The Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House, Canberra

Re: inquiry into the Marriage Equality Amendment Bill 2010

Dear Secretary,

Please find attached my personal submission to the Marriage Equality Amendment Bill inquiry.

The substance of my submission is taken from my work for a book on the subject of marriage equality I co-authored in 2010. It was titled, *Why v Why: gay marriage*. I am submitting some of the work I prepared for that book because the book's format compelled a systematic approach to the issue which I hope benefits the Committee's considerations. I have also attached a rebuttal to the anti-equality stance of my co-author, Mr Bill Muehlenberg. While this rebuttal is specific to his views on marriage equality it has bearing on many of the objections raised more generally by those opposed to the legislation you are considering.

Please contact me if you have any questions about my submission.

Best wishes,
Rodney Croome.

WHY SAME-SEX COUPLES SHOULD BE ALLOWED TO MARRY

Introduction

For many supporters of same-sex marriage their case is obvious. The words "fairness", "equity", "respect" and, above all, "love", occur frequently in the everyday conversations, talk-back radio calls, and letters-to-the-editor, explaining the need for reform.

But marriage equality is about more than these heart-felt values, as important as they are.

Allowing same-sex couples the right to marry is crucial to removing legal and social discrimination against gay and lesbian people and to recognising their equal citizenship and humanity.

Marriage brings with it many practical legal and social benefits for same-sex couples and their families. Marriage equality will also strengthen the institution of marriage by allowing it to embrace those same-sex couples who want to uphold its values.

When we consider the purpose of marriage in today's society we can see that same-sex partners can fulfil that purpose. When we consider the alternatives put forward for same-sex marriage it is obvious there are no substitutes for the right to participate in such a universal and valued institution.

Finally, the growing support for marriage equality shows decision-makers who oppose it are increasingly out of step.

The reasons why same-sex couples should be allowed to marry are:

1 Because, without the right to marry, same-sex partners are not free and equal citizens

2 Because being unable to marry creates legal disadvantages

3 Because marriage has practical social and cultural benefits for same-sex couples and their children

4 Because same-sex marriage is good for marriage

5 Because religion and children are arguments for marriage equality, not against it

6 Because the alternatives don't offer full equality or recognition

7 Because of strong and growing support for equality

1. Because without the right to marry, same-sex partners are not free and equal citizens

"Gay people, like all human beings, love and want to declare love, want inclusion in the community and the equal choices and possibilities that belong to us all… Marriage equality is the precondition for these rights, these protections, this inclusion, this full citizenship." [1]

US marriage equality advocate, Evan Wolfson

For many same-sex partners the right to marry is about the equal recognition of their relationship in the law and in society, and the freedom to marry the person they love most in the world.

The principle that same-sex couples are not fully equal until they can marry has been affirmed by courts and governments around the globe. In one of the ground-breaking court cases that led to marriage equality in Canada, the Supreme Court of British Columbia put it succinctly:

"...Redefinition of marriage to include same-sex couples...is the only road to true equality for same-sex couples."[2]

The idea of "true equality" was brought into sharp focus in Australia in 2008 when the Federal Labor Government amended almost a hundred laws - governing everything from superannuation through taxation to social security and immigration - to ensure the spousal rights and responsibilities these laws grant flow equally to opposite and same-sex cohabiting, "de facto" partners. The single law from which discrimination against same-sex partners was not removed was the Marriage Act. As Davina Storer wrote in her submission to the 2009 Senate marriage equality inquiry (unless otherwise indicated, the ensuing personal stories are all taken from inquiry submissions[3]), the partial 2008 reform had the effect of highlighting that equality in marriage is the corner-stone of full legal equality:

"I applaud the recent changes made to many federal laws to acknowledge same sex entitlements. I believe it is fair that same sex couples are treated equally to everyone else and that we should all be taxed the same way. But this is only fair if same sex couples are treated equally in every way, not in a watered down 'partial equality' that suits the government, but still separates us from our heterosexual friends."

As we shall see in later sections, just as the meaning of marriage goes beyond the law, so the "equality" in "marriage equality" is not limited to legal equality. It takes in all the discrimination, disadvantage and stigma a ban on same-sex marriage creates, reinforces or is used to justify. We shall also see that attempts to undermine the case for equality by portraying opposite and same-sex relationships as inherently unequal, or marriage and same-sex relationships as inherently incompatible, are flawed.

Alongside equality, personal autonomy or the "liberty" to choose one's own marriage partner has been identified by decision-makers in other countries as a fundamental right breached by the failure to allow same-sex marriages.

According to the Massachusetts Supreme Court:

"Barred access to the protections, benefits, and obligations of civil marriage, a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principle of respect for individual autonomy." [4]

But like the principle of equality, the impact of denying same-sex couples freedom to marry goes beyond the law. For those people denied the right to marry the person they love, marriage is synonymous with freedom from second-class legal and social status.

The association between the freedom to marry and freedom from second-class status is well understood by those who have fought for the civil rights of people of colour.

In 1958, in the midst of the struggle for black civil rights in America, Martin Luther King Jr declared:

"When any society says that I cannot marry a certain person, that society has cut off a segment of my freedom." [5]

In 1959, the German-American philosopher and political theorist Hannah Arendt made the same point in greater detail:

"The right to marry whoever one wishes is an elementary human right compared to which 'the right to attend an integrated school, the right to sit where one pleases on a bus, the right to go into any hotel or recreation area or place of amusement, regardless of one's skin color or race' are minor indeed. Even political rights, like the right to vote, and nearly all other rights enumerated in the Constitution, are secondary to the inalienable human rights to 'life, liberty and the pursuit of happiness' proclaimed in the Declaration of Independence, and to this category the right to home and marriage unquestionably belongs." [6]

Inspired by this idea, a black woman from Virginia, Mildred Loving, and her white husband, Richard, took state laws barring their interracial union all the way to the US Supreme Court and in 1967 succeeded in having them struck down.[7]

What many Australians don't know is that laws with an effect similar to those against which Mrs Loving fought, existed here for a century, and were central to the struggle for Aboriginal rights. Beginning in Victoria in the 1860s and reaching their most extreme form in Western Australia and Queensland in the 1930s, Aboriginal Protection Acts allowed state officials to determine who Aborigines could or could not marry. These laws were used for different purposes at different times. Queensland's policy was generally one of preventing black/white unions. WA's evolved in the opposite direction, preventing "half-castes" from marrying other Aborigines in order to "breed out the colour". But no matter what the racist purpose of these policies, the effect was the same: personal tragedy and political disenfranchisement.[8]

In 1935 the "half-caste" women of Broome had had enough. They declared in a petition:

"Sometimes we have the chance to marry a man of our own choice. We ask for our Freedom so that when the chance comes along we can rule our lives and make ourselves true and good citizens." [9]

Thanks to voices like these, freedom to marry rose to the top of the Australian Aboriginal rights agenda, second only to the right to vote, and stayed there until the states repealed their Protection Acts, and the national referendum of 1967 confirmed full Aboriginal citizenship.

There is an obvious parallel between the historic struggle of blacks for marriage choice, and today's struggle by same-sex partners for the same choice. Mildred Loving understood this. On the 40th anniversary of the court decision that bears her name, she declared:

"I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry." [10]

According to teacher, Kim Burman, her Australian Aboriginal students also grasp the link:

"When examining the case of Loving V. Virginia, one student pointed out the similarities between interracial marriage and same-sex marriage. She turned to me and said, "What's the big deal? Why does it matter who you love, or what you do at home? Why do they even care? When will they ever learn???" She was visibly upset and frustrated that her elders - the government, religious leaders, community members, those who she looked to for guidance - could not see the simple truth that she could."

But the link is not simply that blacks were once told which race to marry while gays and lesbians are told which sex. It's not just that our respective relationships were considered undesirable or faulty, or bad for the children we have. As the Broome petition suggests, there is a direct link between freedom to marry and full citizenship.

Consider all the other groups in society, along with people of colour and gay and lesbian people, who at one time or another have been denied the right to marry the partner of their choice: women, people with

disabilities, paupers and prisoners, servants and slaves, people from minority faiths, and people from different countries or races. What they all have in common is that they have been regarded as too immature or irresponsible to make what is arguably the most important decision any individual can ever make, the choice of a life-long partner. Instead they were told that their hearts were untrustworthy and they should marry as society dictates, or not at all. In the same vein, the gradual acceptance that members of these groups are fully adult, fully citizens and fully human, has been accompanied by an acceptance of their right to marry whomever they wished.

It is the acceptance of gay and lesbian Australians as fully members of the Australian nation and the human family which lies behind many people's support for marriage equality. My hope is for the day when, like Mildred Loving and the "half-caste" women of Broome, gays and lesbians will be free to make their own choice and rule their own lives.

2. Because being unable to marry creates legal disadvantages

I am an Australian citizen living in the United Kingdom who married an English person who is of the same sex in 2006. [But] the moment I stepped on to Australia soil (my home country!) my marriage was not recognised. My partner was hospitalised in 2007 at St Vincent's and I was informed I had no more rights than a friend and could not be listed as her spouse on the paperwork hence was only allowed in during visiting hours.

Julianne Clark

As partners who cannot marry, same-sex couples must meet a long list of pre-requisites before they are deemed to have the legal rights granted to common law or "de facto" relationships. This usually includes a fixed period of living together. Partners who have recently met, who live apart because of work, or who have just moved from another state or nation find it hard to qualify.

Even when partners do qualify as a co-habiting couple, their spousal status can be challenged by relatives and denied by the authorities. Going to court is often the only choice in such circumstances, something which involves great financial cost, the intrusiveness of testifying and being cross-examined about one's intimate life, and, of course, being publicly and irrevocably outed. As Julianne Clark reminds us, the failure to recognise partner's rights can be particularly traumatic where one partner requires emergency medical treatment. But proving your spousal status can also be a problem in everything from superannuation entitlements to immigration. What's more, the need to establish the existence of a spousal relationship is more likely to arise for same-sex partners than for their opposite-sex counterparts. The idea that same-sex couples have legal rights is relatively new, and is still not understood or accepted by the relatives of some same-sex partners or by some hospitals, schools or workplaces.

