A Commentary on the Old Saw that Same-Sex Marriage Threatens Civilization

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Discussions of same-sex marriage frequently entertain the notion that
civilization is somehow at stake were a society to award legal sanction to it, and to
gay rights more generally. Typically, those who express concern for negative
civilizational consequences have in mind Western civilization, and more specifically
Christian civilization. This civilizational concern will often be amplified by the
implication that opposite-sex, or opposite-sex monogamous marriage is a timeless
human universal. Any other marital regime is presumed to be an aberration, most
likely the result of grave moral depravity of a sort supposedly facilitated by the
modern rights-based society.

Sometimes this line of denunciation of same-sex marriage and gay rights
more generally is coupled with the suggestion that an overly “liberal” United States
is out-of-step with, or must maintain a moral distinction from, other similar political
regimes. Hence, extending legal recognition and attendant benefits to same-sex
couples is to depart from the true nature of our political values and our democratic-republican regime. In sum, same-sex marriage and gay rights generally are held to be inconsistent with pretty much everything worthy: humanity-at-large as people and human communities supposedly have existed throughout history, modern liberal democracy, and even civilization itself.

The purpose of this chapter is to cast serious doubt on these critiques of same-sex marriage. It challenges the assumption that the current Western conception of “traditional” marriage is a human universal and thus a constant across time and place, and that erosion of the primacy of place of “traditional” marriage will have very serious negative consequences to society and civilization. It is not our purpose here to cast doubt on the self-understandings of the detractors of same-sex marriage, or gay rights more generally; to the contrary, we accept their concerns at their face value, and accept their contributions to the world’s plurality. But one might well ask; if tolerance of same sex relationships is a sign of civilizational decline, then is the reverse also true? Is intolerance of same sex relationships a sign of concern for a civilization’s health? Would anyone really argue that those six or seven countries where gay persons face execution for homosexual behavior are those where civilizational concerns are held most paramount?

We also do not take a position on the desirability of same-sex marriage for any couple. Each couple, and even each set of intimates outside the pair-bond paradigm, must decide for themselves whether to obtain legal recognition or formalizing of their relationship, and thus make their own contribution to the conversation regarding the many benefits and burdens of same-sex marriage, whether these be economic, political, legal, or social.

We also assume, however, that these civilizational concerns are empirically testable in the context of the debate over same-sex marriage, and so in this chapter provide counterexamples to any claims regarding hegemonic and universal norms against same-sex relationships and homosexuality more generally. In light of that empirical survey, the subsequent discussion suggests that western civilization, and modern liberal-democracies in particular, are realizing their core moral and political values of equality and respect for the dignity of each individual human being when they extend legal recognition to same-sex couples, rather than reject or denounce their claims to full inclusion.

While serious public advocacy of “same-sex marriage” became a subject of great controversy in Western countries in the late twentieth and early twenty-first centuries, love and intimacy have always existed between persons of the same sex and/or gender. Such relationships sometimes even have validated by cultural recognition and, less frequently, by institutional and legal formalities. Some societies have socially sanctioned and even culturally or religiously solemnized same-sex intimate partnerships. A very large number of societies, probably the majority across time, have socially recognized multiple partner, usually polygynous, relationships, including the ancestral societies of the Judeo-Christian tradition. Marriage as limited to “one man and one woman,” far from being traditional, is actually a less common pattern than its modern defenders acknowledge. Of course, most societies with an institution of legally licensed civil marriage, a more recent
cultural development, have limited it to heterosexual pairs, though many also have been accepting of polygamy.

**Non-Western Traditions of “Two-spiritedness” and Other Same-Sex Relations**

As far back as the mid-20th century studies by Ford and Beach, anthropologists examining cross-cultural data have confirmed that same-sex relationships of intimacy and family have existed throughout history and across cultures. (Ford and Beach, 1951.) Such studies acknowledge that same-sex intimate behavior has never been shown to the predominant sexual activity among adults in any society. However, in about two-thirds of societies, same-sex relations were socially acceptable and not considered deviant, at least for certain members of the society. (Davis and Whitten, 1987.)

