Marriage Based on Love and Trust, Not Multiplying

Alan E Garfield

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I s there really any good reason why gays and lesbians should not be allowed to marry? That question will be front-and-center this week as the Supreme Court hears arguments in two same-sex marriage cases. Tuesday concerns the challenge to Proposition 8, the California referendum that amended the state constitution to provide that marriage is between only a man and a woman. Wednesday is the challenge to the Defense of Marriage Act, the federal law that restricts marriage benefits (such as the unlimited spousal deduction from estate taxes) to members of opposite-sex couples.

Those opposing same-sex marriage offer a smorgasbord of reasons for denying same-sex couples the right to marry. But their arguments will not pass constitutional muster if they amount to nothing more than a bare desire to stigmatize gays and lesbians. So let’s see what they’ve got.

For starters, opponents say marriage is for biological procreation. Therefore, since gays and lesbians can’t procreate, they shouldn’t be allowed to marry.

But if marriage is about procreation, why can infertile or elderly heterosexual couples marry? And why can heterosexuals who don’t want children marry?

Surely, marriage is about more than being fruitful and multiplying. It’s also about two people making a lifelong commitment based on love and trust. Just think of the promise couples make in the traditional wedding vow “to love and to cherish, till death do us part.”

When the procreation argument fails, same-sex marriage opponents turn to childrearing. The ideal setting for rearing children, they say, is with a father and mother.

The only problem is that the science doesn’t back them up. Empirical studies indicate that same-sex couples are just as fit as heterosexual couples to raise children and that their children are equally well adjusted.

Besides, our society doesn’t stop dysfunctional heterosexuals from marrying even if most of us wouldn’t trust them to raise a goldfish. So how can we say that marriage is reserved for model parents?

When all else fails, opponents say gay and lesbian marriages are immoral. And certainly, many people believe they are. But should their morality dictate the rules for the rest of society?

Of course, many laws coincide with people’s notions of religious morality. Laws against murder and theft seem to come right out of the Ten Commandments.

But the Supreme Court has made it clear that religious morality is “not a sufficient reason for upholding a law.” Instead, there must be some secular purpose behind the law (such as a societal interest in not having people killed or property stolen).

After all, there is no one religious morality. Indeed, many liberal Christian and Jewish groups recognize same-sex marriages. Our Constitution also requires separation of church and state.

And religion can be a two-edged sword. It can inspire a Martin Luther King, Jr. But it can also be used to justify discrimination.

Indeed, prior to the Civil War, religious leaders pointed to biblical slavery to legitimize southern slavery. Almost a century after the War, a Virginia judge upheld a ban on inter-racial marriages by saying that “Almighty God” had placed the races on separate continents because “he did not intend for the races to mix.” And a Supreme Court justice in the late-19th century justified a prohibition on women lawyers because it was “the law of the Creator” that a woman “fulfill the noble and benign offices of wife and mother.”

Ultimately, no good reason exists for denying gays and lesbians the right to marry. The only true reason is to stigmatize them as inferior to heterosexuals.

Even states like Delaware, which give same-sex couples all the legal rights of marriage but not the title, are branding gays and lesbians as second-class citizens. Such a distinction, as the California Supreme Court said of Proposition 8’s similar legal effect, “serves no purpose, and has no effect, other than to lessen the status and human dignity of gays and lesbians.”

Justice Anthony Kennedy said “persons in every generation” are welcome to invoke the Constitution “in their own search for greater freedom.” That time has now come for gays and lesbians.

I say let freedom ring.

Alan Garfield is a professor at Widener University School of Law.