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Madison R. Olson
Georgia State University

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WHAT IS MARRIAGE FOR?

by

MADISON ROSE OLSON

Under the Direction of Dr. Jessica Berry

ABSTRACT

Before we can properly answer the question “What *is* marriage?,” we must first be able to answer the question “What is marriage for?” Defining what marriage *is*, before fully understanding what marriage is *for*, presumes we already know what marriage is for, when in fact we do not. In a moral sense, marriage is *for* love. And in a legal sense, marriage is *for* everyone (regardless of sexuality or race). In this paper I discuss how, regardless of whether you view marriage in a purely moral or in a purely legal light, marriage equality should be afforded to all citizens.

INDEX WORDS: Marriage, Philosophy, Love, Sex, Religion, Government, SCOTUS, Same-sex marriage, Marriage equality, Sexuality

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MADISON ROSE OSON

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B.A. Philosophy

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MADISON ROSE OLSON

Honors Thesis Director: Dr. Jessica Berry
Honors College Associate Dean: Dr. Sarah Cook

Electronic Version Approved:

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1. Introduction

When we look throughout the course of social history, “marriage” always appears to be present, in one form or another. In today’s society we have begun a debate about the definition of marriage and the ramifications that its definition has and should have. In this paper I will examine the question: “What is marriage *for*?”¹

In my first section I will distinguish the question, “What is marriage for?” from others such as “What is marriage?,” and I will discuss why my question is the better and more worthwhile one to be asking. I will then spend some time trying to shed light upon the answer to the question, “What is marriage for?” by discussing what the virtue of marriage is, if there is one. I believe that there is a virtue of marriage—to uphold the “virtue of love.” I will spend time discussing and clarifying what makes or can make love a “virtue” rather than just an emotion, and what types of love are sufficient for (and to be protected by) marriage. Next, I will discuss the nature of the socially constructed sexualities associated with “love.” Although these sexualities

¹ John Corvino asks a very similar question in his book, *Debating Same-Sex Marriage* (2012). But he approaches this question in a different way than I will throughout the course of this paper. In his section with this header, he merely briefly discusses this question, mostly looking at what the actual ceremony of marriage (i.e., the wedding) is for; and, he briefly points to who should be able to get married, why people should get married, and the benefits that marriage brings. His book is dedicated to arguing specifically for marriage equality, discussing the benefits that marriage equality will bring about, and combatting popular anti-marriage equality arguments (presented by Maggie Gallagher).

are in a sense “constructed,” they are still legitimate and can still be worthy of protection by marriage.

In the next section, I will expound upon what Brian Leiter refers to as the “over-privileging” of religion in our society in relation to marriage, for all of the arguments against marriage equality in our society boil down to a religious base. I will illustrate how, if the only arguments against marriage equality have a religious base, we have no reason (legally) to uphold and privilege these as viable arguments against marriage equality.

Next, I will discuss what the effects of taking morality or “virtue” out of marriage would be and why in our society we cannot call “gay marriages” something other than “marriage” (e.g., civil unions), separate from “straight marriages.” Finally, I will discuss what our “options” for marriage are and illustrate how regardless of whether or not we believe marriage to be a moral or a purely legal institution, we should afford marriage equality to all citizens or choose another option for “marriage” altogether.

2. Clarifying the Question

In this project, I am tackling the question, “What is marriage for?” Why is this question a better or more relevant one than “What is marriage?” The “What is marriage?” question is one that has recently been at the forefront of social and civil rights controversy. Our most current definition for “what marriage is” is not an all-inclusive one. It stipulates marriage as a union

between “one man and one woman.” So, it has become a hot topic of debate whether or not we should change our current definition of marriage to include all citizens, regardless of their sexualities. But we should be asking instead, “what is marriage for?” This question addresses the *purposes* of marriage, rather than simply asking for its *definition*. If we can get to the heart of what marriage is *for*, or what the purpose of marriage is, we can better understand how to define it and what kinds of marriages are and should be acceptable. For if different “kinds” of marriages all share the same purpose, why should we deny them?

