

Viewpoint: DH260

SAME-SEX MARRIAGE IN PERSPECTIVE

by Robert Valente

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The Holy Grail for those pushing the trend toward amorality is same-sex marriage: an irrational quest to redefine marriage that appears all but certain to succeed — apart from amending the Constitution to define marriage — given the Supreme Court's recent decision striking down legislation that prohibits homoerotic acts (*Lawrence v. Texas* [2003]).

Anticipating *Lawrence's* impact, Justice Scalia's vigorous dissent notes that if morality is ultimately a matter of individual choice, then the rule of law is superfluous. Scalia clearly perceives that which his agenda-oriented colleagues may prove tragically reluctant to acknowledge. The assault on marriage is the "Shock and Awe" strategy of forces determined to turn civilization on its head. Appealing to "self-evident" truths as the basis for law will come to be viewed as political extremism at its worst. Consider the same-sex marriage proponent who, in a respected national publication, adduces the purpose of the Supreme Court to be "that of clearing out the dust of the past and remaking the world afresh."¹ Does anyone actually believe this "remaking" will stop at same-sex marriage?

Courts of law are required to base decisions on relatively intricate explanations of law and fact, and common sense is often a casualty of this process. Common sense, nonetheless, cannot help but counsel that same-sex marriage is untenable.

The heterosexual marital relationship, even with all its imperfections, constitutes the bedrock of civilization. Marriage — female wife and mother, male husband and father — is the basic social unit. Redefining marriage, given its integral design, is like tampering with root arithmetic: no court, retaining any semblance of respect for the concept of jurisprudence, would do so. Marriage in both fact and law is a sacred covenant between a man and a woman: a uniquely exclusive product of the heterosexual relationship at the interior of which is the very future of humankind — the child.

The mere fact that some groups are not inclined toward this definition of marriage does not grant them the right to redefine marriage. Same-sex marriage proponents claim kinship with victims of race and gender discrimination. Such arguments make sense only where the state bars homosexuals from marrying the opposite sex or grants a single gender the right to same-sex marriage. In stark contrast to same-sex marriage, interracial marriage and women's suffrage did not necessitate redefining marriage or voting to include additional behaviors — race and gender are not defined by behavior.

Homosexuality *is* defined by behavior. Whether one deems homosexuality virtuous or aberrant, those who consider themselves homosexual are not discriminated against as persons by prohibiting same-sex marriage. All men and women, regardless of sexual preference, are afforded the same opportunity to partake of the marriage covenant. The fact that persons of the same sex cannot marry *each other* is intrinsic to the self-evident definition of the marriage covenant. Prohibitions against same-sex marriage, therefore, do not discriminate against the *person*, as did prohibitions against different races marrying or against women voting, but against the *person's behavior* — and that only to the extent of refusing to demolish the foundational nature of gender and thus of stable family life.

Gender exists, and laws that pertain to marriage cohere in the self-evident reality and purpose of gender. Gender is not a mere variance of physical traits within the human family, such as skin color or eye color, but a biological imperative that is foundational to human civilization. Though the existence of gender does not mandate that all persons be married or that all who marry procreate, gender does occasion certain rational consequences on the rule of law. Every Justice on today's Supreme Court understands, for instance, that the Equal Protection Clause does not grant males the right to compete on the Women's U.S. Olympic Team or females the right to compete on the Men's U.S. Olympic Team. It simply grants them the equal right to compete. If the Court has no business removing the legitimate role of gender in the composition of a government-sponsored athletic event, then it certainly has no business removing the self-evident foundation of the universal covenant of marriage. Civil rights, after all, has never been about fabricating radically restructured definitions. *Civil rights is about substantiating self-evident truths.* Recognizing same-sex marriage makes a mockery of both marriage and civil rights, while diverting attention and resources from more acceptable resolutions to the injustices its proponents allege to address.

Same-sex marriage proponents routinely dismiss the issue of polygamy, but the correlation between same-sex marriage and bisexual polygamous marriage is strikingly cogent. The person who claims legitimacy for same-sex marriage, if he or she is to remain consistent, must also claim legitimacy for bisexual polygamous marriage, thus exposing the fact that the basis of their position is not an affirmation of civil rights but a total indifference toward foundational values. Same-sex marriage proponents are aware of the attendant flood of culturally perverse legal challenges that recognizing same-sex marriage invites; yet, on what credible remaining basis will the Court strike them down?