Numerous cultures believe some people have the “spirit” of both male and female, thus taking on a gender-role different from that conventionally assigned to their biological sex or adopting a “third gender” altogether. Modern anthropology suggests that “gender diversity,” often labeled “berdache,” while never a dominant form, was a conventional behavioral pattern among many tribal peoples. In almost all instances where a two-spirit person would have intimate relations with a conventionally-gendered person, the partner of two-spirit person was not perceived to be “homosexual” or in any way gender-diverse themselves. (Jacobs, 1997.)

Many Native American peoples have recognized, sometimes venerated, and sometimes even feared the power of “two-spirit” persons. Such individuals might have special cultural roles, serving as traditional healers or tellers of fortunes, handling and burying the deceased, conducting certain sexual rites, and preserving traditions, songs, and artisanship. Biologically male two-spirit people might engage in male activities such as sweat lodges and warfare, but they also might take on traditional female roles such as gardening, cooking, clothes making, and child rearing.

With some variation between tribal groups, two-spirits might form romantic bonds and engage in intimate relations partners of either sex, sometimes solemnized as marriages. Some tribes saw an advantage in having a biologically male two-spirit person marrying a widower, which provided a nurturing new mother without any chance of creating new children whom the new step-mother might favor. In another variation, Lakota *koskalaka* women, loosely and colloquially translated as “dyke” by Paula Gunn Allen, could be joined in a socially validated union via “rope baby” ceremony. (Allen, 1992.)

Native Hawaiians and numerous other Polynesian groups also have exhibited a richer and more complex tradition of romance, sex, and intimacy than that tolerated by Western conventions by the early 20th century. Two-spirit individuals living gender roles opposite to their biological sex is reflected in the *mahu* of Hawaii and elsewhere, along with the Samoan *fa'afafine* (a male who lives “like a woman”) and *fa'atama* (a female “like a man”) and the Tongan categories of *fakaleiti* and *fakatangata* (again, woman-like males and male-like females). The *mahu* and related forms included biological males living as females, often from a very young

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1 Though the term “berdache” is a generic term, still commonly used by anthropologists, though it is increasingly rejected by Native Americans and other tribal peoples, who object to the term’s etymological roots as a reference to a “kept” prisoner or boy forced into sexual service. It has widely been replaced with “two-spirit.” (Jacobs, 1997.)
age, and who generally entered into romantic and sexual relationships exclusively with males. Thus, the mahu themselves reflected gender-diversity, but their relationships with others reaffirmed a gendered, heterosexual norm of intimacy. (Morris, 1990; Davis and Whitten, 1987.)

However, some Pacific island cultures also included the aikane relationship, which denoted an intense bond between two men, sometimes between a person of chiefly status and a commoner. The aikane role differed from that of the mahu in that there was no gender-diversity, since the aikane otherwise manifested the gender congruous with their biological sex, and even married opposite-sex spouses with whom they reared children.

Though there is no doubt that many if not most aikane relationships included sexual relations, the culture was indifferent to whether or not sexual contact was involved the fact that the traditional Hawaiian culture did not bother to take account of that issue further illustrates the difficulty of drawing parallels to Western cultural terms such as “gay” or “homosexual.”

South Asian “hijra” also do not fit the cultural norms of either gender. Hijra were formerly but somewhat erroneously equated with European concept of “eunuch,” though only a few hijra undergo castration or other genital surgery. Most hijra are biologically male (or hermaphroditic), but they consider themselves to be of a third gender. Their dress and linguistic forms follow female gendered patterns, often with conscious exaggeration. Hijra may live together in intimate family groups, but they also may be involved with men who are considered heterosexual. Some hijras may even “marry” a male intimate partner, though such marriages have not usually been formally recognized. (Nanda, 1998; Davis and Whitten, 1987.)