Simply defining marriage, i.e., what marriage *is*, does not tell us what marriage does, why we marry, why we hold married persons to a certain standard, or why we afford certain benefits to married couples rather than unmarried couples. Answering the question “What is marriage?” does not help us discover anything *about* marriage—it is simply a definition. Defining ‘marriage’ actually presupposes that we know what marriage is for; however, we do not seem to know what marriage is for.² If we did, we would likely not have all of this controversy surrounding marriage and its definition. So, by figuring out what marriage is for, we can more accurately determine and argue for what types of marriages are permissible according to whether or not they uphold its purposes.

² Thank you to Dr. Jessica Berry for bringing this point to my attention.

3. The Virtue of Marriage

In today's society, we seem to see marriage as upholding some sort of morality. We do not seem to want "just anyone" to go and get married—we believe there is a process, certain criteria one must satisfy in order to have a "proper marriage." The most typical picture involves courtship: a first date, subsequent dates, romantic gestures from male to a female, family approval, and finally a romantic proposal which leads to an expensive party celebrating the union of "man and wife." After all of those steps are accomplished, one is married. And of course, sometime *after* the marriage there are offspring produced. We frequently see this picture and plot played out in popular culture, such as in the "romantic comedy" movies that movie-goers tend to frequent, and in the American obsession with celebrity weddings such as, "The Kardashians Wedding" and "Royal Weddings."³ However, need these "typical" steps and pictures always be the case? No. As Charles Budziszewski points out, there are no particular, chronological "moments" that lovers must experience in order to be considered "true lovers" (2012: 77-78). I would like to say that this is the same for marriage: not everyone has to follow the same, man-woman courtship model as described above.

However, in general we tend to frown upon any other "model" of marriage (besides the idealized "man and wife" model). We frown upon "speedy" marriages and "marriages of convenience." We do not allow marriage for purely legal benefits—e.g., "green card"

³ Thank you to Dr. Jessica Berry for bringing this point to my attention.

marriages—we believe there must be something “more” to justify the marriage than simply the obtaining of legal benefits. So what is this “more”? I would like to argue that this “more” is love.

Throughout our society’s history, we have always had laws about who we are or are not allowed to marry. In the relatively recent past, only same-race marriages, between a male and a female, were permitted. If one wanted to marry, one *had* to marry someone of his or her own race (and of the opposite sex). Eventually we amended this law. Now, people are free to marry anyone (of the opposite sex) of any race they choose. However, why did we do this? Why was it so important that anyone be allowed legally to marry anyone (of the opposite sex) of any race he or she wanted? It was for love. It could not have been purely for the legal benefits a couple receives when they marry; because, if marriage were purely to obtain legal benefits, then people would most likely have accepted racial restrictions on marriage. If the issue concerned only legal benefits, it would not have made a difference *whom* you were marrying (i.e., what race), as long as you obtained those legal benefits. However, people clearly see marriage as having something to do with more than the acquiring of certain legal benefits. It matters to them not just that they get married, but it also matters *whom* they marry.⁴ So, it seems the purpose of marriage must be for something *more* than legal status—it must be love. Today we might be “misled” to believe that marriage and love do not have anything to do with one another (Budziszewski 2012: 68). However, promises and vows are inherent in love—without promises it is not love at all (Budziszewski 2012: 68).

⁴ Thank you to Dr. Jessica Berry for bringing this point to my attention.

If there is some sort of moral significance to marriage, in addition to its legal benefits, then I would like to argue that it is “the virtue of love.” However, what does this mean? What is the “virtue of love?” And how does it pertain to marriage? In order to understand the virtue of marriage as the virtue of love, we must first understand what is meant by “the virtue of love.” What constitutes love as a virtue? People typically see love as an emotion, rather than as a “virtue.” So, what can make love “special” enough to be seen as a virtue rather than a mere fleeting emotion?

