

A Submission to the Senate Legal and Constitutional Committee

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Australia

Regarding the Marriage Equality Amendment Bill 2010

From Matthew James Waldron

I would like to express three concerns about the proposal to legally recognize same-sex marriages.

Firstly, it assumes that marriage is something that has its most fundamental existence in law.

Secondly, it assumes that sexual ethics have no objective basis.

Thirdly, it assumes that there are no alternatives that would adequately protect the liberty and rights of people of diverse sexual orientations.

1. Assumption that marriage is something that has its most fundamental existence in law.

According to the description on the Parliament website:

This private senator's bill, introduced by Senator Hanson-Young, seeks to remove all discriminatory references from the Marriage Act 1961 to allow all people, regardless of sex, sexuality and gender identity, the opportunity to marry.

I note that this description assumes that marriage is in itself, inherently a legal status. That is to say, that if the marriage act does not recognize a relationship, then the couple is denied the opportunity to marry. I want to contend in the strongest possible way, that marriage is a public lifelong commitment between two people. In fact I have the distinct impression that our marriage act has been written in such a way as to recognize this reality that exists independently of the law. This is reflected in our participation in international conventions regarding the recognition of marriages that are recognized by other countries. It is all about recognizing marriages, not creating marriages. I love that Australia has a whole range of cultures, religions, and people, who are free to believe and generally practice what they believe about marriage. But as a nation, we need to decide which practices we will nationally endorse as marriage. For example, Mormons are free to believe that their marriages are eternal. At this point in time, Australian legislation is silent on whether that is true, but recognizes these relationships as meeting the criteria of a lifetime commitment. On the other side, polygamy is not recognized by law, despite the fact that it is practiced. That is to say, some people, for religious or other reasons, have relationships they would describe as marriages. I am not aware of any legal basis to interfere with these relationships, though they are not granted all the benefits conferred on relationships that are legally recognized as marriages.

So then, portraying this bill as a civil liberty issue in which a change is being sought to allow gay marriage is false. The right question, and there is a right question, is not whether gay people should be allowed to live as they choose, but rather, whether same sex marriage should receive the nations endorsement as an equally valid expression of our understanding (as a nation) of marriage.

We have no difficulty allowing tobacco smoking to be legal, but denying normal rights in advertising to tobacco companies. In the same way, this is not a black and white civil rights issue. Rather, it rests on a necessary value judgment about same-sex marriage.

2. Assumption that sexual ethics have no objective basis.

The argument that same-sex marriage must be treated the same as marriages between a man and a woman, is based on the assumption that these relationships are equally valid.

This is illustrated by excluding polygamy not because we think polygamists have less human rights, but because we evaluate the practice of polygamy as invalid. It is said that because people do not choose their sexual orientation, that this diversity is just as valid as gender or culture. But once again we don't apply this consistently eg. to polygamy. Rather, it is thought that anything that does not harm another human, is equally valid. However we cannot use this logic in regard to relationships without assuming further value judgments. For example, suppose a married man discovers that he is bisexual. Is it better for him to restrain this desire, or better for his wife to restrain her desire for her marriage to be monogamous?

So, given that we need to make a value judgment about homosexual relationships, is there any objective basis for valuing heterosexual marriage, above homosexual relationships? Heterosexuality is the way our species reproduces. This is not to say, that people who have children are more valuable, more human, or have greater rights, than those who do not. It simply observing that heterosexuality is an objectively necessary part of corporate humanity. Homosexuality is, with all due respect, and recognizing that it is very strong and deep, just a feeling.

My two cents: gay marriage is not the cause of the increasing sexual dysfunction of the western world, but rather is a symptom (if you will allow me this common idiom without meaning to imply any value judgment, apart from admitting that I am of course making a value judgment on us together as a whole). What I mean is the following.

Although there is more to the question of gay marriage than sexual ethics, it is nevertheless the central issue. It is widely assumed, that good sexuality, is whatever I feel, except in extreme circumstances (like hurting someone else, or if your straight, getting caught...okay no-one actually teaches this last bit in an ethics course, but plenty of people do it).

Now the thing to note about this, is that rather than being unique to homosexuality, this way of thinking is representative of how the whole of the western world tends to reason about all sexuality (if not all of life).

For example, it is regularly argued or assumed that divorce, marital unfaithfulness, pornography, prostitution, abortion and promiscuity are rightly understood solely through the individual human right to do as one wishes. And of course we all wish to be free to do as we wish. The problem is that this human right is based on our human value, which brings with it certain human responsibilities. Consequently, true freedom is found not in convincing myself that human nature does not exist apart from what I wish it to be. Rather true freedom is found in understanding ourselves as we really are, and changing my wishes to conform to reality.

At this point it is worth stating that I have a theory. This will clarify that I am not ignorant of the standard objections to this line of reasoning, and outline the direction of my current investigations in case anyone else would like to pursue them as well. Here it is: removing desires is much harder than creating new ones.

Given the massive proportion of same sex attracted people who also experience heterosexual attractions, I find the absence of these issues from the public discourse bordering on deception.

For me personally, faith in Jesus Christ and his renewal from the dead, gives me great hope for myself and for you and for our world.

3. Assumption that there are no alternatives that would adequately protect the liberty and rights of people of diverse sexual orientations.

It appears to me that the public discourse on this subject argues that there is no alternative way to protecting the rights of people of diverse sexual orientations.

For example, <http://www.australianmarriageequality.com/wp/> argues that a system of Civil Unions is opposed by most who oppose equal marriage, and that it brings about unnecessary outing.

It appears to me that there is a powerful lobby group opposing both same-sex marriage and a Civil Unions system, eg <http://australianmarriage.org/>.

However in my network I find this ridiculously polarized. Both myself, and most of my Christian friends would be opposed to same sex marriage but in favour of other legal measures to protect the rights of same-sex couples (however they consider themselves). I also find it striking that according to the website above only 80% of homosexuals are in favour of same sex marriage.

What is more important however is the comment about unnecessary outing. I believe this reflects the real issues. That is, people of diverse sexual orientations still feel stigmatized for being different. There are ultimately only two ways to approach this. Firstly, we can promote tolerance – the real kind – where we acknowledge different beliefs, but are committed to respecting each other regardless of our differences. Or alternatively, we legislate that really there is no difference and then wonder why the children continue to notice that the Emperor is actually naked.

Best wishes as you try to digest all the submissions and make wise recommendations for all Australians.