In traditional China, same-sex relationships were never treated illegal or “sinful,” though some Confucians argued that men should adhere to gender-assigned public social roles. Some Taoists argued that exclusive homosexuality was an “unbalanced” pairing of yang and yang, while others argued that every person contains some mix of yin and yang, so individual same sex relationships might still be “balanced.” During the millennial span from the Song to the Qing dynasties, same-sex relations, especially those between men, were publicly practiced and expressed in art and literature without significant censure or even much concern. A Chinese practice of “sworn sisterhoods” continued into the twentieth century, in which two women would contract legal binding agreements of mutual intimacy and support, perhaps even including an agreement to provide joint support of children. The Golden Orchid movement of marriage resisters in the late 19th and early 20th century was consider even in its day to be associated with lesbian sexuality, sometimes in pairs and occasionally in intimate relations not limited to couples. (Lau and Ng, 1989; Ng, 1998, 1997.)

In several parts of Africa, a practice of “woman marriage” existed into the early twentieth century, whereby a successful older childless woman contracted with a younger woman to have children. The older woman might be married to a man or might not. Among the Nuer of Sudan, for example, the “woman-husband” married her wife in exactly the same way as a man marries a woman. A male kinsman or

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\[2\] The traditional relative tolerance of same-sex relationships among Native Hawaiians renders somewhat ironic the public backlash against the Hawaiian Supreme Court’s 1989 decision in *Baehr v. Lewin*, which held that equal protection guarantees extended to same-sex couples. The decision was “overruled” in 1997 by a public referendum amending the state constitution.
neighbor would be engaged to conceive children with the wife, and perhaps to offer ongoing assistance to the couple and child. He may be rewarded for his service with a “cow of the begetting” at the time of the child’s eventual marriage. A wealthy woman might have several wives and enjoy most privileges of a male head-of-household. Like any other husband, she could demand damages if a wife had relations with men without her consent. As the father of the children, she received “the cattle of the father,” and her siblings would receive the other cattle which go to the father’s side in the distribution of bridewealth. The practice of “boy-wives” has also been noted among some African cultures, where an older male formally pairs with younger male via all the essential cultural protocols of marriage. Same-sex partnerships of these kinds became less acceptable by mid-twentieth century, particularly under pressure from Western missionaries and colonial governments. (Evans-Pritchard, 1951; Davis and Whitten, 1987.)

All these various traditional forms are a function of cultural tolerance for a degree of gender variety that only recently is beginning to re-emerge in modern Western society. In most if not all societies, some children are to found exhibit a misalignment as to expected gender behavior and biological sex, often at a very young age. This misalignment is reflected through such things as clothing preferences and interests in forms of play and work associated with the opposite gender. The West generally has sought to redirect such children to the gendered behavior conventionally congruent with their biological sex. In other traditional societies, with a tolerant and more a capacious understanding of gender and personal identity, such children could grow into adulthood being accepted into a socially validated role reflecting their preferred personal identity not constrained by their biological sex.

In the period of Western colonial expansion and cultural imperialism, the more “modern” Americans and Europeans viewed both two-spirited individuals and their same-sex intimates as deviant and homosexual. Modern Westerners also were more rigid in demanding congruence between biological sex and gender behavior, and generally intolerant of males or females who do not adhere to gender norms. “Indeed, it has been argued that extreme homophobia is a distinctly Anglo-American trait.” (Davis & Whitten, 1987, 80.) Not surprisingly, contemporary indigenous and traditional peoples have been influenced by Western cultural patterns, and have become conflicted, if not overtly hostile, in their attitudes toward personal relationships between persons of the same sex. For example, despite traditional recognition of “two-spirit” persons, a number of Native American tribes recently acted to limit legal marriage to one man and one woman. And, though the post-apartheid South African Supreme Court has mandated equal rights to same-sex couples based on the country’s new constitution which prohibits discrimination on the basis of sexual orientation, a significant faction within the governing African National Congress has labeled homosexuality un-African and criticized the movement to legalize same-sex marriages.