Let’s take a look at what Robert Solomon has to say on the virtue of romantic or erotic love:

Romantic love, unlike familial love, for example, is unprescribed and often spontaneous.... Critical to erotic, romantic love is the sense of *choice*. Family love, in this sense, is always prescribed.... This is not to say that an emotion such as love can simply be produced, by an act of will or volition, as one might now produce a thought or a movement of one’s finger.... Love—especially erotic or romantic love—is wholly particular.... In love the particular is everything. The virtue of love is and ought to be entirely preferential and personal. The lover who gives special preference to his love...is virtuous. A lover who insisted on treating everyone including his or her lover the same would strike us as utterly repulsive. (Solomon 1991: 495, 499-500)

Here, Solomon claims that part of what makes romantic or erotic love “different” from mere emotion, and what makes it virtuous, is the way in which it comes about (it is not just something

forced upon you, like family), and by the special kind of attention that you give to your romantically loved one. This appears to coincide with John Corvino's notion of the "mutual life-long caregiving" that one gives to their spouse (Corvino 2012: 20). This "mutual life-long caregiving" is different from the kind that a family member could provide to another family member. As Solomon points out, family love comes does not necessarily come with a sense of choice, whereas romantic or erotic love is a love you choose--you choose to give this sort of "special attention" to another person rather than feeling that you are *required* (via family ties) to give attention to another person (Solomon 1991: 495). And as Corvino points out, it would be foolish to ignore sexuality and romance as part of the "caregiving function of marriage" (Corvino 2012: 17). "Sexuality and romance" are not things we typically view families as being able to (or rather that they *should not* be able to) provide for one another. These are (some of the) reasons why familial love and the life-long caregiving a family member could provide are not sufficient for marriage, but romantic or erotic love is.

4. Distinguishing Among Different Types of Love

When we speak of marriage equality we might think of it as "marriage for all." However, "marriage for all" or "marriage for everyone" is not necessarily what we mean. First, let's discuss what "marriage equality" does *not* mean. "Marriage equality" does not promote marriage for every kind of love, because not all kinds of love are the kind that should be protected by marriage. For instance, marriage is not for the protection of love between a human and an animal

(e.g., a human and his or her dog). “Marriage equality” is for the protection of romantic love between humans, regardless of sexuality, ethnicity, or religious affiliation.

Many anti-marriage equality activists use the following argument against gay marriage: If people of the same sex can marry, then why not sisters? Why not humans and dogs? Why not humans and fruit salad? These arguments are “slippery slope” fallacies and do not hold up. In his book “Debating Same-Sex Marriage,” John Corvino defends same-sex marriage against these arguments. According to Corvino, the right to same-sex marriage is about the ability to provide proper “mutual life-long caregiving,” which is something neither an animal nor an inanimate object can necessarily do for a human (Corvino 2012: 65). And while the incest ban forbids people to marry only *some* people (their relatives), the same-sex marriage ban forbids people to marry *anyone* they might be in love with (Corvino 2012: 67). For example, prohibiting Suzy to marry anyone in her family, e.g., her cousin Karen, limits Suzy only to being unable to marry a small number of people that she might want to marry: her family members (specifically, her female cousins), rather than prohibiting her from marrying any person she might want to marry (any female).⁵

The only type of love sufficient for (and to be protected by) marriage is romantic or erotic love. However, what makes this form of love different from the others? What gives it its privileged status over others and makes it sufficient for marriage? For one thing, romantic or

⁵ While the various forms of love are important for this discussion, I cannot give them a full treatment here. So, I discuss them only briefly. For more on these topics, see: Bennet Helm,, “Love”, *The Stanford Encyclopedia of Philosophy* (Fall 2013), Edward N. Zalta (ed.). Web. 28 July 2013.

erotic love can provide the kind of “mutual life-long caregiving” that is desired in a relationship.⁶

As mentioned above, an animal cannot provide this “mutual life-long caregiving” to a human the way another human can. And although a family member, such as a brother or sister, could provide a similar sort of “mutual life-long caregiving” as a romantic partner, it is not the same. A brother or sister does not exhibit the same sort of special or “romantic” attention that a spouse or romantic partner gives to another. So, although romantic or “erotic” love need not necessarily involve sexual activity, there must be a certain level of willing commitment and ability to care for the other person in the relationship. In romantic love, you consent to put another person’s needs and wishes before your own. And marriage is a signifier of this form of love, of the commitment two people make to one another—to care for one another.

