

How same-sex marriage violates children's human rights

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1 June 2023, Tallinn, Estonia

A major deficiency in the project to legalise same-sex marriage is an almost complete disregard for children's inherent natural rights to know and be raised by their biological father and mother. Instead of starting with the most vulnerable persons, children, and their legitimate claims on us as to how we treat them, the focus is adult-centred. By downplaying the significance of the gendered structure of marriage, the new law undermines children's identity and relationship rights, which are arguably among their most fundamental human rights. The moral violation involved in causing this incalculable suffering and harm to children undermines the moral fabric of society as well as its cultural potential, stability and prosperity.

Does love trump gender complementarity?

While not all gender-diverse marriages produce children, the structure of gender-diverse marriage is meant to secure that every child is born into the home of his biological father and mother. Same-sex unions structurally separate the child from either his biological father or mother.

Supporters of same-sex marriage could perhaps argue that, although it is a desirable life-good that children be raised by their biological father and mother, it is not a universal human right. They could appeal to the fact that in many cases this ideal is not attainable due to divorce, the death of a parent, their extreme poverty or other circumstances beyond anyone's control. Such an argument is, however, problematic. First, although the violation of children's identity and relationship rights cannot always be prevented, the implied normative claim is not thereby repealed, as "rights are normative bonds,"¹ not law-like necessities. Compare this to the child's right to life. This right is not repealed by the fact that many children are killed or die due to illness or natural catastrophes.

Second, basic principles of justice make it hard to deny the child's basic identity and relationship rights. Human beings have worth as the unique individuals they are. As bodily beings, their biological origin is of central significance to their unique identity. The status of being a child of a father and a mother is intrinsic to human nature and essential to individual identity. The child's right to discover his unique identity in relation to his biological origin, his father and mother, is thus grounded in his worth as a unique individual. The child has the right to be loved in his unique individuality by those who gave his life. To deny the child's right to discover his unique identity would be to deny his absolute worth as the unique individual he is.

The argument that a child's right to know and to be reared by his biological father and mother is an inherent natural right can be summarised as follows:

1. A human child is a finite personal being, created in the image of the infinite personal God, through the biological union of his father and mother as complementary gendered beings.
2. Therefore, his unique identity is partly derivative of his personal origin in the love relationship of his father and mother.
3. Since a human child has intrinsic worth as the unique individual he is, he has the right to the preconditions necessary for realising his unique identity.
4. One of those preconditions is to grow up in a loving relationship with his biological origin.
5. The child's search for his unique identity is inherent in his human nature. Therefore, to obstruct this search is to violate the innermost core of his humanity.
6. Therefore, a human child has the right to know and be reared by his biological father and mother. This right is inherent and natural since it is inherent in his nature as a finite personal being created through the mediation of his biological father and mother becoming one flesh.

Children's identity and relationship rights

Same-sex marriage is often defended by arguing that homosexuals are a vulnerable and oppressed minority whose rights we should be defending. Yet professor Margaret Somerville points out that, even though homosexuals are a vulnerable group, "as adults their claims take second place to children's needs and rights". Moreover, in upholding children's rights we are acting in the best interests of all children irrespective of what their sexual orientation later in life will be, and of all citizens, because, at one stage, all of us are children.²

As human beings in search of their identity and of their life's meaning, children have a special need to trace their origin and to live in touch with it. Children, therefore, have three fundamental human rights with respect to their biological origins (their very coming into being) that cannot be taken away from them without incurring incalculable harm: "(1) their rights to knowledge of their biological origins; (2) their rights to be reared within their immediate and wider biological families; and (3) their rights to a parent of each sex."³ The question of identity is central to being human as Aristotle has argued: no one would want to attain happiness at the cost of losing his identity.⁴

The biological origin of a human child in a love relationship between a woman and man forms the basis for his identity in several respects: (1) His moral identity as a human being with inherent worth is supported by the fact that his existence is the fruit of the love between his mother and father. (2) His social identity is founded on the web of social relations where he is located as the child of his parents. (3) A foundation of his sexual identity is the awareness that he is the fruit of the love between a man and a woman. (4) He acquires his national identity by association with his kin and its place in the wider community of a nation. In this way he is able to locate his special place as a member of humanity. (5) His biological origin connects his with previous generations and with human history. To break this historical connection leaves him without an acknowledged place within the chain of human generations. (6) Through his historical origin he participates in his mother's and father's cultural heritages with their languages, literature, and art.

Man–woman marriage naturally combines all these dimensions of children’s identity in one integrated whole instead of leaving children with a disconnected web of ambiguous sources of identity and unanswered questions that hamper their coming to know who they are. Genderless marriage undermines children’s right to an integrated identity by setting fatherless and motherless families as an ideal: the structure of same-sex marriage separates children either from their biological mother or father and thereby deprives them of the opportunity to develop an integrated moral, social, sexual, historical, and kinship identity in relation to their double biological origin.