**The West’s Oscillating Attitudes Towards Gender Diversity and Same Sex Relationships**

The story of the West’s early acceptance of same-sex relationships is generally well-known; no one with even passing familiarity with the Greeks can ignore the fact that tolerance, even celebration, of same sex intimacy is a Hellenic “traditional value” lurking beneath the surface of Western Judeo-Christian society.
Christianity increasingly marginalized and persecuted such relationships, though they clearly continued to exist. As Rictor Norton, Dirk Jaap Noordam, and others have indicated, such relationships, sometimes denominated “marriages” by those involved, were known in most parts of early modern Europe. (Norton, 2006; Noordam, 1989.) The more controversial works of John Boswell on same-sex unions in pre-modern Europe makes the same point. (Boswell, 1994, 1981.)

Into the early twentieth century, many Western societies also had traditional arrangements in which intimate relationships of people of the same sex were socially accepted, even if not formally recognized. With its “Molly houses” of the 18th century and its Victorian reputation as “Sodom on the Thames,” London was well-established as a place that wrestled with conflicting impulses about same-sex intimacy. The phenomenon of “Boston marriages” or “Wellesley marriages” involving intense intimate relationships between two women, allowed such couples to live together, travel and socialize together, and generally provide mutual support as domestic partners. Sometimes these relationships included a degree of formal legal recognition through contract, joint property ownership, and trusts or wills. Though their relationships were treated as acceptable under the pretense that they were non-sexual (though some, even many, were lesbian relationships), such “women-identified women” existed outside the scope of conventional heterosexuality in a bond that functionally paralleled marriage. Early twentieth century Paris, for example, provided a haven for an outstanding community of same-sex couples, both French and expatriate. Gertrude Stein and Alice B. Toklas established a renowned literary and artistic salon, while nearby American journalist Janet Flanner lived with her French girlfriend Georgette LeBlanc, and American heiress Nathalie Barney and the poet Renée Vivien also held court. Sylvia Beach and her lover Adrienne Monnier were the proprietors of the Shakespeare & Company bookshop, legendary in the 1920s and 1930s as a home for the likes of James Joyce and Ezra Pound.

By the 1950s, urban enclaves in America and elsewhere were opening wherein same-sex couples could live relatively unmolested, if not completely freely. In San Francisco in 1955, Del Martin and Phyllis Lyon, a lesbian couple, joined with other lesbians to form the Daughter of Bilitis, a social club and activist organization that eventually spread to San Diego and Los Angeles, to Denver, Chicago, New Orleans, Detroit and Cleveland, and to Philadelphia and New York. The Bilitis publication, The Ladder, first edited by Lyons, continued in circulation until 1970, and provided advocacy, advice, and community for lesbian and gay individuals and their families and supporters. As first president of the organization, Martin called for lesbian women to step out into the open and confront “the evils of ignorance, superstition, prejudice and bigotry.” As she wrote in the first edition of The Ladder, “Nothing was ever accomplished by hiding in a dark corner. Why not discard the hermitage for the heritage that awaits any red-blooded American woman who dares to claim it?” (Gallo, 2006.)

An important historical footnote: After living in a committed relationship for 55 years, Del Martin and Phyllis Lyon were married in June 2008, the first same-sex couple married in San Francisco in the aftermath of the California Supreme Court’s decision mandating the recognition of equal marriage rights. In a sign of how far things had changed, San Francisco Mayor Gavin Newsome officiated. In August 2008, Del Martin died at the age of 87. (Id.)
Recognition of Equal Marriage Rights

The eventual recognition of equal marriage rights by several national governments, and by the American states of Massachusetts, California, and Connecticut, was made inevitable given that the debate over same sex marriage is taking place at a time in which the very nature of marriage has been undergoing dramatic changes in the West, and, to some extent, elsewhere in the world. The changes in the lived experience of marriage, concomitant changes in legal institutions of marriage and family law, and the broader pressure toward equality in civil and political rights made it increasingly difficult throughout Western society to deny the logic of equal marriage rights.