Marriage equality eliminates all this legal uncertainty by allowing couples immediate access to all spousal rights and protections, and guaranteeing these rights against all challenges. No doctor, bureaucrat or estranged parent can argue against a marriage certificate.

Another practical problem faced by same-sex couples because they can't marry is differences in the rights of de facto partners between the Australian states and territories. Some allow same-sex couples equal recognition as parents, others don't. The hurdles couples have to jump over to be deemed de factos also vary. In contrast, marriage provides the same rights and responsibilities wherever you live in Australia.

Davina Storer explains it this way:

"It might be hard to comprehend if you are not in a same-sex relationship, but we are often not even sure what our rights are a lot of the time, especially in different states. It is very sad, that in this day and age in Australia, the land of the 'fair go', there is still a group of citizens like us, who have to regularly log on to Google and devote significant chunks of time to working out what our rights are in different parts of Australia, whenever we embark on a normal couple milestone, such as moving interstate, buying a house, having children etc."

Inconsistency is even more of a problem between nations than it is between states. A marriage in one country is generally recognised in most others. Marriage is a legal contract that has "portability" as lawyers say. Of course, only about a dozen places overseas currently recognise foreign same-sex marriages.[11] But this is a dozen more than recognise Australian de facto relationships, and the number is growing all the time.[12]

The fact that the list of nations that allow same-sex marriage is growing rapidly highlights another galling inequity: the Australian Government's failure to honour same-sex marriages solemnised overseas. When the Marriage Act was amended in 2004 to make it clear that legally-recognised matrimony is limited to heterosexual couples, a provision was included explicitly banning the recognition of overseas same-sex marriages. Since then several thousand Australian same-sex partners have married overseas.[13] Some of these partners are new Australians or expats like Julianne. Most go overseas specifically to marry, although they do so reluctantly. It is expensive, and an overseas marriage is far harder for families and friends to attend. If a same-sex marriage solemnised overseas breaks down, it can also be much harder and more expensive to obtain a divorce than it is for opposite-sex couples in Australia. No wonder a University

of Queensland study, "Not So Private Lives", has found 91.3% of Australian same-sex couples married overseas would prefer to marry in Australia.[14]

But as Davina reminds us, for Australia's marriage refugees the right to marry is so profoundly important they are willing to make the sacrifice:

"My partner and I were recently married in Canada, but upon flying home to Australia, our marriage is not recognised and this has brought significant sadness to not only our lives, but to both of our families who were unable to travel to Vancouver to be with us on our special day. We spent a small fortune to be legally married. This was money we had been saving to put towards our first home deposit, but we made the decision to dip in to these funds to be married in a country where it was legally recognised and neither of us regret this for an instant."

Regret, no. But frustration, yes. In Julianne's case we saw the practical problems that arise when legal same-sex marriages are not honoured. But no less painful is the symbolism of having your matrimonial status stripped from you and your solemn vows count for nothing, the moment you walk back through Australian customs. Davina again:

"By refusing to acknowledge our legally witnessed marriage overseas, you tell us we are not equal citizens in Australia. You tell us and the rest of the community that somehow our love and marriage is "less than" the rest of heterosexual Australian society. You make us feel unwelcome in our place of birth, compared to the compassion and understanding we receive in other countries that have true equality."

The other major set of legal disadvantages faced by same-sex partners because they cannot marry arises from "seepage" of discrimination from the Marriage Act into other areas of law and policy.

After it wrote a ban on same-sex marriage into Australia's Marriage Act in 2004, the Federal Coalition Government of Prime Minister John Howard, frequently used that ban to justify discrimination in other areas of relationship law. For example, it refused to recognise same-sex partners as de factos, even in uncontroversial areas like superannuation entitlements. State and territory civil union schemes that provided same-sex couples with formal recognition and the entitlements of marriage were also targeted, especially in the Australian Capital Territory (ACT) which, constitutionally, is subordinate to the Federal Government.

Even in the complex regulations governing marriage, the ban on same-sex marriage has a long reach. It has been used to justify rules banning registered celebrants from conducting unofficial same-sex commitment ceremonies (and from referring to opposite-sex partners as anything but "husband" and "wife" during their wedding ceremonies). It is also the reason the government refuses to issue gay and lesbian Australians with the documents they require to marry overseas and which opposite-sex partners receive as a matter of course. Whatever form of recognition they seek, and wherever they seek it, Australian same-sex couples cannot escape the shadow of their exclusion from the Marriage Act.

In opposition, Labor supported the ban on same-sex marriage. Now in office under Prime Minister Kevin Rudd, too little has changed. As I've noted already, in 2008 the Federal Labor Government removed discrimination against same-sex de facto partners in areas like superannuation and taxation. It also allowed the ACT to adopt a civil union scheme which formally recognises same-sex couples yet still refuses to allow couples an official, marriage-like ceremony. It has not budged on its refusal to issue same-sex partners with the documents required for them to marry overseas. Same-sex couples are still frustrated in their attempts to have official civil union ceremonies here, or official marriages overseas.

As if it weren't enough to burden same-sex couples with the day-to-day legal problems that arise from being unable to marry, successive Australian Government's have used a single discriminatory law – the Marriage Act – as the foundation for a wall of policies and regulations to defend the definition of marriage from local and global change. These restrictions on same-sex equality are embarrassing for a nation that claims to value a fair go for all. In the words of Johnathon Parker:

"I have a great desire to one day be able to marry a partner of my choosing - and have that marriage fully and equally recognised by the law in this great country that I love. I consider Australia to be a forward thinking, modern country of

pioneers and innovators, however, on this particular issue, Australia seems to be being left behind."

3. Because marriage has practical social and cultural benefits for couples and their families

"I have been in a happy relationship for 38 years. My partner and I were both migrants arriving to Australia in the 50s. We were a controversial pair. He was German and I was Jewish who not so long before spent my childhood and adolescence in a concentration camp. Yet we overcame a great obstacle because we have found love was stronger than hate. We built our lives, together. We brought family to Australia, who in turn prospered and had families of their own. We lived in the same house we bought and had a wonderful relationship with our neighbours and people at large. Our foundation was solid. We did not shake any heterosexual foundations.

"We would have loved to be married and be part of society instead of outsiders. I think that in a more enlightened world there should be more understanding and tolerance for persons of the same sex to be allowed to marry and live equal as heterosexuals. With the staggering number of divorces around me I wonder how much stronger our foundation was by comparison."

Frederick Weisinger

Marriage provides partners, families and the general community with a universal language for love, commitment and relationships. Terms like "husband", "wife" and "wedding" are immediately understood. Marriage is also one of the universal legal and social institutions through which we find connection and a sense of belonging, not only with our partner, but with our families and communities.

An example of this social aspect of marriage is the fact that marriage conventionally creates kinship between families as well as partners, hence terms such as "mother-in-law" and "brother-in-law". Marriages are usually solemnised by a representative of the state, not only between the marrying partners, but in the presence of family members and friends. Traditionally, those present at a wedding are symbolically involved in the ceremony by being asked to voice their view on the union "or forever hold their peace".

Allowing same-sex couples to marry includes them in the universal language of marriage so fundamental to everyday interaction. It also provides them with a sense of belonging not otherwise available. Both result in a real social and cultural benefits. Landmark research led by Lee Badgett, Professor of Economics at the University of Massachusetts and research director of the Williams Institute for Sexual Orientation Law and Public Policy at the UCLA Law School, describes and quantifies some of these benefits in two different places that have allowed same-sex marriages for several years, the Netherlands and Massachusetts.[15]

Professor Badgett found that same-sex partners overwhelmingly:

- marry for the same reasons as opposite-sex couples, chiefly because of their shared love and commitment
- felt marriage had increased their commitment and their sense of responsibility, and had generally strengthened their relationships
- believed their children were better off after their marriage, chiefly through legal protection for those children and enhanced feelings of security, stability and acceptance in the children, and
- felt participation and acceptance in their extended families and communities had increased because of their marriage

Her conclusion was that:

"Overall, the experiences of same-sex couples in two countries, the United States and the Netherlands, suggests that same-sex couples and their families are strengthened by a policy of marriage equality for same-sex couples."

Dr Darren Cundy and his partner Warrick concur:

"Marriage is to us a cross-generational ceremony that provides a framework and context for families to come together to offer their support and blessing. Marriage 'says' to a couple, your family acknowledges you, your community acknowledges you and the law of the land acknowledges you. To preclude a couple from marriage on the basis of sexuality sends just the opposite message."

Two obvious areas where same-sex couples and their families are strengthened by the greater commitment and connection that comes with marriage are money and health.

Research shows that the failure of governments to allow same-sex couples to marry limits their financial self-reliance and heightens their risk of welfare dependence. After reviewing this research, British academic, Michele Calandrino, concluded:

"Since same-sex partnerships are not legally recognised, homosexual people do not have the possibility to form their own legally protected family. [Legally recognized] families… represent strong safety nets for individual workers and this possibility of 'income-insurance' is not open to homosexuals." [16]

In the Australian context, this is less of a problem now that the financial and workplace entitlements of same-sex de facto partners have been legally recognised. But, insofar as married partners are more financially interdependent and more likely to stay together longer, including at times of personal crisis, the economic safety net which marriage provides opposite-sex partners is missing for same-sex partners.

There is also a growing body of research showing that married partners, including same-sex married partners, are, on average, healthier, happier and longer lived, than their cohabiting peers, or singles. According to the US Centre for Disease Control, even rates of heart disease, drug use and stress are lower among married partners. In a wide-ranging review of studies into same-sex couples who marry, Yale Law Professor William Eskridge, and his colleague, Darren Spedale, identified specific health benefits for these couples, from the lower levels of stress associated with being more open with family and work colleagues to lower levels of HIV and other STDs.[17]

"For richer for poorer, in sickness and in health": clearly there are benefits to be had from making these vows, benefits which are blind to our sexuality and gender. For Allan Swanepoel it makes no sense to value the benefits of marriage but then hesitate to extend them to same-sex couples:

"I have a gay son, I have always loved him and always will, regardless of his sexual orientation. I feel that for him not to have the fruits of marriage, like I have for the last 30 years, simply goes against all democratic and basic fundamentals of life."

As well as excluding same-sex couples from the "fruits of marriage", the law as it stands exposes them to the social discrimination that draws its strength from this exclusion.