What about children in same-sex families?

The defenders of same-sex marriage could argue that children in same-sex families need stability and that genderless marriage secures a more stable environment for these children and makes them feel that their families are accepted. Isn’t the redefinition of marriage in genderless terms required in order to protect the children that are already living in same-sex households?

The problem with this suggestion is that it would incorporate a structural injustice into the definition of marriage, and therefore, as professor Douglas Farrow points out, “considered on its own merits,” such a proposal is “explicable only as an act of determined cynicism.”⁵ The point is that children in same-sex households have been separated from their biological father or mother. The very structure of same-sex relationships makes it impossible to connect the child to both his biological mother and father. So this can hardly be regarded as normative and hardly as an adequate basis for redefining marriage in a way that undermines the norm protecting children’s right to a mother and a father.

Including same-sex couples in the marriage institution will lead to greater instability in the institution of marriage as a whole, because the genderless redefinition of marriage will make it harder for anyone to understand the rationale behind the norms of marriage. As a consequence, people will be less likely to adhere to them. “The state’s laws and policies partly shape the general culture. If the state conveys a gravely distorted view of marriage, it will weaken and undermine its members’ capacities for full and rich participation in this critical aspect of human flourishing.”⁶ Within a committed gender-diverse marriage, life is transmitted to new persons in such a way that respects their human worth as ends in themselves by fulfilling both their need for love and identity. The well-being of the family is a precondition for the flourishing of civilisation.

The supporters of same-sex marriage implicitly claim that children do not need a father and a mother: a social parent can replace a biological one without the child incurring any harm or injustice. They assume that the same-sex structure of the union creates no problems in the rearing of children. In this way, they disregard the research evidence according to which mothers and fathers generally have different strengths in parenting and that the absence of the mother or the father harms children’s development in different ways. They fail to acknowledge the *polaric complementarity* of fathers and mothers, who are not just different, but different in corresponding ways: “Each sex completes what the other lacks, and helps

bring the other into balance.”⁷ Children benefit from the unique parenting styles of mothers and fathers as they are typically modeled in child rearing.⁸ Absence of gender complementarity in the family makes it difficult for children to learn how men and women relate to each other. Absence of a father predicts children’s behaviour problems, depression, lower self-esteem, lower life-satisfaction, and difficulties in transition to adulthood.⁹ The father’s presence is associated with a delayed onset of puberty in daughters (suggesting a biochemical link) and a lower risk of teen pregnancy. Lack of maternal responsiveness predicts infants’ insecure attachment styles that lead to problems in psychological adjustment later in life. “In fact, the research literature on the relation between quality of infant attachment and later development has been described as ‘dizzying’ and its effects are some of the most robust in developmental psychology”: secure attachment has been described as a “multivitamin” that prevents problems and fosters healthy development.¹⁰

The production of genetic orphans

Article 16 of the Universal Declaration of Human Rights indicates that the right to marry is a compound right involving “the right to marry and to found a family.” Marriage establishes and institutionalises not only one adult’s relationship to another adult, but also the relationship of those adults to the children born to them. The institution of marriage is intrinsically connected to parenthood and to the values and norms associated with bearing and raising children.

The defenders of same-sex marriage fail to consider the fact that the redefinition of marriage in genderless terms increases the number of orphans by destabilising marriage and by encouraging the production of so-called genetic orphans.¹¹ Since genderless marriage gives adults the freedom to marry in terms of their sexual orientation and the consequent right to found a family, it implicitly endorses their right to produce children using the means made available by third-party reproductive technologies.

Since children cannot voluntarily participate in their own creation and cannot give their informed consent to the arrangement agreed upon them, their freedom and choice are often completely forgotten. They are, however, the ones most profoundly affected by the way in which they come into being, and their right to know their genetic origins should take precedence, as Margaret Somerville argues: “Adopted children and children born from donated sperm, ova or embryos want to know their biological identity.”¹²

The ethical doctrine that needs to be respected in this context is that of “anticipated consent.” We ought to try to stand in the shoes of the person affected by our decision and to ask: “Can I reasonably anticipate that if the persons were able to be asked, they would consent to what I want to do that will affect them?” Somerville applies this principle to future children: “What might we reasonably assume that a future child would consent to if they were able to make their wishes known? Evidence is starting to come in: ‘Donor-conceived adults’ describe powerful feelings of loss of identity through not knowing one or both biological parents and their wider biological families, and describe themselves as ‘genetic orphans’. They believe society was complicit in a serious wrong done to them in the way they were conceived and ask, ‘How could anyone think they had the right to do this to me?’”¹³

It is unethical to deliberately create genetic orphans who lose a sense of connection to their individual–human–family past and experience the deep suffering and loss of identity as a result. “It is paradoxical that in an era of sensitivity to individual human rights and “intense” individualism, we are prepared to wipe out for others one of the most important bases on which we found a sense of individual identity.”¹⁴ The disintegration of marriage as a gender-diverse conjugal union is contrary to the essential purpose of the marriage institution to protect children as persons of inherent worth rather than as means to the satisfaction of adult needs.

