

The Postal Vote on Same Sex Marriage

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It seems Australia is making its way to a postal vote on whether we should change our marriage laws to remove reference to gender, i.e. to make same-sex marriage lawful.

Whatever the outcome of the postal vote, the parliament will still have to decide, and our representatives won't necessarily be bound to make the same decision as the people. Even if most people vote 'no', some parliamentarians would vote 'yes' to a bill, and vice versa.

If you have doubts about whether changing our marriage laws are a good idea, or if you disagree with it, what should you say to friends or colleagues who support the 'yes' vote? I offer some thoughts here.

The 'yes' position may seem simple and easy to understand. It says that everyone should be treated equally, so it's wrong to deny marriage to same-sex attracted people because it's wrong to make marriage available to some people and not to others. This position sees marriage as an entitlement, a service provided to people by the state, like the right to an education or to Medicare, or to ride on a bus. It sees 'granting' marriage as a form of respect. But is it?

The 'no' position is a more complex one. It means thinking through what marriage is or should be, and why the state should be in the marriage game. It also means thinking through what should happen to dissenters: those people whose beliefs don't align with same-sex marriage.

I believe that marriage is a natural institution found in cultures all over the world. The features differ, but the heart of the arrangement is a man and woman who cohabit, have sex, and bear children together, and raise their biological children together. The intended outcome of this process is the formation of families, which are intergenerational associations of biologically related people who also share a strong social connection. The process of joining together in this way is a long and difficult one, offering rewards, but also bringing significant risks. One risk for a woman is that her husband might father children with other women, creating competing calls on the family's resources. A risk for a man is that his wife might bear a child by another man, and the husband could be end up devoting his life to support the raising of a child not his own. There is also the risk for either party of being abandoned, and being left to raise children solo.

Cultures and societies regulate how people marry. At best this regulation works to maximize human flourishing, by minimizing the risks involved, and encouraging the formation of stable, strong families. (It must be acknowledged that cultures and societies can also regulate marriage to serve other, less noble purposes, such as supporting male dominance over women. Not all aspects of the traditional regulation of marriage have been positive.)

The regulation of marriage is complex in our society. It influences inheritance laws: for example, in our legal tradition a child born into a marriage is considered, by default, to be the child of the husband and his legal heir. Divorce law, and principles affecting custody for children, and paying maintenance, are all aspects of the regulation of marriage.

In the English legal tradition, which Australia inherited, marriage was first regulated by the state in a significant way in 1753. The law was called "An Act for the Better Preventing of Clandestine Marriage", and the state got involved in marriage to stop men taking advantage of women through unregistered, secret marriages, which they might later deny ever took place. There were some notorious cases of men doing exactly this. This possibility greatly increased the risk of marriage for women. Most of the limitations which the 1753 act placed on marriage continue to this day, such as the requirement that advance notice be given, that the marriage be witnessed, and that the marriage be publicly registered. The point here is that the state got into the marriage business because of the risks for women associated with bearing children to 'secret' husbands.

It is because of the purpose of marriage — that it involves sex and child-rearing — that the state intervened with marriage and placed restrictions upon it in the first place. For example, marriage is, by default in our tradition, a life-long institution, because forming and maintaining families is a life-long process. It is exclusive (i.e. monogamous) to minimise the risks involved to each party. These features derive from the basic function of marriage.

To put this another way, marriage has a purpose, and that purpose includes couples having a sexual relationship of a kind which results in the bearing and raising of children as a life-long project. The state regulated marriage, and gave it the features it has, not because it wanted to award marriage as an entitlement to dignify heterosexual pairing, but because it wanted to regulate the bearing and raising of children, to make it safer and to help produce better outcomes.

What does the research show? This is where it gets messy. Study after study has shown that, on average, children have the best outcomes when they are raised by their own married biological parents. Professor Patrick Parkinson of Sydney University wrote:

... if there is one major demographic change in western societies that can be linked to a large range of adverse consequences for many children and young people, it is the growth in the numbers of children who experience life in a family other than living with their two biological parents, at some point before the age of 15.

http://sydney.edu.au/law/news/docs_pdfs_images/2011/Sep/FKS-ResearchReport.pdf

However, there is disagreement in social science literature about the impact of same-sex parenting. This is a highly politicized area of research, and at least some of studies which have reported 'no difference' or a positive outcome of same-sex parenting are advocacy research, with flawed research design. Another complication is that a high percentage of social science research is non-replicable. Each side in the debate tends to favour the studies that align with their views.

What are the religious freedom implications of introducing same-sex marriage? Paul Kelly, writing for the Australian, reported on findings by an Australian Senate committee on potential impacts of same-sex marriage:

There was the closure of all Catholic adoption agencies in England and Wales or the transfer of their operations to secular entities because their charitable status was removed due to their position and practices on same-sex marriage.

There was the intimidation of Trinity Western University in British Columbia, a Canadian Christian university, in which the province's teachers board refused accreditation to its

graduates on grounds they might discriminate against LGBTI students, a decision reversed by the Supreme Court of Canada after years of litigation.

But when Trinity Western applied to open a law school, Canadian legal institutions including the Canadian Bar Association and a number of provincial law societies voted not to accredit its graduates because they had signed a required university covenant to abstain from sex unless it was between a husband and wife.

The attitude of large corporates is a major concern. Last year -numerous US companies threatened to boycott the state of Georgia after legislation was tabled seeking to expand religious freedom exceptions in relation to same-sex marriage. The companies included Disney, Intel, Coca-Cola and Unilever. Disney said: "We will plan to take our business elsewhere should any legislation allowing discriminatory practices be signed into state law."