Denying same-sex partners the right to marry sends out the message that they are not capable of the level of love and commitment associated with marriage. Impugning their love in this way is particularly damaging for gays and lesbians because who they love seems to define so much about their lives, at least in the eyes of others. Discrimination in marriage also says it is acceptable to exclude an entire group of citizens from important social institutions on the basis of their sexual orientation. These negative messages are magnified by the fact that marriage is the only federal law which still discriminates on the grounds of sexual orientation, and because marriage is such a central social institution.

An ever-growing body of social research shows the vulnerability of gay and lesbian people, particularly young people, to prejudice, stigma and discrimination. They experience unacceptably high levels discrimination in the workplace, discrimination in other aspects of their lives including at school and in their families, and hate-motivated assault.[18] Gay and lesbian Australians are also more likely to experience below-average health outcomes including higher levels of depression, due to this prejudice and discrimination.[19]

Further, research confirms a direct link between these unacceptable levels of discrimination and exclusion from marriage. A large-scale American study found laws that prevent same-sex couples from marrying cause the couples to devalue their relationships, feel discriminated against, and experience high levels of stress and other mental health problems, regardless of whether the couples in question wish to marry.[20]

Of course, marriage equality will not remove all discrimination, stigma and prejudice against gay and lesbian people. But it will remove one of the last official refuges for this prejudice. Neither will, marriage

equality erase the fact that same-sex relationships have been persecuted and criminalised until very recently. But it will be the fastest acting antidote to this poisonous past.

Benjamin Bridge highlights the link between discrimination in marriage and discrimination more broadly, as he explains the impact of legal inequality on his life:

"Being officially and publicly denied the choice of whether or not I want to get married to the person I love has definitely had a negative impact on my life. I am unable to walk down the street as myself for fear of being discriminated against and heaven forbid I show public affection even if it were to just hold my partners hand. This kind of oppression permeates throughout every aspect of my life and affects how I work in my place of employment and even how I interact with my neighbours. Denying equal rights to all but some drives a rift into the subconscious of all Australians, creating an undesirable "us and them" frame of mind."

At a time of growing social isolation, exclusion and alienation, when many people yearn to find a genuine connection with others, it seems perverse that we continue to exclude same-sex couples and their families from such a universal and fundamental institution of social connection as marriage. As much as anyone, gay and lesbian people understand the harm caused by this exclusion. It is no coincidence that in the quote that opened this section, Frederick Weisinger directly linked exclusion from marriage to exclusion from society. As his story reminds us, marriage is about building bridges not barriers. By allowing same-sex couples to marry, Australia will have affirmed, not only that discrimination is wrong, but that same-sex couples belong, and that, for everyone, marriage is still where we find one of our deepest and most fulfilling connection with others.

4. Because same-sex marriage is good for marriage

"The fact that not everyone in Australia can marry actually made me hesitate to get married earlier this year. I felt that if I got married with the law the way it is, I would be supporting the current marriage laws that disallow same sex couples recognition."

Marie Brown[21]

The debate on same-sex marriage often focuses on the benefits of equality for same-sex partners, but there are also benefits for marriage as a legal and cultural institution.

Allowing same-sex couples to marry will admit many more couples who seek to uphold the core values of marriage and are enthusiastic for the institution. It will send out the message that marriage is defined by love and respect not prejudice and discrimination. It will also prompt opposite-sex couples to re-value wedlock as an institution in which the over-arching values are love, devotion, and not least, social inclusion. It shows them that marriage is relevant and resilient enough to embrace changing social attitudes.

Pro-equality Baptist pastor, Rev Nathan Nettleton, goes even further, arguing that the future of same-sex marriage and marriage generally are inextricably linked:

"Heterosexual marriage is under threat, but the threat is from within and not from without. The real threats to marriage come from the commodification of sex and relationships and a consumerist mindset that sees everything as ephemera that can be discarded and replaced as soon as a new model comes along that offers a greater level of satisfaction. Unfortunately, when things that we hold dear are under threat from things we feel powerless to tackle, we have a tendency to deflect the blame onto a scapegoat. I think that is what the churches have often tended to do with the homosexual community. But now what we have here is a group who are recognising the value of marriage—of faithful, lifelong vowed relationships—and asking for the right to participate in the benefits of that. Surely if a group who have been stereotyped as the champions of hedonistic promiscuity begin extolling the virtues of marriage, that can only increase the regard in which marriage is held by the community as a whole."

Evidence that allowing same-sex marriage uplifts marriage can be found in those places where the recognition of same-sex relationships has a relatively long history. In Scandinavia the formal recognition of same-sex relationships has been in place for longer than anywhere else in the world, and same-sex marriage is now widely allowed. At the same time, marriage rates among heterosexual couples have increased after decades of decline, divorce rates have stopped increasing, as has the number of children raised by unmarried couples.[22] Similarly, those US states that allow same-sex couples full marriage rights have the lowest rates of divorce among heterosexual partners. The state which has had marriage equality the longest, Massachusetts, has the lowest divorce rate of all,[23] while those states that have banned same-sex marriage have the highest divorce rates.[24] A review of these examples published in *The Wall Street Journal* in 2006 agrees none of this is a coincidence:

"There is no evidence that allowing same-sex couples to marry weakens the institution. If anything, the numbers indicate the opposite".[25]

Of course, opponents of marriage equality argue exactly the opposite, declaring that same-sex marriage will variously "demean", "degrade" or "destroy" the institution of marriage. To make their case, they declare same-sex couples to be incapable of the levels of commitment associated with marriage, citing studies purportedly showing same-sex relationships are shorter, less happy, less stable and less committed than opposite-sex relationships. Beware of such studies. They often compare, for example, married opposite-sex couples with unmarried same-sex couples including those who wouldn't marry even if they could[26] or, like a commonly-cited Dutch study of HIV risk among young, inner-urban gay men, deliberately select subjects who are *not* monogamous.[27]

In contrast to these isolated and mis-construed studies, there is a substantial body of peer-reviewed research which indicates that many same-sex attracted people form committed relationships that are long term, and that these couples have the same level of relationship quality as opposite-sex couples[28]. Perhaps

the most important evidence of all comes those nations that allow same-sex marriage. When we compare divorce rates between same-sex and opposite-sex couples in the Netherlands, since same-sex partners were permitted to marry in that country in 2001, we find they are exactly the same[29]. Clearly, same-sex couples are just as capable of the level of commitment associated with marriage as their heterosexual peers.

Another fear of marriage-equality opponents is that marriage is such a fragile institution any change poses a risk too great to take. But if we look at the history of marriage we can see it has changed over the years, and that these changes, far from weakening the institution, have strengthened it.

It is only in relatively recent times that partners married for love. Before that, marriage was primarily about the inheritance of property, shoring up ethnic or religious identity and, as we will see in the next section, the begetting of children. This is why fathers arranged their children's marriages and women lost all their legal rights upon marriage. It is why rape was allowed within marriage but contraception banned. It is why interracial unions were barred and inter-faith unions frowned upon. As old ideas about the purpose of marriage changed, so did the laws governing it. Divorce was allowed so partners could escape abusive or unhappy marriages, equal rights were extended to unmarried de facto partners and their children, marital rape was prohibited, wives were given legal equality, and, as already mentioned, barriers to interracial marriages were removed. When each of these changes occurred, opponents of change claimed that the institution of marriage would be destroyed. Clearly, this was not the case. Instead marriage was reformed, renovated and rejuvenated so that it remained relevant to an ever more tolerant and egalitarian age. Same-sex marriage is part of the same tradition of reform and renovation.

Citing examples of how marriage has changed reminds us, not only that these change were inevitable, but that change is essential for marriage to survive. Imagine if marriage was the same institution today that it was a hundred years ago when wives were virtually property, divorce nearly impossible and the races effectively segregated? It would no longer be considered relevant and few heterosexual couples would wish to marry. The same consideration applies to same-sex marriage. As society becomes more accepting of same-sex relationships, the current prohibition on same-sex marriages will come to be seen as anachronistic and the institution of marriage as whole will be increasingly seen as an instrument of prejudice rather than a symbol of love.

The real threat to marriage today comes not from those same-sex couples who seek to become part of the institution and uphold its values, but from those who would make marriage a vehicle for their prejudices, and who would fossilise the institution until it was as repellent and irrelevant as these prejudices are fast becoming.

We can already see this happening in Australia. In my experience, an increasing number of heterosexual partners share the view of Marie Brown, whose words opened this section, that marriage is diminished by the discrimination against same-sex relationships that is entrenched in the Marriage Act. Some even go so far as to refuse to marry while their gay and lesbian friends can't. In the ears of more and more Australians, the words celebrants are obliged to say at all marriage ceremonies - "under Australian law marriage is the union of a man and a woman *to the exclusion of all others*" - risks becoming a declaration of prejudice rather than an affirmation of fidelity.

But there is hope. It is offered by those countries that have proven same-sex marriage brings the benefits of full equality, with none of the dire consequences predicted by opponents of reform.

Like every Australian marriage refugee, Davina Storer has seen this with her own eyes:

"During our time spent in Canada, the country seemed to be functioning well, and there was no evidence that having same-sex marriage has destroyed family values or broken down social functions in anyway. The religious institution of marriage is alive and well there and has not been destroyed, and life goes on as usual, and Canadians can truly say that they have equality in their country."

5. Because children and religion are arguments for marriage equality, not against it

"*My husband David and I married in a Quaker ceremony in Canberra 2007. The irony of being able to have a religious ceremony but being prevented from achieving legal recognition due to arguments about the 'sanctity' of marriage has always struck me as highlighting one of the many absurdities in the continuing discrimination against gay, lesbian, bisexual and transgender people. "*

Evan Gallagher

The Bible and procreation are the two most common arguments against marriage equality. For some people, marriage is a holy sacrament and same-sex relationships, sinful. We can assume this is what the head of the Australian Christian Lobby, Jim Wallace, was getting at when he wrote that Prime Minister, Kevin Rudd's, opposition to same-sex marriage is based on "personal faith".[30] For others, same-sex couples are incapable of reproducing while the whole purpose of marriage is to have children. This is why former Prime Minister, John Howard, said banning same-sex nuptials was justified on the basis that "same-sex marriage does not contribute to the survival of the species".[31]

In the past there was a clear separation between civil and religious marriage. Marriage pre-exists all modern religions, including Christianity. Early Christians married under Roman civil law and did not observe marriage as a sacrament. Only in the later Middle Ages did marriage as a civil institution and marriage as a religious sacrament converge[32].