Undermining the norms of marriage

The gender-diverse core of marriage is meant to ensure that children are conceived naturally (they are not cloned, nor are they intentionally produced to be genetic orphans) and are reared by both their father and mother. The redefinition of marriage as a genderless union of love undermines the intelligibility of the chief features of marriage — its twoness, its ethic of sexual fidelity, and its life-long duration. These norms lose much of their intrinsic intelligibility without gender complementarity and its connection to children’s identity rights: Why should love be limited to two people? Why should it be exclusive? Insofar as people do not understand the rationale of the norms, they are less likely to adhere to them in their behaviour. “Hence redefining marriage ... will lead to an incoherent view of marriage and to a greater instability in the institution of marriage.”¹⁵

Therefore, the institutionalisation of same-sex marriage will have harmful social consequences: “Where the nature of marriage is obscured and the culture of marriage is weakened, fewer young men and women marry, fewer view marriage as the proper context for sexual conduct and expression, and the number of children born outside marriage dramatically increases, and with it the number of children growing up outside intact families.”¹⁶ Hence, the number of orphans increases.

The law is like a teacher, and social legislation has an educational impact: it shapes culture, which influences people’s perceptions, attitudes, and behaviour.

Consequences for the state’s justice system as a whole

The defenders of same-sex marriage fail to analyse the question of same-sex marriage in light of the likely consequences for the state’s justice system as a whole. Marriage is not just an institution among many but it is so fully integrated into many complex and intersecting layers of our public and private lives—including family law, adoption, religion, education, property, civil rights and employment—that changes in marriage law have wide-reaching implications for the justice system as a whole.¹⁷

In the public debate, the issue has been dealt with mainly at the micro level, by telling emotional stories about the desires and preferences of a few adults and quoting slogans about equality. However, when social decisions are made, the issue should be considered holistically, on a macro level, taking into account the broader social implications of the

decision. The broad cultural and educational implications of the law have often been ignored in the debate.

When important facts about the natural structure of the family are obscured, the well-being and moral integrity of both adults and children are at risk. Marriage is based on heteronormative principles, on the complementarity of a woman and a man, as professor Douglas Farrow states, "The erosion of the institution of marriage between a woman and a man will lead society into general cultural chaos, for heteronormativity cannot be separated from culture. It is a universal feature of all cultures, and an attack on heteronormativity can only mean cultural suicide — no society that takes such an approach can remain viable in the long run."¹⁸

According to the Harvard sociologist Carle Zimmerman, the role of the family in the process of social renewal is the basis for all advanced cultures, upon which they develop and whose decline eventually causes their decay. An advanced culture develops on the basis of a family-centred way of life, but in the course of its development and prosperity it often loses its original connection with the fundamental source of its being, the family-centred way of life. If this process goes too far, civilisation soon exhausts its community resources. The result is reaction and degeneration. The degree of reaction and the duration of the dark ages seem to depend on how quickly the culture finds its way back to its starting point - the family-centred way of life.¹⁹ When "we speak of the 'fall' of great civilisations like those of Rome or Greece, in which an inner decay is the main agency, we are justified in giving an absolute causal analysis" in terms of familistic decay, according to Zimmerman.

The importance of heteronormativity to cultural development is also underscored by sociologist Pitirim Sorokin. Sorokin's research shows that societies are in decline when they reject a strong marriage culture. He examined 1,623 internal disturbances in the history of Greco-Roman and European culture in the period 600 BC–1900 AD and found that the weakening of the institution of marriage almost always preceded or accompanied an explosion of socio-political unrest.²⁰ (Sorokin 1956: 98). Sorokin's detailed study supports the contention that any culture that rejects absolute monogamy suffers from developmental disorders.