The 20th century saw a series of profound changes in the social norms that define the roles and behavior of married couples. Andrew Cherlin and others have noted that the traditional “institutional marriage,” which gave priority to the social and even economic interests of the family and the community, gave way to the notion of “companionate marriage,” which prioritized the emotional interests of the couple, and then to the “individualized marriage,” which emphasized personal choice and self-development. This was reflected in the rise of divorce and its rapid social acceptance, and in the increase in the number and variety of cohabiting relationship, ultimately including same sex relationships. (Cherlin, 2004.) Given such fundamental changes in the very nature of marriage, the impulse toward same sex marriage has become increasingly hard to resist. However, with superficial irony but perfect predictability, these fundamental changes in the practical realities of heterosexual marriage have been accompanied by a backlash against same-sex relationships and an increasing conviction as to the symbolic significance of the traditional vision of marriage.

As William Eskridge argues in The Case for Same Sex Marriage, once the focus of marriage is on interpersonal commitment, denying same sex couples the right to marriage cannot be seen as anything other than denying gays and lesbians the same rights that heterosexuals enjoy. Interestingly, some critics of same sex marriage actually agree with this point, and explicitly argue for a return to an institutional conception of marriage. For example, conservative California Assembly Member Tim Leslie has argued that “if the central purpose of marriage is the spouses’ happiness,... then heterosexual-only wedlock is indeed discrimination.” But, he goes on, the belief that “the overriding purpose of marriage is the spouses’ mutual pleasure,” the belief that “companionship and sexual pleasure are matrimony’s preeminent ends,” seems to him a deviation “from what every culture in history has recognized as the heart of marriage: the begetting and education of children.” Though this might be disappointing to his constituents, Leslie insists that individual “happiness’ produces no definitive benefit for society, whereas the rearing of children clearly does,” so that “it makes sense for society to support traditional marriage alone,” and “allowing same-sex spousal unions makes no sense.” (Leslie, 2004.)

In addition to changes in the social purpose of marriage, the stigma against same-sex relationships is slowly eroding in the face of the modern gay rights movement, as well as experience and research that demonstrates that same sex couples are not inferior to, or even much different from, heterosexual couples. “Overall, research paints a positive picture of gay and lesbian couples and indicates that they tend to be more similar to than different from heterosexual couples.” (Kurdek, 2005.) There are few differences in terms of the various factors indicative
of relationship health, and, where differences do exist, they more often reflect better functioning within same sex couples. That is, compared to married heterosexual couples, gay and lesbian couples tend to share household chores more fairly and resolve conflict more constructively. This seems to be true even when couples move into parenting. That is, the relationships of gay and lesbian couples change to accommodate the presence of children in essentially the same ways as those of heterosexual couples. Similarly, research in developmental psychology has consistently shown there are no significant differences between children raised by lesbian and gay couples and those raised by heterosexuals. Such empirical research served to confirm the general public’s increasing experience with (if not comfort with) neighbors, friends, and co-workers in same-sex relationships. This eventually helped smooth the path toward changes in laws relating to sodomy statutes, discrimination in the workplace, and hate crimes, and these inevitably led to further demands for equality and full civil rights.3

Many jurisdictions proceeded in a somewhat piecemeal fashion to extend legal benefits to those in same sex relationships. Several jurisdictions graduated to offering more complete recognition in the form of so-called “civil unions” or other domestic partnership alternatives. Many have complained that such alternatives were not a legal victory for same sex couples. Instead, such alternative arrangements cannot help but cement an imbalance between same sex and heterosexual couples. For example, a close examination of the rhetoric of those touting such alternatives often betrays a sense of apprehension and even fear as the ultimate, underlying rationale for refusing to put same sex relationships on the same grounds officially sanctioned marriages. Rather than prepare the ground for the eventual acceptance of equal marriage rights, such inferior arrangements validate the dominant society’s fears of gay and lesbian identity, and continue to trumpeting heterosexual primacy. (Thomas, 2005.) Eskridge and other advocates, on the other hand, argued that societies may need to get comfortable with some sort of intermediate institution (like registered partnerships or civil unions) before they can become tolerant of same sex marriage. (Eskridge and Spedale, 2006.)