In modern times religious and civil marriage have again diverged. In Australian law, and, before that, in the British legal system Australia inherited, there has been a clear distinction between civil and religious marriage. It is because of this distinction that the law allows divorce, even though this is expressly prohibited by Jesus, it prohibits polygamy, arranged marriages, child betrothal and the subordination of married women, even though these are commonly found in the Old Testament, and it allows marriage between people of different faiths or no faith.

The legal distinction between civil and religious marriage reflects the same distinction in society. According to the Australian Bureau of Statistics (ABS) 65% of marriages performed in 2008 were performed by a civil celebrant rather than a minister of religion. This compares to 42.2% in 1989.[33]

Rather than appeal directly to the Bible, some religious folk invoke human rights. They declare same-sex marriage will impinge their freedom of religion because they will be forced, against their beliefs, to conduct marriage ceremonies for same-sex partners. What they ignore is that in no country that allows same-sex marriage has this occurred. They also ignore the fact that in Australia marriage celebrants are not forced to marry anyone against their will.

However, freedom of religion *is* a real issue for those Christian denominations that conduct same-sex marriage ceremonies in their churches but are denied the same governmental recognition of these marriages that other churches receive for the heterosexual marriages they legally solemnise.

In explaining his support for marriage equality, Rev Nathan Nettleton, argues:

"the doctrine of separation of church and state, for which some of my Baptist forebears endured violent persecution, teaches us firstly that it is a Christian duty to defend the right of others to follow their own conscience before God, free from coercive attempts to impose conformity of belief or practice; and secondly that the state should not privilege the convictions of any particular religious tradition, even a majority tradition, over the convictions of those who dissent from it."

Put simply, while Biblical injunctions against homosexuality are not a legitimate argument against marriage equality, religious freedom is a compelling argument in favour of it.

Children

A similar case can be made about procreation. We do not demand from marrying opposite-sex partners

that they intend to have children, or impose any such legal requirement on them. This is why we allow partners to marry if they are infertile or passed child bearing age, and to stay married if they use contraception, don't have sex, don't want children, or for whatever reason don't reproduce. It is also why Australian law provides the same legal rights, protections and responsibilities to unmarried parents and their children.

Again, this legal regime reflects changing social norms. According to the ABS, the proportion of Australian children born outside marriage is increasing, while the proportion of heterosexual couples with children, compared to those without children, is declining.[34]

But there is still a widespread belief that marriage benefits children by providing them with stability and security, which brings us to the other side of the argument: an increasing number of same-sex couples are raising children - approximately 10-20% according to most studies,[35] a figure which rises to almost 50% of female partners over 36 according to a recent national study.[36] By any count this is many thousands of Australian children.

Jim Wallace, from the Australian Christian Lobby, thinks this is a bad thing, and another reason to oppose marriage equality:

"Children benefit most from having two biological parents of the opposite sex. They need the love and role models of the different genders that a mother and a father can provide, and they need this ideal of marriage to aspire to. Any redefinition of marriage risks deliberately placing children in relational constraints which deny them a mother or a father." [37]

However, studies from Australia and overseas show that children in the care of two parents of the same sex are not disadvantaged by being raised by these parents.

One of the best summaries of the research on same-sex parenting was put together by the Australian Psychological Society in 2007. It found that

"…parenting practices and children's outcomes in families parented by lesbian and gay parents are likely to be at least as favourable as those in families of heterosexual parents, despite the reality that considerable legal discrimination and inequity remain significant challenges for these families."[38]

The benefits to same-sex couples and their children of both marriage and the right to marry were noted earlier in sections 1, 2 and 3. They include legal security, the removal of harmful discrimination, and a stronger sense of stability and connection.

As Elizabeth Murray confirms, the only deficiency associated with same-sex parents is the law's failure to acknowledge their love:

"I lived with my mum and her same sex partner from the age of 10. I could not have had a better set of parents. They are my role models when it comes to how a long term relationship should look, and I hope my husband and I are as happy as they when we have been together for 20 years. Yet these women, who I love dearly, are denied the opportunity to legally marry. They came to my wedding and celebrated with me - yet I cannot celebrate the same happy occasion with them. Their union is like a marriage in every sense, so why are they denied that legitimacy? Why was I denied the legitimacy of my parents being married?"

While the capacity to conceive is not and should not be a pre-requisite for marriage, the stability and acknowledgment marriage brings, benefits the children of straight and gay couples alike.

Our other half

An argument often associated with the procreational case against marriage equality, is that marriage is about the complementarity of the sexes. In other words, men and women are essentially different in a way that makes their union somehow more meaningful.

The newspaper columnist Piers Akerman believes:

"Among humans, marriage is the joining of a man and a woman, different sexes, one whole….At the simplest, a marriage is reflected in the relationship between a nut and bolt. A single nut is not much use. Neither is a bolt, but the two used in tandem as they are designed to be used, form an effective fastener. Two nuts don't make it, nor two bolts. Try to put them together and they don't marry." [39]

This argument is profoundly sexist. It assumes gender is a more important feature of an individual than his or her character, abilities or morality. It is also an argument thinkers have taken issue with for centuries. In *The Symposium* Plato reminds us that gender is irrelevant when it comes to finding our "other half":

"And so, when a person meets the half that is his very own, whatever his orientation, whether it's to young men or not, then something wonderful happens: the two are struck from their senses by love, by a sense of belonging to one another, and by desire, and they don't want to be separated from one another, not even for a moment." [40]

As we've seen, the chief preoccupation of marriage equality opponents is to define marriage as something which precludes same-sex couples, chiefly with appeals to what God wants, what children need, and what gender difference demands. Even among equality opponents who reject the idea that same-sex relationships are somehow inferior or threatening, there are many who believe there is some inherent difference between same-sex and opposite-sex unions which makes the former unable to fulfil the requirements of marriage as they have defined it. Australia's Federal Opposition leader, Tony Abbott, expresses it this way:

"I am not against gay people having solid lasting relationships. I just don't think these can be called "marriages" any more than a rose could be called a gardenia or vice versa notwithstanding that they're both beautiful and sweet scented."[41]

But it's clear from both the law and prevailing social attitudes that the purpose of civil marriage in modern Australia is not to discharge a religious duty, or have children, or "fasten" the sexes.

So what is it's purpose, and can same-sex couples fulfil this purpose?

I believe most Australians today would agree the role of civil marriage is no more and no less than to legally entitle and socially acknowledge a loving, committed, enduring, romantic relationship. I also believe a majority would agree that same-sex relationships can be as loving, and as deserving of legal protection, as their opposite-sex counterparts. This is why, with overwhelming public support, the equal marriage-like characteristics of same-sex relationships have been established as principles of public policy in Australia through the recognition at every level and in every area of law of same-sex de facto marriages.

Australians today no longer believe same-sex relationships are intrinsically different, or unfit for marriage. Through familiarity with gay and lesbian friends and relatives, heterosexual Australians have come to understand that sexual orientation does not determine our desire for or experience of love and commitment. They understand, often far better than their leaders, that wherever love blooms into a life-long union, a single vine, our common humanity, gives it bud.

6. Because the alternatives don't offer full equality or recognition

"As I listened to the arguments that said that the state could legally recognise same-sex relationships but not call it 'marriage', I became less and less comfortable with that position. In the end it began to sound snobby. It began to sound as though the underlying message was 'Please don't let them into our exclusive club'. 'Please reserve this badge of honour for our group only, and exclude them."

Rev Nathan Nettleton[42]

As we've seen, existing laws that deem cohabiting same-sex couples to be de facto partners do not provide these partners with the legal security that comes with a marriage certificate.

To address this problem, while maintaining the ban on same-sex marriage, some people advocate civil unions ("civil union" is a generic term that includes a registered partnership, a civil partnership, and all other formally-recognised personal unions that are not marriages). But this just creates another set of problems arising from the failure of civil unions to be a satisfactory substitute for equality in marriage.

Like de facto partnerships, civil unions do not offer the same legal benefits as marriage, even when the law says they should. This is because they are not as widely understood or respected. Several recent inquiries into the operation of civil union schemes in Europe and North America[43] confirm the conclusion of the 2008 New Jersey Civil Union Review Commission:

"A common theme in the testimony gathered by the Commission was that while marriage is universally recognized by the public, civil union status must be explained repeatedly to employers, doctors, nurses, insurers, teachers, soccer coaches, emergency room personnel and the children of civil union partners. The testimony suggests that the need to explain the legal significance of civil union status to decision makers and individuals who provide vital services is more than a mere inconvenience.…comments (were) provided by many witnesses regarding medical personnel, school officials and government workers who denied access and decision-making authority to civil union partners, either initially or completely, because of a lack of understanding of the rights that flow from civil unions." [44]

A low level of recognition is also a problem when it comes to "portability". In some cases local or state civil unions aren't recognised in other states or nationally. National civil union schemes rarely provide rights in other countries.

But even if a solution can be found to these practical problems, legal unions other than marriage do not give same-sex couples the respect and acknowledgment that comes with marriage.

As Kim Burman notes, de facto status does not do justice to the reality of deep marriage-like love, commitment and mutual responsibility between some same-sex partners:

"I live with my partner, who is also female. According to the new laws, she is my 'De Facto'. But I really don't think that that term even begins to describe what we have together. Our relationship has survived everything that has tried to pull us apart. We survived when I moved to a new state, with no money or work….In turn, I support her now, when she cannot work due to an injury. I take care of her on the days that she is in too much pain to move. I drive her to all or her appointments, and I console her on the days when it's all too much. I love her, and I would be honoured to call her My Wife. Is this extraordinary? No. It's just what any couple should do for each other. We have our good times, and our bad times, and we stick together always. How are we less than worthy? How are we not enough?"