The negative social consequences of the disintegration of the family are a central focus of contemporary family sociology. Extensive meta-analyses of relevant social science research show the benefit of the intact family of married biological parents for children's healthy development and the well-being of society:²¹

In the long run, removing natural sex differences from the law threatens the rights of parents to their child and the universally protected status of natural family relationships, as Stella Morabito notes. "If the sex difference is removed from the law, it is possible for the state to deny recognition to the family. The state can then regulate personal relationships and extend its power more effectively than ever before."²²

Until now, the natural biological relationship has defined who a child's parents are. The state's role was simply to establish this natural fact. However, gender-neutral legislation ultimately

undermines the natural right of biological parents to their children, as jurist Dr. Ulrich Vosgerau notes, "The point of all these reforms now being pursued ... is always to sever, as far as possible, the bond between biology and family law on which the legislature usually builds." If you now say that parenthood no longer have anything to do with biology, but is a purely legal construct, how will you ensure that this view is not systematically transferred sooner or later? "Then at some point it will be said: you are not the child's mother because you gave birth to it — but who is its mother is decided by the authorities." (Ulrich Vosgerau: "Then the state determines who the parents of your child are!" (tichyseinblick.de))

NOTES

¹ Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton, NJ: Princeton University Press, 2008) p. 4.

² Margaret Somerville, "Children's human rights and unlinking child — parent biological bonds with adoption, same-sex marriage and new reproductive technologies", *Journal of Family Studies* 13, no. 2 (2007–2017) p. 195.

³ Somerville, "Children's Human Rights", p. 179.

⁴ Aristotle, *Nic. Eth.* IX.4: 116a20–23; VIII.7: 1159a9–12.

⁵ Douglas Farrow, "Rights and Responsibilities" in *Divorcing Marriage: Unveiling the Dangers in Canada's New Social Experiment*, ed. Daniel Cere and Douglas Farrow (Montreal: McQuill–Queens University Press, 2005) p. 112.

⁶ Patrick Lee and Robert P. George, *Conjugal Union: What Marriage Is and Why It Matters* (New York: Cambridge University Press, 2014) p. 105.

⁷ An overview of research in this area is William Bradley Wilcox and Kathleen Kovner Kline, eds., *Gender and Parenthood: Biological and Social Scientific Perspectives* (New York: Columbia University Press, 2013).

⁸ Rob Palkovitz: "Gendered Parenting's Implications for Children's Well-Being," in *Gender and Parenthood*, pp. 215–248.

⁹ David J. Eggebeen, "Do Fathers Uniquely Matter for Adolescent Well-Being?" in *Gender and Parenthood*, pp. 249–250.

¹⁰ David F. Bjorklund and Ashley C. Jordan, "Human Parenting from an Evolutionary Perspective", in *Gender and Parenthood*, pp. 71–72.

¹¹ Somerville, *Ethical Imagination*, pp. 147–149.

¹² Somerville, "Children's Human Rights," 195.

¹³ *Ibid.*

- ¹⁴ Somerville, “Children’s Human Rights,” p. 196.
- ¹⁵ Lee and George, *Conjugal Union*, p. 127.
- ¹⁶ *Ibid.*, p. 109.
- ¹⁷ Francis J. Beckwith, “Justificatory Liberalism and Same-Sex Marriage,” *Ratio Juris*, Vol. 26, No. 4, 2013, 487–509; *Taking Rites Seriously: Law Politics, and the Reasonableness of Faith* (New York: Cambridge University Press, 2015).
- ¹⁸ Douglas Farrow, “[The Government of Québec Declares War on ‘Homophobic’ and ‘Heterosexual’ Populace](#)” (2010).
- ¹⁹ Carlo Zimmerman, *Family and Civilization* (New York, NY: Harper & Brothers, 1947) pp. 782–783.
- ²⁰ Pitirim A. Sorokin, *The American Sex Revolution* (Porter Sargent Publisher, 1956) p. 98.
- ²¹ Sara McLanahan, Elizabeth Donahue, Ron Haskins, “Introducing the Issue,” *The Future of Children* 15 (2005); W. Bradley Wilcox, William. B. Doherty, Helen Fisher et al., *Why Marriage Matters: Twenty-six Conclusions from the Social Sciences* (New York, NY: Institute for American Values, 2005). Contemporary analyses of the wider societal consequences of same-sex marriage include Ryan Anderson, *Truth Overruled: The Future of Marriage and Religious Freedom* (Washington, D.C.: Regnery, 2015); Gabriele Kuby, *The Global Sexual Revolution: Destruction of Freedom in the Name of Freedom* (Kettering, OH: Life Site, 2015); Patricia Morgan, *The Marriage Files: The Purpose, Limits and Fate of Marriage* (London: Wilberforce Publications, 2014); *The Meaning of Marriage: Family, State, Market and Morals*, ed. Robert P. George and Jean Bethke Elshtain (Dallas: Spence, 2006). The issue is being debated in John Corvino and Maggie Gallagher: *Debating Same-Sex Marriage* (Oxford: Oxford University Press, 2012); John Corvino, Ryan T. Anderson, and Sherif Girgis, *Debating Religious Liberty and Discrimination* (Oxford: Oxford University Press, 2017).
- ²² Morabito; cited in Nancy Pearcey *Love Thy Body: Answering Hard Questions about Life and Sexuality*. Baker Books 2018, 212.