Marriage equality continued as an important goal, even in places like California and Connecticut, where alternative legal arrangements offered same sex couples virtually all benefits the state offered via legal marriage. Indeed, while the research confirms that gay men and lesbians form committed relationships and parent successfully, it also indicates that the very denial of marriage rights does disadvantage same sex couples. After all, legally and socially sanctioned marriage does provide significant tangible and intangible benefits in terms of social, cultural, legal, economic, and political advantages. Obviously, many same-sex couples feel the same emotional need that heterosexual couples do to have society recognize their commitment to each other. They also seek the security and financial benefits provided through the hundreds of legal advantages automatically available through

heterosexual marriage. Even through complex and expensive alternative legal arrangements under contract and property law, same-sex couples may not be fully able to share health and retirement benefits, take bereavement leave after a death in the family, file joint tax returns, benefit under property and inheritance laws, or visit loved ones in medical facilities. In addition, many same-sex families include children, whether the biological offspring of one of the partners or adopted, and require the protections and obligations of marriage under family law.

Same-sex marriage advocates parallel their cause with the earlier struggle to permit interracial marriage. Eventually, societies rejected the putative equality of anti-miscegenation laws that prohibited the marriage of a white to a person of color. Same-sex couples similarly seek the freedom to choose equally between male and female partners. The so-called “equal application” argument accepted in many cases permitting bans on same sex marriage parallels an argument rejected in the U.S. Supreme Court decision in Loving v. Virginia (1967), e.g., that a race-based ban that applies equally to blacks and whites is not a denial of equal protection because it applies to everyone. Thus, some have argued, a ban on same sex marriage applies to all persons equally, both straight and gay. To follow this line of argument, however, is to accept that social and legal discrimination is unobjectionable so long as it is equal, rather than to reject discrimination as wrongful in and of itself without significant justification. The context of racism, as the Court in Loving to its credit found, casts a shadow over the virtue of equality in marriage discrimination, tarnishing it; similarly, so too does the context of heterosexism or heteronormativity cast a shadow over any positive valence equality likewise brings to the denial of same-sex marriage to both gay persons and non-gay persons.

An opposite approach, initially most common among libertarians, but recently including centrists like legal scholar Douglas Laycock (2008) and religious scholar Tony Campolo (2008), argues that the state should get out of the business linking legal benefits to any religious sacrament. Instead, the state should offer only civil recognition to all relationships, including those of heterosexual couples, leaving religious consecration a private affair. Some American states, such as New Jersey and Vermont, as well as foreign jurisdictions such as Denmark, have established a legal status (often labeled “civil union”) for same-sex couples (and sometimes heterosexual unmarried partners) that have essentially all the legal attributes of marriage without the word. However, no such jurisdiction has eliminated legal “marriage” for heterosexual couples so as to put same sex couples on an equal footing with opposite sex couples.

Some gay rights activists and scholars such as Michael Warner and Jeff Redding have cautioned that the fight for same-sex marriage may leave those who do not want to subject their intimate personal relationships to regulation by the state without a basis for claiming social respect or legal protection. Furthermore, they and others note, even where there has been relative tolerance for or recognition of same-sex relationships, this did not mean an acceptance of all varieties of intimate relations. Often, tolerance extends only to those relationships which parallel stereotypical heterosexual monogamous pairs.

Critics such as Warner argue the priority should be on making certain legal benefits now connected with marriage available to those in non-traditional relationships, whatever their orientation, or in no conventionally recognizable relationship form at all. He complains that a “sexual shaming” lurks behind the quest for same-sex marriage, making it consistent with efforts to close down
bathhouses, stigmatize non-monogamous sexuality, and in some cases, impede safe-
sex education by foreclosing discussion about healthy forms of non-monogamous relationships. (Warner, 1999.)

Redding has argued, in a related fashion, that while many involved in same
sex intimacies want to identify as “gay,” some do not, and that this is especially
common in the non-Western world. Many such persons do not necessarily
understand same sex attraction as first and foremost a sexual identity, such that
“their gayness or homosexuality is deeply interwoven with personal experiences”
and understandings of religion and culture. (Redding, 2006.) Redding argues that
this means, among other things, that a hegemonic personal law which privileges
couples who at least aspire to permanence in a state-sanctioned marriage may well
be inconsistent with the very dignity for all that so many see as the central value in
the pursuit of marriage equality. (Redding, 2008.)