Civil unions, too, do not provide full social recognition. They do not necessarily carry the expectation partners will share their lives completely or the hope of a lifelong union. They do not connote inclusion within families or create kinship between them. They can lack marriage's cultural association with mutual love, commitment *and* responsibility. There is not even an accepted civil union equivalent of the verb "to marry. In the words of American marriage equality advocate, Beth Robinson, "nobody writes songs about civil unions".[45]

Worse still, civil unions may actually downgrade the status of same-sex relationships.

The Massachusetts Supreme Court, like many courts across North America, has confirmed that the right of equal treatment is not only left unsatisfied by civil union schemes, but is breached by them:

"The dissimilitude between the terms 'civil marriage' and 'civil union' is not innocuous; it is a considered choice of language that reflects a demonstrable assigning of same-sex couples to second class status." [46]

Civil rights historians like Barbara Cox have drawn the parallel between civil unions and those former "Jim Crow laws" in the American south which enforced racial segregation:

"…restricting same-sex couples to civil unions is reminiscent of the racism that relegated African-Americans to separate railroad cars and separate schools. Our society's experiences with 'separate and equal' have shown that separation can never result in equality because the separation is based on a belief that a distance needs to be maintained between those in the privileged position and those placed in the inferior position." [47]

Witnesses at the New Jersey civil union inquiry mentioned above see the effects of this second-class status on a daily basis:

"Witnesses called the two-tier system created by the Civil Union Act 'an invitation to discriminate' and a 'justification to employers and others' to treat same-sex couples as 'less than' married couples… According to the testimony, the Civil Union Act amounts to a tacit endorsement of discriminatory treatment."

"Many witnesses noted that the labeling of civil union couples, not as married but in a civil union, has a detrimental effect on their families, showing children that their parents are different or somehow less than others, which can lead to teasing and bullying. Many witnesses observed that when the government treats people differently, it emboldens private citizens of any age to follow suit." [48]

Civil unions have not only left unfulfilled their promise of equal rights and respect for same-sex couples, they appear to have made matters worse. Instead of eliminating discrimination they have entrenched it. Instead of removing stigma they have inflamed it. Instead of being a step towards full equality they are a step away.

This is probably why same-sex couples consistently show they prefer marriage to other forms of legal recognition.

Professor Badgett conducted a study in 2008 which compared take-up rates for civil unions and marriage across those US states where one or the other was available to same-sex couples. The result was a higher take-up rate for marriage.[49]

This is consistent with a large, Australia-wide study by social researcher, Sharon Dane, from the University of Queensland.[50] It showed that 55.4% of respondents who were in a same-sex de facto relationship would marry under Australian law if they had the choice. 25.6% would chose to be in a civil union, and only 17.7% would remain as de facto partners. Of those respondents currently in a state same-sex civil union 78.3% would prefer to be married under Australian law. 60% of those in an overseas civil union or overseas same-sex marriage would prefer to be married in Australia.

Alternatives to marriage are important for providing legal security and/or formal recognition for those partners who do not wish to marry. In Australia we are lucky to have much stronger legal protections for cohabiting de facto couples than exist in countries such as Britain and the United States. We also have state civil union schemes which are some of the best in the world. They provide access to almost all spousal rights at both a local and national level. They provide these rights to a wider range of personal relationships and with greater ceremonial recognition, than virtually all civil union schemes internationally. But there is one piece missing from the jigsaw of legal options available to Australian couples. That piece is marriage for same-sex partners. The picture is not complete until that piece is in place, and that place can be taken by no other piece.

7. Because of strong and growing support for equality

"Society evolves. Social attitudes change…To future generations the prohibition on same-sex marriage will seem as unfathomable as the prohibition on interracial marriage seems today. The stark question for each of us is, which side of history do we want to be on?"

Australian marriage equality advocate, Tony Pitman[51]

We have seen how marriage equality is a matter of basic human rights, how same-sex couples and their families benefit legally and socially from this equality, and we how marriage itself is uplifted not diminished by embracing loving, committed couples regardless of gender.

We have seen that same-sex relationships are equal in their capacity for love and commitment, that marriage has changed over the years so that the recognition of such love and commitment is now its primary purpose, and that while marriage still has associations with religion and the raising of children these are arguments for equality, not against it.

For all these reasons and many more, support for marriage equality is steadily growing. Seven nations, including Catholic Spain, six US states, including mid-west Iowa, and three jurisdictions in Latin America allowed same-sex marriage *at the time of writing*[52]. This caveat is important because the number is also accelerating. In Australia, the number of corporations, unions, and community groups that recognise same-sex marriages is also rapidly increasing.[53] Even Government agencies are beginning to acknowledge the reality of same-sex marriages; in early 2008 the ABS confirmed it will count same-sex married couples in the next national census.[54]

In turn, this shift in organisational support reflects a shift in public opinion. In 2004 a Newspoll found that 38% of Australians supported marriage equality while 44% opposed.[55] In 2007 a Galaxy Poll found that 57% of those surveyed support marriage equality.[56] A Galaxy Poll conducted in 2009 using an identical question to 2007, showed 60% of those surveyed were in favour of marriage equality, with a clear majority of support among voters for both of Australia's major parties.[57] Significantly, support was highest among young voters. This may be because they are more familiar with and accepting of gay and lesbian people. It may also be because they are part of what I call the Family Law Act Generation – people born after reform to marriage, divorce and de facto laws gave the sexes greater legal equity and made marriage another life choice. Only when marriage becomes a choice for the majority does the failure to allow a minority the same choice really begin to concern us. But whatever the reasons, on the trends indicated by these polls, we can expect support for marriage equality to keep on increasing.

In the gay and lesbian community, support is also high. The most recent study on this issue, *Not So Private Lives*,[58] found that 80% of same-sex partners support their right to marry and a majority - 55.4% - would marry if they had the choice, a figure that increases to over 80% among same-sex couples with young children.[59] Support is also significantly higher, again, among the young. This may be because older gay or lesbian people grew up when legally-recognised same-sex marriage was inconceivable. It may be because, in the past, gay identity was defined in a way which made a virtue out of our exclusion from marriage. Or it may simply be because young gays and lesbians are also part of a generation for whom marriage no longer looms large as life's only option.

Clearly, those who declare the Australian people do not support marriage equality, or the gay and lesbian community is divided on the issue, are wrong. So, why then are both major political parties in Australia, and in most other western countries, still so strongly opposed to marriage equality?

In Australia the answer is this: politicians believe those who oppose reform are more committed and passionate than those who support, including, crucially, at the ballot box. This perception is beginning to change. A 2004 Senate inquiry into marriage equality received 13,000 submissions of which less than a quarter supported reform. The 2009 inquiry received 27,000 with an unprecedented 11,000 in favour of equality.[60] Obviously, supporters of reform are becoming more active, but still the minority who oppose change remain the most vocal.

In Australia there is no charter of human rights to allow courts to consider marriage equality. There are no citizen initiated referenda to allow the majority of fair-minded and tolerant Australians to directly change the law. Marriage equality will only be achieved when those Australians who support reform make their views known to their family members, friends, workmates, and most important of all, to their elected representatives through letters, through personal conversations and through their ballots. Marriage equality will only occur when each of us makes the choice which side of history we will be on, and acts on that choice. My earnest hope in having contributed to this book is to prompt and inform that choice.

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[1] Wolfson, E., *Why Marriage Matters; America, Equality and Gay People's Right to Marry,* Simon and Schuster, New York, 2004, p18

[2] Barbeau v British Columbia (Attorney General), 2003 BCCA 251 at 156, also Ontario Court of Appeal, Halpern v Canada (2003).

[3] The final report of the Senate Legal and Constitutional Affairs Committee inquiry into the Marriage Equality Amendment Bill 2009, as well as a selection of the submissions to that inquiry, can be found at http://www.aph.gov.au/Senate/committee/legcon_ctte/marriage_equality/index.htm. Some of the extracts reproduced here are from submissions not posted to the Senate website, or otherwise not publicly available. Written permission has been obtained from all submission writers for the use of their extracts and their names.

[4] Goodridge v Dept. of Public Health, 798 N.E.2d 941 (Mass. 2003).

[5] Carson, C., R. Luker and P. A. Russell (eds), (2000) *The Papers of Martin Luther King, Jr: Symbol of the Movement*, January 1957, University of California Press, Berkeley. Page 436.

[6] Arendt, H. and P. A. Baeher (ed), *The portable Hannah Arendt*, Penguin, New York, 2000, p. 236.

[7] Loving v Virginia (1967) 388 U.S. 1

[8] The historical analysis of Aboriginal rights included here is extracted from an unpublished manuscript by the author, Rodney Croome. It is based on several key primary and secondary sources including archival material, memoirs of Aborigines denied freedom to marry their partner and primary and secondary Aboriginal rights texts.

[9] Petition of the 'half-caste' women of Broome, January 1935 to the President and Members of the Western Australian Royal Commission to inquire into allegations of the mistreatment of Aborigines, reproduced in Attwood, B., and A Markus, *The struggle for Aboriginal Rights: a documentary history*, Allen and Unwin, 1999

[10] Loving, M., *Loving for All*, June 12, 2007. http://www.freedomtomarry.org/pdfs/mildred_loving-statement.pdf

[11] Together with the dates when marriage equality was achieved, the nations which allow same-sex marriage (as at March 2010) are, the Netherlands (2001), Belgium (2003), Canada (provincially beginning in 2003, nationally in 2005), Spain (2005), South Africa (2006), Norway (2009) and Sweden (2009). In the US, same-sex marriage is allowed in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire and the District of Columbia. In New York and Rhode Island same-sex marriages are not solemnised but out-of-state same-sex marriages are recognised. In California, same-sex marriages solemnised between June and November 2008, when a referendum ended any further registration of same-sex marriages, are recognised. Same-sex marriages are also allowed in the Argentinian states of Tierra del Fuego and Buenes Aires, and the Mexican state of Mexico City. Marriage equality is expected soon in Portugal.

[12] In the time it took to write this text, marriage equality was achieved in eight of the jurisdictions mentioned above. By the time it is published, the list will almost inevitably be outdated.