This romantic love is different from a type of love people have in friendship. In friendship, you may indeed give a sort of “mutual caregiving” to one another. However, typically, people have more than one friend. So, there is only so much attention and “caregiving” that one can give to one’s friends. In romantic or erotic love, you consent to give a special kind of dedication and caregiving to one other person in the relationship. One can give this kind of special attention to at most one other person.

⁶ John Corvino (2012: 20) points to “mutual life-long caregiving” as an essential factor in marriage.

While I have no qualms about people being in polyamorous relationships, I do not believe that people can afford romantic love, fully, to more than one person at a time. Romantic love requires an amount of special, undivided attention to another person. If one attempted to have this sort of “romantic love” relationship, or to disperse romantic love among several people, he or she would find himself or herself unable to care for each of those people in the way she truly wanted to. In other words, he or she would be spreading himself or herself “too thin” among his or her romantic love partners. Thus, romantic love needs to be and can only be between two (human) people (at any given time).⁷

This notion of romantic love is consistent with the idea that marriage is between two people.⁸ As John Corvino points out, while he is not necessarily “in principle” against polygamy, he is against polygamy because of the negative social ramifications that it tends to produce in society (i.e., sexism and classism) (Corvino 2012: 67). Polygamy contributes to sexism and classism by placing a higher value on married males (Corvino 2012: 67). Males who are unmarried are seen as less valuable or less worthy than others (Corvino 2012: 67). This system also makes females subservient to males. Males are able to marry multiple females; however, females are allowed to marry only one male and must share their homes, families, and husbands, with the other wives and females her husband chooses to marry—often, the females do not have a choice or say in the matter. I agree with Corvino when it comes to polyamorous relationships in

⁷ However, this is not to say that I believe that one can only romantically love one another person in one’s life. I merely mean that one can truly romantically love only one other person at one time.

⁸ That is, if we assume marriage is for the protection of some moral standard; if it is, it can only be romantic love.

general. While I am not against them in principle (I am not against polyamorous relationships *simply because* they are polyamorous relationships), I object to them (in regard to romantic love and marriage) because of the negative repercussions of those relationships—i.e., one or more persons’ feeling neglected and uncared for because their partner is unable to give them the undivided, special “romantic” attention they desire. So, since romantic love can only be between two people (at a time) and is the only form of love sufficient for marriage, marriage can only be between two people (at a time).⁹

5. Socially Constructed Sexualities

When looking at history, sexualities and family structures seem to have been shaped, in large part, by what is required for survival in any particular society. In America, for instance, before the Industrial Revolution (and even for a time after), heterosexual families were essentially a requirement for personal and familial survival. One needed to produce children in order to have extra workers to help out on the farm, or to work to help provide an income for the family. It was nearly impossible, or was at least very unlikely, that a family or person could survive without having a family for support. Now, however, we no longer necessarily need children to help provide income for the family. This allows for new romantic relationship “shapes” (from what we previously knew as the norm) to prevail (i.e., ones that cannot or do not produce children). These new shapes of sexualities (e.g., same-sex couples) are now able to be “mainstreamed” into society and can and should be included in the “new norm.” However, simply

⁹ See footnote 7.

because our society allows for new sexual and familial models does not mean that public opinion of those practices will necessarily change along with it, or if they do, that they will be favorable.

So, between whom are these relationships “appropriate”? Or rather, between whom (i.e., what sexes) should these types of (romantic love) relationships exist? The answer is: either same-sex or opposite-sex! Surprising? It should not be. While perhaps these relationships between same-sex couples were not viable options in the past, that does not make them any less valuable now. In today’s society, heteronormative structures are no longer necessary. Heterosexual family structures are no longer required of us in order to achieve and maintain personal and familial survival. Now we are able to achieve and maintain personal and familial survival, as well as flourish in a variety of familial and romantic structures (e.g., same-sex families, single-parent families, and so on).