It makes no sense to declare same-sex marriage legitimate while declaring bisexual polygamous marriage illegitimate. Advocating the right of non-heterosexuals to marry, yet refusing to fully extend that right to bisexuals, is commensurate to advocating that drugs be legalized — only for a privileged class.

Bisexuality is not a vacillation between heterosexuality and homosexuality but an abiding attraction toward both sexes. Once same-sex marriage is recognized as having a legitimate basis, prohibiting bisexual polygamous marriage becomes incoherent. The legal argument will proceed as follows:

Because of "who they are," bisexuals cannot have their need for love and companionship completed by a single gender. If it is legitimate to marry a person of either the same sex or the opposite sex, why is it a criminal offense to marry both? This is an archetypal, subjective, and discriminatory distinction: it makes no pronouncements against the behavior but limits its scope to particular classes of persons. As the opportunity to marry according to one's own distinct identity in no way harms existing marriages, barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry persons of each gender violates the Constitution.²

Corresponding suits brought on behalf of traditional polygamists are nonsensical: the heterosexual's need for love, companionship, and procreation is complete with one partner. As bisexuals gain the right to polygamy, however, the Equal Protection Clause, consistently applied, obliges that the right to polygamy be extended to heterosexuals and homosexuals as well. In the end, marriage, in all but name, will effectively be annihilated.³

Same-sex marriage proponents may argue that bisexuals are just as capable of "forsaking all others" as anyone else, but *bisexual monogamy* is a contradiction in terms. More importantly, same-sex marriage proponents do not speak for all bisexuals. If the Supreme Court recognizes same-sex marriage, bisexuals will attain standing to claim a right to polygamous marriage. The rare same-sex marriage proponent who actually opposes bisexual polygamy will be in the hypocritical position of asserting the argument those opposed to same-sex marriage assert now: Polygamous marriage is an *illegitimate redefinition* of the marriage covenant. The Court will thus face a dilemma: either strike down the claim by employing the rationale it previously rejected (i.e., marriage cannot be redefined), which would unmask

the vacuity of their decision recognizing same-sex marriage,⁴ or grant bisexuals the right to polygamous marriage.

Same-sex marriage proponents astutely evade the implications of bisexual marriage and its inherent relevance to polygamy. At the core of the same-sex marriage argument rests the presumption that any grouping of adults who claim to love each other has an implicit right to marriage regardless of whether this presumption contradicts fundamental sociological or physiological norms. The Constitution, however, neither adopts nor advances the practice of defining reality apart from fundamental standards. If the Supreme Court recognizes same-sex marriage, it will diminish both the rule of law and its own existence. It is not unthinkable that an exasperated electorate, rather than follow the Court down a path to the radical deconstruction of laws and norms, might amend the Constitution to provide Congress and the President emergency veto power over judicial legislating. If one accepts the devolution of the separation of powers represented by a judiciary vested with an assumed legislative capacity, one must accept the various likely consequences.

The issue is not that people of the same sex might love each other; the issue is whether society as a whole should be required to declare *by law* or through the imprimatur of marriage that homoerotic behavior is a necessary aspect of that love. The question, therefore, is not one of civil rights, but whether we will indoctrinate America's children with the philosophy that marrying the same sex is equivalent to marrying the opposite sex — and catapult ourselves toward becoming a people unwilling to discern left from right. The answer is clearly a matter of common sense, but it appears that common sense is about to be tossed into the dustbin of history. Perhaps the message posted on a church announcement board just outside Martha's Vineyard puts it best: "Those who stand for nothing will fall for anything."

— Robert Valente

NOTES

- 1 Adam Goodheart, "The Ghosts of Jamestown," *New York Times*, July 3, 2003. Goodheart also advocates same-sex marriage while describing it as "cultural Armageddon" in the same publication's November 23, 2003 edition.
- 2 This is essentially the majority view of the Massachusetts Supreme Court as applied to same-sex marriage in *Goodridge v. Department of Public Health* (2003).
- 3 In "Beyond Gay Marriage," *Weekly Standard*, August 4, 2003, author Stanley Kurtz powerfully documents that a determined assemblage of legal scholars, academics, and activists is already eagerly preparing the "polyamory" offensive and deftly appropriating same-sex marriage as their Trojan horse.
- 4 A decision to strike down bisexual polygamy, in addition to largely contradicting the application of law used in recognizing same-sex marriage (thus inviting further comment by lower courts), will signal legislatures that the same-sex marriage decision was primarily based on value judgments regarding social norms — rightly a purview of the nation's legislatures, not the courts.