[13] In its submission to the 2009 Senate inquiry into the Marriage Equality Amendment Bill, Australian Marriage Equality estimated that "between 3000 and 4000 Australian couples have married overseas". According to AME, this estimate was based on "the numbers of couples who have contacted us for advice, and the numbers who have entered into British civil partnerships in UK consulates in Australia. Mostly these couples have married in countries without residency requirements for marriage, such as Canada (we estimate the number of Australian couples who have entered into Canadian same-sex marriages to be about 2000). But we have been contacted by couples who have married in all the nations which allow same-sex marriage."

[14] Dane, S., B. Masser, and J. Duck, *Not So Private Lives: National Findings on the Relationships and Well-Being of Same-Sex Attracted Australians*. The University of Queensland, 2009. See: http://www.notsoprivatelives.com/Not-So-Private-Lives-Relationship-Recognition-Report-Aug-2009_F4.pdf

[15] Badgett, M.V., N. Goldberg and C. Ramos, *The Effects of Marriage Equality in Massachusetts: A survey of the experiences and impact of marriage on same-sex couples*. UCLA School of Law, 2009. Also, *When Gay People Get Married: What*

Happens When Societies Legalize Same-Sex Marriage. New York University Press, 2009.

[16] Calandrino, M., *Sexual Orientation Discrimination in the UK Labour Market*. St Anthony's College, University of Oxford, 1999.

[17] Spedale D., and W. Eskridge, *Gay Marriage: For Better or Worse? What We've Learnt from the Evidence*. Oxford University Press, 2006

[18] For workplace discrimination see, *The Pink Ceiling is Too Low: workplace experiences of lesbians, gay men and transgender people*. NSW Gay and Lesbian Rights Lobby, 1999, http://glrl.org.au/images/stories/the_pink_ceiling_is_too_low.pdf.

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[19] For more on health risk in young people see *Writing Themselves in Again, the 2nd national report on the sexual health and wellbeing of same-sex attracted young people*. Australian Centre for Sex, Health and Society, http://www.glhv.org.au/files/writing_themselves_in_again.pdf

[20] Herdt, G., and R Kertzner, "I Do, but I Can't: The Impact of Marriage Denial on the Mental Health and Sexual Citizenship of Lesbians and Gay Men in the United States", *Journal of the National Sexual Research Centre*, Issue 1, Vol 3, 2006, pp.33-49.

[21] Not her real name, at her request.

[22] For a summary of the relevant Scandinavian statistics see, MV Lee Badgett, "Prenuptial Jitters: Did gay marriage destroy heterosexual marriage in Scandinavia?", *Slate* magazine, May 2004, See: http://www.slate.com/id/2100884/

[23] For more, see http://www.cdc.gov/nchs/data/nvss/Divorce%20Rates%2090%2095%20and%2099-07.pdf

[24] For more see N. Silver, "Divorce Rates Higher in States with Gay Marriage Bans", 2010, in *FiveThirtyEight.com*. See: http://www.fivethirtyeight.com/2010/01/divorce-rates-appear-higher-in-states.html

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[40] Plato, *Symposium*. See translation by Alexander Nehamas and Paul Woodruff at p.28

[41] Abbott, T., "Not for Adam and Steve," 9 May 2008 on *ABC*. See: http://www.abc.net.au/unleashed/stories/s2240035.htm

[42] "Supplementary Submission to the Senate Inquiry into the Marriage Equality Amendment Bill 2009 from the Rev'd Nathan Nettleton", 18 November 2009, page 6. See: http://www.aph.gov.au/Senate/committee/legcon_ctte/marriage_equality/submissions/sublist3/for/Sub_ef44a.pdf

[43] See, Gavin, F., *Civil Partnerships - Another Year On*. Village Citizens Advice Bureau, 2007. See: http://www.thevillage.org.uk/research/CP_Report/index.html.

Also, *Report of the Vermont Commission on Family Recognition and Protection*, April 2008. See: http://www.leg.state.vt.us/WorkGroups/FamilyCommission/VCFRP_Report.pdf

[44] *Report of the New Jersey Civil Union Review Commission*, pp. 10-11. See: http://www.nj.gov/oag/dcr/downloads/CURC-Final-Report-.pdf

[45] Cited in Wolfson, *op cit.*, p134

[46] Goodridge v Dept. of Public Health, *op cit.*

[47] Cox, B. J., "But Why Not Marriage: An Essay on Vermont's Civil Unions Law, Same-Sex Marriage, and Separate but (Un)Equal", 25 Vt. L. Rev. 113 (2000-2001). See also, http://heinonline.org/HOL/LandingPage?collection=journalsandhandle=hein.journals/vlr25anddiv=13andid=andpage=

[48] *Report of the New Jersey Civil Union Review Commission*, pp. 11 and 9. See: http://www.nj.gov/oag/dcr/downloads/CURC-Final-Report-.pdf

[49] Gates G.J., M. V. L. Badgett, D. Ho, *Marriage, registration and dissolution by same-sex couples in the U.S.* The Williams Institute, July 2008. See: http://www.law.ucla.edu/WilliamsInstitute/publications/Couples%20Marr%20Regis%20Diss.pdf

[50] Dane, *op cit*.

[51] Pitman, T., "Gay marriage - which side of history is Labor on?" *The Punch*, 3 August 2008. Quote amended with Tony Pitman's consent. See: http://www.thepunch.com.au/articles/Gay-marriage-which-side-of-history-is-Labor-on/desc/

[52] See notes 11 and 12, above

[53] For a list visit http://www.australianmarriageequality.com/employers.htm

[54] A copy of the ABS announcement can be found at: http://www.australianmarriageequality.com/releases/20090507.htm

[55] A copy of this poll can be found at http://www.newspoll.com.au/image_uploads/cgi-lib.17497.1.0601_gay.pdf

[56] For more on this poll, see: Misha Schubert, "Public backs gay unions, equality", *The Age,* 21 June, 2007 http://www.theage.com.au/news/national/public-backs-gay-unions-equality/2007/06/20/1182019204491.html

[57] For a summary of this poll and the full poll results visit, http://www.australianmarriageequality.com/releases/20090616.htm

[58] Dane, *op cit.*

[59] Previous studies within the gay, lesbian, bisexual and transgender community in NSW and Victoria reflect the high and growing level of support for same-sex marriage within the community.

For more see McNair, R., and N. Thomacos, Victorian Gay and Lesbian Rights Lobby (with the assistance of Gay and Lesbian Health Victoria), *Not Yet Equal, Report on the VGLRL same sex relationships survey*, 2005, p.38. See: http://www.vglrl.org.au/files/publications/NotYetEqualFullReport.pdf

Also Gay and Lesbian Rights Lobby, *All Love is Equal, Isn't It? The recognition of same-sex relationships under federal law, Consultation Report*, February 2007, p. 17. See: http://glrl.org.au/images/stories/all_love_is_equal_isnt_it.pdf

[60] This information supplied by the Senate Legal and Constitutional Affairs Committee secretariat

'I once heard a quote about same sex marriage that I feel is simple, appropriate and accurate: "if you don't like same sex marriage, don't have one".'

Marie Brown

Bill Muehlenberg's case against allowing same-sex couples to marry has two threads.

The first is that there is a fundamental incompatibility between same-sex relationships and marriage. This is illustrated by the unchanging nature of marriage, the instability of same-sex relationships and the disastrous consequences of same-sex parenting.

The other is that so few homosexuals want to marry, and claims of "discrimination" are so spurious, that there must be some another agenda behind the demand for marriage equality. Muehlenberg concludes the agenda is to destroy marriage and the family.

What is common to these arguments is that they are based on a dangerous blend of junk science and fear, are riven with internal contradictions, and apply double standards to same and opposite-sex unions. If carried to their logical conclusion they would see virtually everyone deprived of the right to marry. Ultimately they seem to be more about hate of homosexuals than love of marriage.

Marriage and same-sex relationships are incompatible

~ Marriage

Bill Muehlenberg believes that marriage, restricted exclusively to heterosexual couples, is a "universal", "bedrock" institution so fundamental to society that allowing two men or two women to marry would not only "effectively destroy" marriage[i] but put our "continuity as a culture in jeopardy"[ii].

To uphold this conclusion he turns to science, particularly anthropology and evolutionary biology[iii]. Some of the academics Muehlenberg cites are credible, independent experts in their field. But most are either advocates against same-sex marriage giving opinions not based on research, or scientists whose work is very outdated[iv].

An even greater problem is the way Muehlenberg weaves together his real experts and pseudo-experts to leave the reader with the impression that the experts all concur with each other and with him[v]. Fortunately, nothing could be further from the truth. Anthropologists have found that in many different cultures – from medieval China and Japan to pre-modern Africa, America and Polynesia - same-sex relationships have been regarded with respect and sometimes treated as marriages, albeit almost always those between men[vi]. As the Yale history professor, John Boswell, argued in *Same-Sex Unions in Pre-Modern Europe*, the Catholic Church itself recognised same-sex unions right up to the end of the middle ages, developing liturgies specifically for such ceremonies[vii]. Clearly, the exclusion of same-sex couples from marriage is not "universal", and marriage-like relationships between same-sex partners are an important part of history.

For that reason, and to counter the misinformation of people like Bill Muehlenberg, the American Anthropological Society issued the following statement in 2004.

The results of more than a century of anthropological research on households, kinship relationships, and families, across cultures and through time, provide no support whatsoever for the view that either civilization or viable social orders depend upon marriage as an exclusively heterosexual institution. Rather, anthropological research supports the conclusion that a vast array of family types, including families built upon same-sex partnerships, can contribute to stable and humane societies.[viii]

Science does not uphold Bill Muehlenberg's views. If anything, it shows that respect and recognition for marriage-like same-sex relationships has a history as long as marriage itself. But even if marriage has always been an exclusively heterosexual institution, that doesn't mean it should continue to be. In modern times we have slowly but steadily shaped a society in which women are legally and socially equal to men. There are few if any other societies in history which have aimed for or achieved this goal. Opponents of equal rights for women frequently pointed this out, claiming that human society can only survive when men are in charge. They were wrong.

Bill Muehlenberg's opposition to same-sex couples to marry falls into the same category. He justifies an old exclusion by nothing more than the fact it is old. As I showed in section 4, marriage has undergone great changes under the influence of changing social and historical conditions. These changes have benefited not only married partners, but the institution itself by keeping it relevant. Whether allowing same-sex couples to marry is part of history or not, it will also be a beneficial change and should be part of our future.

