

If Marriage Is Not About Procreation, Why Is It About Sex?

In the court cases that have upheld the one-man/one-woman definition of marriage (yes, there have been many, though not in the last year), the “rational basis” that judges have found for the laws has been the state’s interest in promoting “responsible procreation.”

Marriage is defined as the union of a woman and a man because it brings together men and women for the natural reproduction of the human race (which is impossible without the contribution of both sexes)—that’s the “procreation” part.

Marriage further gives incentive for potentially procreative activities to take place in the context of a committed, lifelong relationship, to maximize the possibility that the fruit of procreation (a child) will be raised and economically supported in a stable setting by both the woman and the man who created that child – that’s the “responsible” part.

Since only opposite-sex couples are capable of fulfilling this important public purpose through their natural union, it is rational to limit the public institution of marriage to such couples.

Advocates for the redefinition of marriage, however, have a simple answer to this argument. “Opposite-sex couples,” they say, “are not required to demonstrate their intent or capacity to procreate before they may marry. Many opposite-sex couples never procreate, and the state still recognizes them as married. Therefore, marriage cannot be about procreation.”

This argument sounds decisive, but in reality is extremely weak. It simply is not constitutionally required (because it

is nearly impossible) for classifications under the law to draw perfectly precise lines between every single individual who fulfills the public purpose of the law and every single person who does not.

Consider this: Suppose a group of obese and otherwise physically disabled individuals were to sue the government for the “right” to serve in the military. They charge that physical-fitness standards for military recruitment “discriminate” against them because of “who they are,” and are therefore unconstitutional. The government responds, “The military exists to fight and win wars. Physical-fitness standards are rational because good physical fitness is necessary to perform effectively in combat.”

“Aha!” respond the plaintiffs’ attorneys. “There are some people in the military who never serve in combat, but they are still considered service members and receive all the benefits of that, and of veteran status when they retire. Therefore, the military cannot be about fighting wars!”

This way of arguing is plainly silly, but it has been taken with grave seriousness by a string of otherwise intelligent judges.

However, my question for those who wish to redefine marriage to include (intrinsically, structurally) infertile same-sex couples is this: “If marriage is not about procreation, why is it about sex?”

Marriage redefiners rarely state the heart of their contention, implicit in their arguments, that sexual attraction is a fundamental and necessary condition of marriage.

I sometimes point out that strictly speaking, the marriage laws do not “discriminate” against any individuals on the basis of sexual orientation. Marriage license applications do not inquire, and have never inquired, as to the “sexual

orientation" of the prospective spouses. A homosexual man is completely free to get married—as long as he marries a woman. A lesbian is completely free to marry—as long as she marries a man. There is no facial discrimination at all.

Some people may feel that such an argument borders on the absurd. After all, who would want to marry someone they're not sexually attracted to? However, the legal and political issue at the heart of the debate over redefining marriage is not, "Why does any one individual or couple choose to marry?" The key question is, "Why does the government treat marriage as a public institution in the first place, rather than as a purely private relationship?"

From a legal perspective, however, the idea of same-sex-attracted persons marrying someone of the opposite sex is absurd only if sexual attraction is bedrock essential for a "marriage" to exist. And sexual attraction is only essential to marriage if we assume that the public purpose of marriage is to promote relationships that bring the maximum sexual pleasure to the spouses.

The idea that the government should (let alone that it is constitutionally required to) promote relationships that provide sexual pleasure above other relationships that involve "love" and "commitment" is truly absurd.

The fact that marriage redefiners think marriage is only about sex is illustrated in a backhanded way by their reaction to another pro-family argument against such redefinition. We have raised a slippery slope argument—that if "love and commitment" are the only things essential for marriage, then there would be no reason why polygamous or incestuous relationships (as long as they are between consenting adults) should not also enjoy the legal designation of "marriage."

Most advocates of marriage redefinition sputter and howl at such accusations, and vehemently deny them. But why? I think

the answer is simple—there remains a strong taboo against sexual relations between close blood relatives, and a stigma still attaches to simultaneous sexual relationships with multiple partners. In other words, it is not that these groupings cannot share love, commitment, living quarters, mutual caring, finances, and even raise children—it is that society still does not believe that such relationships should be sexual and therefore does not believe that they should be called “marriages.”

Homosexual activists do not want the citizenry (or judiciary) to closely examine this logic, however, because they aim to convince people (and judges in particular) that moral disapproval of their sexual conduct is an illegitimate basis for denying them “marriage.”

The assumption that marriage is about sexual attraction is vulnerable to the exact same challenges as the argument that marriage is about procreation:

- Marriage-license applications do not inquire as to whether the spouses are sexually attracted to one another.
- Couples intending marriage are not required to declare, nor to prove, that they find one another sexually attractive.
- The government does not inquire of married couples whether they are sexually active. Couples are legally permitted to abstain from sex and still remain married.
- Some couples may find that their sexual attraction wanes over the years, but they are still permitted to remain married.
- Some couples (particularly elderly ones) may marry more for non-sexual love and companionship than for sex.
- Couples that are incapable of sexual intercourse—due to, say, physical disability—are still permitted to marry.

The Supreme Court has found that there is a “fundamental right

to marry” even for people who will never be able to consummate those marriages—such as prisoners who are allowed no conjugal visits.

Historically, legal marriages have occurred for all kinds of reasons other than sexual attraction—by parental arrangement, and for social, economic and political reasons.

In light of all these facts, it’s perfectly clear: Marriage cannot be about sexual attraction!

Does this argument sound silly? Of course it does—just like the argument that the military does not exist to fight wars. But neither argument is any sillier than the argument that “marriage is not about procreation.” Why? Because the existence of exceptions does not disprove the rule.

Most service members must be prepared to either serve in, or in support of, combat operations. Most people will choose to marry someone they find sexually attractive. And most married couples either will have, are raising, or have had children.

The difference between these examples is that there is a clear public interest in being prepared to fight our nation’s enemies, and there is a clear public interest in the creation and nurture of the next generation. However, it is far less clear that there is a public interest in encouraging relationships whose primary purpose is sexual satisfaction for the partners. If there is anything that libertarians should want to keep the government out of, it’s that!

To summarize: Advocates for redefining marriage say that homosexual relationships should be legally recognized because like heterosexual marriages, they involve “love” and “commitment.” But this cannot be their only motive, because they do not propose to define all relationships that involve “love” and “commitment” as “marriages.” Instead, homosexual activist want their sexual attractions to be recognized as equivalent to heterosexual attractions.

Yes, marriage is about sex—but the primary public interest in sex lies in the fact that it leads to procreation.

Individual exceptions do not nullify this rule, but changing the very definition of marriage would, to the harm of children and society.

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