The Backlash against Marriage Equality

Fundamentalist religious movements have largely spearheaded the
traditionalist backlash against legal benefits for same-sex relationships. Some claim
religious law only permits heterosexual marriage. Others insist that the
government’s interest in marriage is solely in promoting (and regulating)
procreation, which they argue justifies refusing marriage to same-sex partners. This
backlash has resulted in legislation and constitutional provisions prohibiting a
jurisdiction from giving marriage benefits to same-sex couples. Several American
states and the U.S. federal government have enacted prohibitions or severe limits on
extending marriage beyond heterosexual pairs, and sometimes, as in the cases of
Virginia and Wisconsin, even banned civil unions and domestic partnerships. This is
not unique to the United States. Other countries, including Latvia, Poland, and
Lithuania, also have recent enactments limiting benefits available to those other
than heterosexual pairs and most countries allow for neither civil unions nor same-
sex marriages.

The arguments have some impact in the popular debates, but tend to fair less
well in legal and academic realms. This is in part because religious traditionalists
and other so-called conservatives (Andrew Sullivan and Dale Carpenter would
challenge the label) who would exclude same-sex couples from marriage have to
maintain a rather untenable set of propositions. They argue that marriage is (1)
good for the people who are married in myriad ways, and (2) good for society because
it sustains personal relationships and supports healthy childrearing, but (3) becomes
bad for society when same-sex couples and their families are involved. The obvious
question is how sustaining some relationships and supporting some families
produces a social good, while sustaining other relationships and other families
produces a social harm. (Carpenter et al., 2008; see also Carpenter, 2005.)

Some “anti” social observers and political activists analogize same-sex
families to heterosexual adoptive or step-parent families. They suggest that there is
some research and some reason to believe that such families are less stable and less
successful in terms of child development, and that same-sex couples may exhibit
similar patterns. Even if true, the analogy begs the question of what justifies
extending marriage to heterosexual blended and step-parent families but denying it
to same-sex families. This is especially problematic given that blended and step-
parent families of heterosexual couples will always vastly outnumber those of same-
sex couples. Similarly, assisted reproduction is a practice dominated by infertile heterosexual couples.\(^4\) If two parent biological bonds are to be preferred by law, the greatest brunt of such a ban must fall on heterosexual couples—but, of course, there is essentially no one pushing for that.

The “anti” argument also needs to confront the fact that same-sex families have always existed, and exist even more openly in modern society, and there is no reason to expect that genie is going back in the bottle. An estimated 1.5 million adults live in same-sex couples, and approximately one million children currently live in families with same-sex parents. The “anti” proponents face a high hurdle in trying to prove why the benefits of married family life must be denied to these adults and their children. How great a showing of benefit to the children of heterosexual couples would be required to justify denying the benefits of married family life to the children of same-sex couples? Indeed, could such an argument even be morally entertained? The “anti” argument is at best a form of “malign neglect,” argues Dale Carpenter: “I really suspect that many traditionalists do not give much thought at all to the needs of gay families. If they think about these things at all, they wish it would simply go away. But it is not going away.” (Carpenter, 2008.)

Furthermore, as Carpenter, Andrew Sullivan, and others have noted, extending the right to marriage to same sex couples is much more likely to change those couples than to change the behavior of heterosexual couples. As Carpenter has noted: “Marriage is not a reward for good behavior, but an inducement to it.” (Carpenter, 2008.) The customs and laws of marriage function as a set of carrots and sticks are designed to induce spouses to be more committed, and all the evidence is that these inducements work. There is every reason to believe, and increasing empirical evidence which proves, that these inducements work on same-sex couples just as they work on heterosexual couples.

And how serious is the prospect, central to the opposition’s case, that the existence of same-sex marriage will materially harm the marriages of heterosexual couples? Is there any reason to think that heterosexual couples will think less of their own relationships, will have less affection for their spouses and children, or take less seriously their legal and customary obligations, simply because same-sex couples are offered the same opportunity for legal marriage? Again, the increasing empirical evidence shows no such impact, and logic alone suggests that the inevitably small fraction of families formed by same-sex couples makes the prospects of these alleged threats even less plausible.