~ Same-sex relationships

To establish that same-sex relationships cannot reach the standards of love and commitment expected in marriage because they are "highly unstable and promiscuous" Muehlenberg again resorts to science, this time sociology.

Again, some of the people Muehlenberg cites as independent experts are nothing of the kind[ix]. But there are much deeper problems with the "science" he attempt to deploy here.

Some of the studies he cites are from the pioneering days of homosexual research, and drew on small, unrepresentative samples[x]. Later studies he cites have the same problem, although by design. They draw their samples from inner-city bars, clinics and sex clubs because their focus is on gay men at high HIV risk[xi]. As I've noted in section 4 in regard to a study of young gay men in Amsterdam, many of these studies also go out of their way to exclude men in monogamous relationships because they are not at risk[xii].

As if these in-built biases aren't enough, Muehlenberg feels the need to add his own. When citing large surveys like those by Kinsey or Grulich, he tells us only that gay men who aren't in relationships may have multiple sexual partners. What he doesn't tell us is that straight men in the same situation behave in a similar way[xiii], that 93% of gay men in relationships are monogamous[xiv], and that between 30 and 50% of married heterosexual men cheat on their partners[xv]. If these studies show there is a difference between same and opposite-sex partners it is that the former are more committed. They are, if we apply Muehlenberg's logic without fear or favour, an argument for taking the right to marry away from heterosexual men[xvi].

Muehlenberg's selective use of statistics is complemented by his equally selective deployment of quotes from gay men who either aren't looking for committed relationships, or are

explaining to a sometimes condemnatory and hypocritical world why gay men who have multiple partners, while not necessarily more common, may be more honest about it. In the same way that ordinary, committed same-sex partners living in the suburbs are less likely to show up in studies, they are less likely to make an appearance in commentary, literature and pop culture. They're don't match the gay stereotypes audiences like to be titillated or horrified by.

But they are, nonetheless, what this debate is all about. Muehlenberg's statistics about gay men who sleep around are not only misleading and unrepresentative. They are also irrelevant. When it comes to whether same-sex partners are capable of the commitment associated with marriage, we should be looking at those partners who already value commitment, not those who eschew it, because it will be the former who are likely to marry. In section 4 I listed a series of studies specifically aimed at determining how stable, committed and fulfilling existing same-sex relationships actually are. They found very little difference between same and opposite-sex relationships. To these I will add two more: a large scale study of same-sex couples registered under the Vermont's civil union scheme which found that, "*what's most interesting about this analysis…is the banality of the results. Civil union households simply don't differ that much from those of the general population*"[xvii]. The second study, recently released by the University of Minnesota, affirmed this result. It found that the gay people surveyed valued romantic love, faithfulness and commitment no less than their heterosexual peers.

Clearly, Muehlenberg couldn't be more wrong when he argues that same-sex relationships lack the marriage-like qualities to be found in opposite-sex relationships.

But for the sake or argument, let's suppose that same-sex relationships are more unstable and uncommitted. Isn't this an argument FOR same-sex marriage rather than against it? Muehlenberg clearly believes homosexual promiscuity is a bad thing. He clearly believes that marriage is a way to promote values like commitment. He should be one of Australia's strongest advocates for marriage equality. The fact that he isn't suggests he has a fundamental belief, which he simply uses statistics to bolster, that same-sex relationships are beyond redemption, as well as a fear, odd in someone who believes so ardently in marriage, that the institution is too weak to lift same-sex couples up.

~ Parenting

Muehlenberg's third strategy for drawing a line between marriage and same-sex relationships is characterised by the most serious distortion of scientific evidence and denigration of same-sex couples so far. Having declared that "marriage has always been primarily about procreation and children[xviii]", he goes onto state "in most cases, a child will suffer as a result of being raised by same-sex parents"[xix].

To back this up he again cites academics who are evangelicals and anti-equality advocates[xx]. But worse than portraying culture warriors as disinterested experts he cites psychologists who have been censured by their profession for unscientific practices[xxi]. Muehlenberg has quite a nerve to cite such people and then immediately launch an attack on research which endorses gay parenting, for its "methodological shortcomings"[xxii].

Fortunately, the real experts in this field provide some guidance through this mire. On top of the statement from the Australian Psychological Society cited in section 5, we have the

following statements from the American Pedriatrics Association and the American Academy of Child and Adolescent Psychiatry, respectively.

"Research comparing children raised by homosexual parents to children raised by heterosexual parents has found no developmental differences in intelligence, psychological adjustment, social adjustment, or peer popularity between them."[xxiii]

"Outcome studies of children raised by parents with a homosexual or bisexual orientation, when compared to heterosexual parents, show no greater degree of instability in the parental relationship or developmental dysfunction in children. There is no basis on which to assume that a parental homosexual orientation will increase likelihood of or induce a homosexual orientation in the child."[xxiv]

The American Psychological Association goes one step further and addresses the criticism about "methodological shortcomings" levelled by Muehlenberg. It notes,

"The relevance of this criticism has been greatly reduced as research has expanded to explore life in a wider array of lesbian mother and gay father families…and as newer studies begin to include a wider array of control groups. Contemporary research on children of lesbian and gay parents involves a wider array of research designs (and hence, control groups) than did earlier studies."[xxv]

Significantly, the APA highlights the single study – by Australian researcher, Sotirios Sarantakos - upon which Bill Muehlenberg bases his offensive claim that children suffer from same-sex parenting.

The APA says,

"the anomalous results reported by this study--which contradict the accumulated body of research findings in this field--are attributable to idiosyncrasies in its sample and methodologies and are therefore not reliable"[xxvi].

Muehlenberg would do well to follow his own advice on gay parenting, "exceptions do not make the rule"[xxvii].

He would also do well to consider how his views on same-sex parenting illustrate the same internal contradiction we have already seen on same-sex relationships. If the research is wrong, and same-sex parents do strike problems raising their children, particularly because of the prejudices of others, surely one of the best ways to improve their lives and the lives of their children is to provide them with the legal protection and social legitimacy that comes with marriage.

The real agenda

Having argued that same-sex relationships and marriage are chalk and cheese, Muehlenberg attempts to knock down other commonly made arguments for marriage equality.

"The percentage of homosexuals who want marriage rights is very small indeed"[xxviii], he asserts, deploying yet more unreliable studies by anti-equality advocates and ignoring evidence to the contrary[xxix].

He also claims that the discrimination gays want removed is either "necessary" to protect marriage, or simply doesn't exist because homosexuals are already free to marry people of the other sex[xxx]. Throughout his argument, Muehlenberg strongly suggests that homosexuality is a choice. Now we can see why. It makes his point that "a homosexual (can) find a woman and settle down" seem less foolish or callous. But to cover all bases, he quickly moves on. Interracial couples were also once told they were they were not discriminated against because they were free to marry people of the same race. But Muehlenberg asserts that any such comparison is unwarranted. "Laws banning interracial marriage were unjust" he says. "Overturning them did not mean redefining marriage but affirming it"[xxxi]. Significantly, this was not the view of people at the time. Many opponents of interracial marriages believed allowing such unions would harm marriage, children and society[xxxii]. They predicted the same dire consequences Muehlenberg predicts for same-sex marriage, and misused similar pseudo-science to bolster their position[xxxiii]. The fact they were so very wrong is one of the most important arguments against the opponents of marriage equality.

The broader point of M's case that exclusion from marriage doesn't much bother gays and doesn't violate their rights, is to highlight "the real agenda" behind the marriage equality movement.

The first item on this agenda is to legalise a range of unacceptable relationships, from polygamy, incest and paedophilia through to marriage with pets or aliens and marriages between men and their cars[xxxiv]. Most of this is hard to take seriously. Incest and paedophilia are abusive, exploitative practices rightly held in almost universal contempt. Marriage is a legal contract and the last time I looked there was no proposal to give animals, inanimate objects or extra terrestrials legal standing to sign contracts.

But there is a serious issue to address here. As I argued in section 1, marriage equality is about the principle of freedom of choice. But it is not only about that principle. There are also important legal, social and cultural limits on this freedom. When these limits are taken into account we can see why same-sex marriage does not lead to the kind of unacceptable or downright bizarre unions mentioned above[xxxv].

Evidence of these limits can be seen in those countries which have allowed same-sex marriage. They have not legitimised the relationships that lie at the bottom of M's slipper slope. We can take this point one step further. As we saw in section 4, these countries are the best response to much of the fear-mongering over marriage equality. Marriage, family and society have not fallen apart just because same-sex partners can officially declare their love for each other.

The second item is even more insidious, to be rid of marriage and to destroy the family[xxxvi]. Evidence for this comes from the words of those gay men and lesbians who variously

criticise marriage, make fun of it, want to reform it, want to escape it, question the need for equality within it, question the inevitable legal and social integration same-sex marriage represents, or just don't want to get married.

These are exactly the kind of diverse responses you would expect in any group of people to such a ubiquitous institution. Indeed, a far larger number of heterosexuals have been criticising, satirizing and avoiding matrimony for centuries. If this was a legitimate argument for excluding whole groups from marriage, no-one would be allowed to marry. So why does Muehlenberg feel free to deny same-sex partners the right to marry just because some of these partners may not share his view on what marriage should be? I'd venture that prejudice and ignorance towards gay and lesbian makes it easier to believe they pose a threat, however spurious that threat may be.

Having immersed myself in Bill M's "science", fear-mongering and denigration of same-sex relationships I have realised it is actually he who has another "agenda". He seems to have a profound antagonism to homosexuals that goes beyond simply defending the best interests of marriage as he sees them. Only someone with such an antagonism would see something threatening in my desire to destigmatise and foster acceptance of same-sex relationships[xxxvii].

This is an "agenda" I am proud to claim. I have seen first hand the personal pain and social disruption caused by the criminalisation and persecution of same-sex love. I have also witnessed the immense benefits for families and society that have come from greater recognition of this love. These experiences leave me in no doubt that same-sex couples should be allowed to marry. I am grateful I have had this opportunity to argue for this conviction.

