

Slate: 'Marriage Equality' Includes Polygamy

As a lawyer in the **same-sex marriage** litigation at the Supreme Court who has spent a couple years working through all the implications of declaring a constitutional right to gay marriage, it became clear that such a declaration would also mean there is a right to polygamy.

When I previously explained these reasons, gay marriage supporters said the country would never go there. Well, now the far-left magazine *Slate* has come out with a full-throated endorsement of polygamous marriage.

For thousands of years, Western Civilization has always recognized three elements to marriage. It is the union of (1) two consenting adults, (2) of opposite sex, (3) who are not close blood relatives. **Gay marriage** advocates say the second element can be jettisoned. I've always asked why those same people say the first element cannot be touched.

Slate believes, "Legalized polygamy in the United States is the constitutional, feminist, and sex-positive choice."

They're wrong on all counts. On the constitutional issue, for liberties not found in the text of the Constitution (where marriage is never mentioned once), the Supreme Court has held a fundamental right is one that is "deeply rooted in the history and traditions" of the American people. Marriage of one man and one woman satisfy this test, which is why the Court held in the 1878 case *Reynolds v. U.S.* that there is no constitutional right to polygamy. It's also why there is no right to gay marriage but why laws against marriage between different racial groups are clearly unconstitutional.

Slate elaborates on their reasoning:

The definition of marriage is plastic. Just like heterosexual marriage is no better or worse than homosexual marriage, marriage between two consenting adults is not inherently more or less “correct” than marriage among three (or four, or six) consenting adults. Though polygamists are a minority—a tiny minority, in fact—freedom has no value unless it extends to even the smallest and most marginalized groups among us.

If you believe that marriage is merely the union of consenting adults, and nothing more, then this argument might make sense. I’m still waiting for one of the lawyers working on the gay marriage cases to explain why this means their argument for a right to gay marriage doesn’t extend to polygamists.

This is especially important, since **same-sex marriage** has only existed on earth since 2001, but polygamy has been around more than 5,000 years of recorded history. Also, gay marriage is legal in just over a dozen countries, but polygamy is legal in over four dozen (roughly 50) nations and is expressly sanctioned by the second-largest religion on earth with 1.6 billion followers, Islam.

One point *Slate* misses is that there are two forms of polygamy that could never involve disadvantaging women: a multi-person gay men marriage, and a multi-person lesbian marriage. If three men decide to enter into a polygamous gay marriage, how could any woman be victimized by it? It becomes increasingly harder for those trying to redefine marriage to explain their arbitrary line-drawing choices.

Slate concludes: “All marriages deserve access to the support and resources needed to build happy, healthy lives, no matter how many partners are involved.” I give them credit for their honesty; they admit and even embrace that if you demand a right to same-sex marriage, there’s no principled reason not to have a right to polygamous marriage. The only reason is political. The American people have been told for years now

that gay marriage would not open Pandora's Box, but they still understand at a gut level that they do not want to entirely redefine the family unit in the United States.

Slate completely misses the point of marriage laws in America. We'll write about that when the Supreme Court hands down its decision in the Prop 8 case, *Hollingsworth v. Perry*.

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