Given the support Australian companies have offered same-sex marriage, any idea they would not pursue this cause against religious freedom seems forlorn. Indeed, it is hard to find any statement of meaningful support for religious freedom and belief from a senior Australian corporate executive on this issue, a telling omission.

At home there was huge pressure for the sacking by IBM of Mark Allaby and by Macquarie University of Steven Chavura unless they resigned from other bodies perceived to oppose same-sex marriage. A boycott was imposed by hotels against Coopers Brewing because it sponsored the Bible Society, which ran a video not against same-sex marriage but one that put both sides of the debate.

In the US, Chick-fil-A, a sandwich franchise, was subject to consumer boycotts and government and commercial retaliation when a senior executive supported traditional marriage. Brendan Eich, co-founder of Mozilla Corporation, known for its browser Firefox, triggered a consumer boycott because he had supported an anti-gay marriage position. He was forced to step down.

In Sydney the Mercure Hotel, which was hosting an event of various Christian groups to form a strategy against same-sex marriage, was threatened with violent protests such that staff safety could not be guaranteed. It had to cancel the event, an example of how easily the technique of intimidation can deliver. The most celebrated domestic case is the decision by Tasmania's Anti-Discrimination Commissioner that the Catholic Archbishop of Hobart, Julian Porteous, had a case to answer for distributing a book in schools defending traditional marriage.

Big Business has come out strongly in support of same-sex marriage, and is increasingly willing to boycott organisations or suppress individuals who think differently. For example Google offers its business apps free to charities which do not discriminate unlawfully (i.e. in violation of the laws of the land in which the charity is located) for example on the grounds of race or physical disability, but where gender and sexual preferences are concerned, Google's absolute requirements trump national laws. No Catholic or Eastern Orthodox church, monastery or convent could qualify for Google's support for charities because these denominations do not ordain women to the priesthood.

Australia has very poor protections for religious freedom, very little appetite to develop protections, and Australian leaders are generally ignorant of how religions work. This makes it highly likely that people of faith will be hurt by the introduction of same-sex marriage. It

seems likely there will be little or no tolerance for those who do not accept same-sex marriage. There will certainly be professions that people with such religious beliefs will need to avoid.

The suggestion that clergy will come under pressure by the introduction of same-sex marriage seems to be of little relevance. Christian photographers and cake bakers are more likely to get into trouble than clergy. In any case, clergy can just get out of marrying people altogether by surrendering their state marriage license. Marrying people for the state is not a necessary part of a Christian pastor's work. Christians who want to have a church wedding could just go to the registry office and get their marriage blessed in church afterwards.

It is also important to grasp that the same-sex campaign is also about demolishing heteronormativity. Heteronormativity is the idea that heterosexual relationships are the norm. The same-sex marriage struggle is not just about marriage; it is a staging post along a much larger and more far-reaching program of overthrowing the dominance of hetero perspectives, of pushing heteronormativity aside.

Underpinning the push for same-sex marriage is a view about sex. This is the view that people must have the freedom to do whatever they wish, especially in the area of sex. This consumerist outlook aligns ideologically with the interests of big business, because consumption is all about personal choice. This alliance of gender and sexual rights with Big Business gives the same-sex marriage push a particular compelling appeal in our times. It is also not a coincidence that large corporations are pushing same-sex marriage.

What then might you say to someone who is advocating for same-sex marriage, if you have a different view? First of all, you need to accept that if you disagree with others on this issue, neither you nor your beliefs may be respected. There may be no way to communicate in a way that will win the other person's respect. It may be just about holding on to your beliefs.

Here are some points you could make, if you wish to defend the status quo:

- Marriage is not a human right. It exists for a purpose, and that purpose is all about people raising their own biological children to adulthood. This is why marriage has always been for heterosexual couples. This change will alter the fundamental purpose of marriage.
- If we are to redefine marriage, and it is really a personal entitlement, why retain other legal limitation such as 'to the exclusion of all others' or 'for life'? What sense do these principles make? Why not bring in temporary marriages, or open marriages, or poly marriages? If marriage is just an entitlement, a kind of personal freedom, why doesn't the state allow groups of three or more people to marry? What is the sense in that? If marriage is just a personal entitlement, why should such groupings be refused respect and treated like second class citizens by denying them the right to marry in whatever way they like?
- Australia has almost no protections for freedom of religion, and it seems crystal clear, based on many outcomes in other jurisdictions, and even here in Australia, that dissenters will be punished and hurt, some severely, involving heavy financial penalties, for not agreeing with the state, if same-sex marriage comes in. Australia is

not ready for this, and the journey to try to resolve these issues will divide us even more. This change will not bring harmony or increase tolerance.

- Some years ago Australia removed all forms of legal difference which applied to same-sex couples (except the label 'marriage'). So the plebiscite is not about legal standing or actual rights that affect people's ability to form relationships, own property, exercise legal rights etc.
- A Christian view of sex is profoundly different from the dominant secular view. It's not about self-expression or personal freedom. From a Christian perspective, our identity is not about our sexual preferences or gender. The assumption that opponents of same-sex marriage are rejecting people because of their identity is fundamentally mistaken. This is not a Christian understanding of identity.
- Whatever the state or the culture decides to do with marriage, many Christians will continue to form and nurture marriages in ways which align with Biblical teachings, and not the dominant ideology of society around them. And the Bible's teaching is clear, that marriage is the union of a man and a woman.