Unlike other things that have become cultural “norms” that our society allows and has begun to allow for, such as industrial factory farming and genetically modified foods, which may impose some harm on society, these “new” family structures do not impose harm on society.¹⁰

These new family structures still promote the idea of family and security (for instance, for children) that the familial structure was always supposed to provide. The only thing that is “different” in these “new” family structures is their composition—the families may be two men or two women, rather than the “traditional” one man and one woman. But does this change to family structure harm our society or culture? I would say no. All it does is promote a more positive

¹⁰ Thank you to Dr. Jessica Berry for bringing this point to my attention.

attitude and acceptance towards these new family structures and extend to these new family structures (with appropriate change to law) the same legal securities that “one man and one woman” families already enjoy. All in all, our culture allows for these varying types of families, without imposing harm on society. So, why should we deny them, either legally or socially?

In *The History of Sexuality*, Michael Foucault discusses “sexuality” as a subjective, social construct. However, I do not believe that what Foucault means by sexuality being a “social construct” is that sexuality is simply “made up” or “constructed” out of thin air or to anyone’s whim at any particular time. Same-sexuality, for instance, is not simply “made up.” However, the various “forms” of sexuality have been shaped over time. According to Foucault:

We must abandon the hypothesis that modern industrial societies ushered in an age of increased sexual repression. We have not only witnessed a visible explosion of unorthodox sexualities, but also, through a network of interconnecting mechanisms, the proliferation of specific pleasures and the multiplication of disparate sexualities. (Foucault 1990: 49)

“Sexuality” is a socially constructed term. This means that its definition is and can be changed and shaped over time. However, what this does not mean is that it can be simply “made up” or invented, defined in any which way one chooses. It is changed and defined socially, according to cultural circumstances and developments, such as what one has to do in order to survive. Perhaps

at one time it was necessary to preserve the “heterosexual” family mode, when it was necessary for survival. However, in this day and age it is no longer necessary.

The family, sexuality, and marriage models have all been shaped, constructed, and changed over time. Our notion of marriage 1,000, 100, or even 50 years ago is not the same as it is today. Does that make our past notions of marriage any less or any more meaningful? No, it simply means they no longer work, or are no longer the only appropriate forms, for today’s culture, and the same goes for ‘sexuality’. The fact that the definition of a term is a social construct or that a definition of a term can and does change over time does not make the term itself any less powerful or “meaningful.”¹¹

These “new norm” forms of sexuality are also viable candidates for romantic love. In a society that allows for these types of relationships, the “mutual caregiving” that is required for romantic love is accessible to various kind of couples, both same-sex and opposite-sex. Although some “details” of the “mutual caregiving,” such as how a couple provides romantic or erotic attention to one another, for instance, through varying consensual sexual acts, may differ from one to another couple, the overall value of the mutual caregiving is the same. And since all of these couples are capable of this romantic love, they should all have the ability to signify this

¹¹ However, it does mean that socially constructed, definitionally-changing words such as ‘marriage’ are not “natural.” Not being “natural” does not mean that it is wrong or bad in any way, just that it is something we had and have to continue to define and redefine ourselves over time, along with our ever-changing and growing societies and cultures. Thank you to Dr. Jessica Berry for bringing this point to my attention.

commitment (of mutual caregiving) with marriage.¹² All true romantic love, regardless of sex, is equal and should thusly be afforded the same opportunities in society, including the ability to signify the “legitimacy” of their relationship with the legal commitment of marriage.

6. Over-Privileged Religion: Getting on the Offensive Against Religion

Religious believers, in today’s society, appear to want to hold marriage to a certain moral standard. However, I believe this “moral standard” that the majority of religious orthodoxies are trying to uphold is misguided. Most religions, in our society, perpetuate the notion that marriage is to be between two people, one male and one female. They cite a varying number of reasons for promoting this model; however, all of them garner support only from their religious teachings. In the end, regardless of who is arguing against marriage equality, all their arguments boil down to religious reasons. It is important to note is that the “strongest” arguments against an “all inclusive” model of marriage are all religious based arguments. This is where the problem lies: religious reasons should not take precedent in our society.