Beginning with Denmark’s recognition of civil unions in 1989, countries and jurisdictions throughout the world, especially in the advanced industrial democracies, have begun to establish legal recognition for relationships between same-sex couples. Full marriage rights were extended to same-sex couples in the

\(^4\) As Andrew Koppelman has argued, “Such families are being formed, in states with and states without same-sex marriage, and mostly by heterosexuals. All that denying same-sex marriage does is prevent some (not all, or even most) children begotten by assisted reproduction from having married parents.” He suspects that those opposed to same-sex marriage must “have some causal scenario in mind about how denying same-sex marriage will make this situation better,” but concedes, “since I can’t tell what that scenario is, I can’t respond to it.” (Carpenter et al., 2008.)
Netherlands, in 2001, and shortly thereafter in Belgium, Spain, Canada, and South Africa. The Supreme Courts of Massachusetts, California, and Connecticut concluded that same-sex marriage could not be denied under their respective state constitutions—after prolonged controversy and debate.

Other forms of civil recognition, some nearly identical to marriage without the name and some with substantially less benefits, have been established. By the first decade of the twenty-first century, civil recognition of same sex relationships was available in Andorra, Argentina, Brazil, Croatia, Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Luxembourg, New Zealand, Norway, Portugal, Slovenia, Sweden, Switzerland, and the United Kingdom; the Australian state of Tasmania, and the states of Hawaii, Maine, New Jersey, and Vermont; and the city of Washington, D.C. (California and Connecticut had also extended such recognition, which played a significant role in the state courts’ conclusion that denying the word “marriage” to same sex relationships was discriminatory.) The European Parliament and European Courts of Human Rights have extended principles of nondiscrimination to same-sex couples and their families, which might lead to further extensions of rights and benefits within the European Union in future years.

Thus, by the final years of the 20th century, the West had lost much of its hostility toward same-sex relationships. Same-sex couples seemed less alien and threatening as they became more familiar—in pop culture if not in terms of personal experience. Criminal prosecutions were firmly interred, and benefits under civil law were increasingly well-established. By the early years of this century, substantial and significant domestic partnership benefits in both public law and private law was unremarkable, and “civil unions” or some other marriage-like legal recognition was increasingly acceptable. Full marriage equality, though still legally uncommon, had become something of a social commonplace, and the subject of common and largely sympathetic and supportive presentation in Western popular culture. When American television talk-show darling Ellen Degeneres could ask President Bush’s daughter if she could use the First Family’s ranch for her upcoming same-sex nuptuals, to the roaring applause of a delighted audience, there would appear to be no turning back.

However, despite all the celebrations of same sex nuptuals, some caution is in order. As noted above, global generalizations about cultural patterns and traditions regarding same-sex relationships is a difficult business. Yet the treatment of same-sex relationships in the modern world does illustrate an ironic truth: respect for those in same-sex relationships not only does not threaten civilization, the reality is that intolerance for such relationships is a marker of those places where uncivilized behavior is most institutionalized. For example, that modern Iran and Afghanistan, the homelands of traditional Persian mystical ghazals celebrating same-sex eroticism, are now one of the few places where gay men risk execution. Europe and America, which once had exported their relatively modern antipathy toward gender diversity and hostility toward same-sex relations through a century of colonialism and cultural imperialism, now offer extensive legal recognition and benefits, if not outright marriage equality, to same-sex couples. Without getting into causes, and at the risk of ethnocentrism, the places in the world today where “civilization” flourishes—where the arts and sciences are most productive and innovative, where representative democracy and republican values are most secure, where the rule of law is most often respected—are the very places where same-sex relationships are
most tolerated. And the reverse also obtains; where the highest values of human civilization are most imperiled and human development least secure, intolerance of same sex relationships is at a peak. Same-sex relationships are a sort of modern “miner’s canary;” where the right to secure and celebrate family and intimate partnership are not equally available, it is there that civilization is truly at risk.

**Bibliography:**


