heterosexual couple decides before they get married that they do not want to have children. Imagine further that the man has had a vasectomy and the woman has had tubal ligation. We now have a situation were a couple has actively chosen to be in a relationship where there is no possibility of having children. Would it be acceptable to prohibit this couple from marrying simply because they choose be in a relationship where there is no possibility of having children? I suspect that the overwhelming response to this question would be that it is discriminatory to prohibit such a couple to marry.

If we are not willing to discriminate against a heterosexual couple based on their inability to have children, even if this inability is based on an active choice, then we cannot discriminate against a same-sex couple based on their ability to have children. Thus, the conclusion to be drawn is this: even if we grant that the purpose of marriage is to have children *and* that sexual orientation is a choice, we still have no basis for not allowing a same-sex couple to be married.

V. Conclusion

It seems worth noting that the arguments against same-sex marriage which I mention share a common theme. That theme is intolerance. Similarly, my refutations share a common theme. That is this: we should not discriminate against people. Thankfully, we, as a society, are finally getting closer to the point at which we do not discriminate against people based upon their race, sex, or ethnicity. It is time for us to do the same with regard to sexual orientation. It is unjust to unfairly discriminate against anyone, and prohibiting same-sex marriage constitutes unfair discrimination.

In the preceding pages, I have sketched simple refutations for some of the more common arguments against same-sex marriage. I do not claim to have conclusively proven that same-sex marriage should be permitted (although I certainly believe that to be the case). I do think, however, that I have shown that many of the common arguments against same-sex marriage are fundamentally flawed; they are based upon prejudice and discrimination.