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[i] ibid, p1 & 4
[ii] ibid, p4
[iii] ibid, p2
[iv] For example, "sociologist", David Popenoe, works for the National Marriage Project which has been criticised for misrepresenting research to pursue a political agenda. "Political scientist", James Wilson, is a professor at a religious University, a leading member of the American conservative movement. Much the same goes for "anthropologist" James Woods. "Marriage proponent" David Blakenhorn, can't even hide his politics behind an academic façade. Under cross-examination during a recent high profile American same-sex marriage court case, Blakenhorn admitted having no academic qualifications or undertaken any relevant research to back up his many claims about the dangers of same-sex marriage (for more see, http://joemygod.blogspot.com/2010/01/protect-marriages-disastrous-final.html[)iv]. People like Lewis Terman, Bronislaw Malinowski and Margaret Mead were legitimate experts in their fields, but they worked long ago, before it was considered appropriate to write about same-sex relationships. Terman was of another age entirely. In 1916 he wrote, *"High-grade or border-line deficiency (in intelligence)… is very, very common among Spanish-Indian and Mexican families of the Southwest and also among negroes. Their dullness seems to be racial, or at least inherent in the family stocks from which they come…"*[iv] (Termin, L., *The Measurement of Intelligence*, 1916, p. 91-92)
[v] Most of the legitimate academics Muehlenberg cites on the issue of marriage refer to its universalism and to the benefits which flow from it. None of what they say excludes same-sex couples from participating in this institution or reaping these benefits. But by seamlessly interspersing their views with his more biased commentators, who use the same language and cite the same evidence but add their own personal views against same-sex marriage, Muehlenberg gives the impression that science speaks with one voice.

[vi] For an over view of same-sex relationships in different historical and cultural contexts see W N Eskridge, The Case for Same-Sex Marriage, pp 15-51

[vii] Other work in this field includes recent research into "affrèrements", legal, marriage-like contracts between same sex and other partners in late mediaeval France (http://www.sciencedaily.com/releases/2007/08/070823110231.htm)

[viii] http://www.aaanet.org/issues/policy-advocacy/Statement-on-Marriage-and-the-Family.cfm

[ix] "American researcher" Thomas Schmidt openly states he writes as "an evangelical Christian" (http://www.ivpress.com/cgi-ivpress/book.pl/code=1858)

[x] The Mattison and McWhirter study Muehlenberg relies on only had 156 participants all drawn from inner-urban gay ghettos

[xi] Studies like the Gay Community Periodic Surveys and the Sydney Men and health study deliberately draw their sample from gay and bisexual men who attend inner-urban bars, STI clinics and sex clubs, because the researchers are specifically looking at what causes HIV infection risk and how to reduce that risk

[xii] Prominent sexual health researcher, Dr Anne Mitchell, has explained why so many studies focus on those gay men who have high numbers of sexual partners. *"…the research, particularly the research done in Australia, is all funded with HIV prevention money and therefore it is very directed at being able to recruit the people who may be at risk of HIV….But it doesn't take account of the much wider gay community who is not of interest to social researchers because they are not at any risk of HIV. They are just living their lives in suburbia as monogamous couples with no sorties out to the gay saunas or anything at the weekend and they are no more at HIV risk than any other person in the community, in fact less than a lot of heterosexuals I would suspect.(* T79, Cain v Australian Red Cross Blood Service, Tasmanian Anti-Discrimination Tribunal, 2008)

[xiii] 30% of heterosexual men have had ten or more partners in their lifetime, A Grulich et al, "Heterosexual experience and recent heterosexual encounters", Australian and New Zealand Journal of Public Health, Vol 27, No 2, 2003, p146.

[xiv] Grulich, A., et al, "Homosexual experience and recent homosexual encounters", Australian and New Zealand Journal of Public Health, Vol27, No 2, 2003, p160

[xv] See, Kinsey Institute, http://www.kinseyinstitute.org/resources/FAQ.html#number, and Muehlenberg W Wiederman, "Extramarital sex: prevalence and correlates in a national survey", Journal of Sex Research, Spring 1997, http://findarticles.com/p/articles/mi_m2372/is_n2_v34/ai_19551967/

[xvi] The same selectivity emerges when Bill Muehlenberg cites divorce rates among same-sex couples in civil unions. He refers to Sweden and Norway where same-sex couples are more likely to separate, but ignores Britain where civil partners have a much lower divorce rate than married couples (see, http://en.wikipedia.org/wiki/Divorce_of_same-sex_couples#Divorce_rates), and Denmark, where same-sex relationships have been recognised longer than anywhere else in the world and where straight couples are more than twice as likely to split up than gay couples (see, Jones, M., Psychology Today magazine, 17 Nov 2006, http://www.psychologytoday.com/articles/199705/lessons-gay-marriage)

[xvii] The authors of the Vermont study agreed with Professor Mitchell, that most previous studies were of gays and lesbians "who are visible and concentrated", producing *"a body of literature about homosexual lives that tends toward the 'exceptional'"*[xvii] (see, Elder, G., "The Non-significance of Significant Others: a National Geography of Gay and Lesbian Coupledom", report from the University of Vermont, http://www.newswise.com/articles/view/518987/)

[xviii] Bill Muehlenberg op cit, p6

[xix] ibid, p19

[xx] "Family experts", Glenn Stanton and Bill Maier, are employees of US evangelical lobby group, Focus on the Family. Lynn Wardle, is a professor at a Mormon University and long-term anti-equality advocate. Commentator, Don Feder, has condemned Disney for promoting "sodomy" and "atheism".

[xxi] Joe Nicolosi's attempts to turn gays straight through "reparative therapy" has been criticised by the American Psychological Society and the American Psychiatric Association (For more on these organisations' views on "reparative therapy" see http://www.apa.org/news/press/releases/2009/08/therapeutic.aspx and

http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200001.aspx
). Paul Cameron has been expelled from several North American psychological and sociological associations for misrepresenting research on homosexuality (for more see http://psychology.ucdavis.edu/rainbow/html/facts_cameron_sheet.html).

[xxii] Bill Muehlenberg, op cit, p20. Not surprisingly, many of the "researchers" who have pointed out these "shortcomings" are also linked to conservative Christian lobby groups[xxii]. For example, Lerner and Nagai are employed by the Marriage Law Project, an initiative of an American religious University.

[xxiii] http://www.healthychildren.org/English/family-life/family-dynamics/types-of-families/pages/Gay-and-Lesbian-Parents.aspx

[xxiv] Patterson, CJ, Lesbian & Gay Parents & Their Children: Summary Of Research Findings, http://www.apa.org/pi/lgbt/resources/parenting.aspx#

[xxv] ibid

[xxvi] ibid

[xxvii] ibid, p19

[xxviii] ibid, p8

[xxix] Muehlenberg cites a study by one of American's leading campaigners against same-sex marriage, Maggie Gallagher, in which she found that only a tiny minority of same-sex partners in Spain and the Netherlands have tied the knot. What he doesn't tell us is that Gallagher only looked at the first year same-sex marriages were allowed in both countries. If we look, instead, at what percentage of marriages are between same-sex couples we find that in the Netherlands that figure (2.5% based on yearly rates: http://en.wikipedia.org/wiki/Same-sex_marriage_in_the_Netherlands#Statistics) is actually slightly higher than the estimated percentage of homosexuals in the Netherlands (Gallagher cites about 2.2%). By this measure, homosexuals are just as interested in marriage as heterosexuals. The interest many gay men and lesbians have in marriage is also illustrated by Australian research I cited in section 6. It showed that 80% of same-sex partners support their right to marry and a majority - 55.4% - would marry if they had the choice. Given that I have criticised Bill Muehlenberg for quoting biased sources, I should disclose that one of this study's co-authors, Sharon Dane, is also a Board Member of Australian Marriage Equality and therefore one of my colleagues. Dane may not be a dis-interested academic, but she is rigorous. Her study, which looked at attitudes within the LGBT community to a range of issues meets the high methodological standards set by the University of Queensland. Her academic contribution to the marriage debate is solid research, not opinion like too many of Muehlenberg's "academics".

[xxx] An important but unspoken assumption underlying Bill Muehlenberg's argument is that people choose to be homosexual. He talks about legal equality sending the message that homosexuality is "desirable" or "preferable"[xxx], about homosexuals "eschew(ing) male-female relationships"[xxx], and about "coming out of" "the homosexual lifestyle"[xxx]. But as I've noted above, the idea that an individual's sexual orientation can be changed, even by intensive therapy, is now discredited. An increasing number of biologists are convinced that sexual orientation has a genetic basis.

[xxxi] BM, op cit, p15

[xxxii] For more see R. Kennedy, *Interracial Intimacies*, Random House, New York, 2002

[xxxiii] For a summary of the comparisons between opposition to same-sex marriage and opposition to interracial marriage see http://www.law.virginia.edu/html/news/2004_fall/forde.htm. For an summary of the religious arguments against interracial unions see http://www.fundamentalistsrepent.com/interracial.html

[xxxiv] BM, op cit, p17

[xxxv] An example is the social and cultural barriers to recognising polygamous marriages. In none of the countries which allow same-sex marriage are polygamous marriages officially solemnised, even though some of them, like Spain and the Netherlands, have large religious minorities that traditionally allow it. In places that allow polygamy, like Saudi Arabia, Afghanistan and Nigeria, homosexuals are not only unable to marry, they are put to death. This is not a coincidence. Polygamy is generally about a man controlling the lives of several women. It is an arrangement that comes from a time when women were considered less valuable than men, restricted to the house and to childrearing, and made

their husband's property*. Wherever values like this prevail same-sex marriage is inconceivable. Where all husbands are legally dominant and all wives mere submissive extensions of their husband, it is absurd and profoundly threatening for there to be an official union between two husbands or two wives. Where marriage is the union of a bread winner who must always be male and a child-carer who must always be female, it is economically unsustainable for people of the same sex to marry. Same-sex marriage only begins to make sense in a society where there is a degree of social and economic equity between men and women and legal equality between marriage partners. It only becomes possible for two men or two women to marry if men and women are already free to choose how they lead their lives regardless of their gender.

*One of the ironies of the marriage equality debate is that overseas polygamous marriage are recognised in Australian law (to protect the legal rights women in these marriages), whereas overseas same-sex marriages are not recognised at all.

[xxxvi] BM, op cit, p9

[xxxvii] ibid p9