The very idea of a “moral standard” in marriage is based on religious teachings, not on the virtue of romantic love as I have suggested. Moreover, we do not need to hold up or tolerate this religious moral standard in society. In his book, *Why Tolerate Religion?*, Brian Leiter discusses what “religion” is and what kind of “special toleration” it deserves, if any at all. The “distinctive features of religious belief,” according to Leiter, are the implicit or explicit explication of a

¹² Again, if we assume marriage is an institution we should uphold in society.

“*metaphysics of ultimate reality*”, “*categoricity of its commands, insulation from evidence* (not just de facto, but also de jure) and *existential consolation*” (Leiter 2013: 53, 47). These features distinguish religion from other “important and meaningful beliefs” that people might have, such as centuries-old family traditions (Leiter 2013: 53). But do these distinguishing features of religion justify our granting religion a “privileged” or “special” sort of toleration not typically given to other meaningful beliefs, such as family traditions (Leiter 2013: 53)? Leiter’s answer is “no.”

Leiter claims there is no reason why religion should be singled out for special protection under the law (Leiter 2013: 66-67). Religion should be tolerated and protected *to an extent*, under the legal protection of liberty of conscience; however, it should be tolerated and protected only to the extent “that it does not burden nonreligious claims of conscience” (Leiter 2013: 67, 118). “A vision of the Good—a vision, broadly speaking, of what is worthwhile or important—is compatible with toleration as long as it does not have as its purpose to burden coercively minority claims of conscience, beyond what is licensed by the harm principle” (Leiter 2013: 118-19).¹³ And just as religious “vision(s) of the good” cannot impede on or burden others’ visions of the good, the legal system’s vision of “the good” cannot try to prohibit citizens from having their

¹³ The Harm Principle is a Millian, utilitarian, idea that claims “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill 1978: 9). On this ideal, the state should tolerate a religious beliefs; however, only insofar as it does not harm or cause unnecessary burden to other citizens (Leiter 2013: 22-23).

own opinions of “the good” or prohibit those citizens from expressing them in “unburdensome” ways (e.g., wearing a star of David or a cross) (Leiter 2013: 118-19). In other words, we should defend peoples’ right to have their own visions of what is right or wrong, “what good is”; however, we should defend them only insofar as they do not impose burdens on other citizens who may have differing opinions on what is right and wrong (“what good is”). Someone’s religious beliefs are insufficient justification for imposing burdens on or limiting other peoples’ freedoms in society—such as limiting peoples’ right to marry.

Although Leiter believes that we should tolerate religion, to an extent, he does not believe we need to give it the privileged place in society that we typically tend to give it. This view has an impact on the same-sex marriage debate. Ultimately, all arguments against the legalization of same-sex marriage come down to one underlying factor: religion. However, if, as Leiter argues, we do *not* need to tolerate religion in this special way, what reason do we have for upholding the same-sex marriage ban? If the only arguments against same-sex marriage are ultimately religious, we have no legal or moral obligation to abide by or tolerate those arguments, because it is not required of us to hold religious opinions in a privileged place, above the law.

Furthermore, by upholding the same-sex marriage ban, we are shifting a burden onto others. By withholding rights from same-sex couples, we are not allowing them to enjoy the same liberties as other citizens and are thus placing a “burden,” such as limiting the rights and freedoms of a particular group of citizens, upon that group of citizens. If we rule in favor of these religious arguments, against same-sex marriage, we are giving religion a privileged place in

society that it does not deserve to have, and we will continue to place a burden upon a certain group of citizens. By ruling in favor of same-sex marriage, we would not be impeding religious peoples' "visions of the good" or placing any burden upon them—we would not be limiting or changing their freedoms or restricting their opinions. In the end, the legal system has no reason to privilege particular moral beliefs, such as religious beliefs that displace burdens onto other citizens. Instead, the legal system needs to worry only about upholding the morality of legal fairness—what is fair to all citizens.

7. "Marriage" without Morality

Although marriage appears to have a very strong presence in societies throughout history, I do not believe marriage to be a "human right," but a legal right. The *Stanford Encyclopedia of Philosophy* (online) defines "human rights" as: "international norms that help protect all people everywhere from severe political, legal, and social abuses...these rights exist in morality and in law and the national and international levels" (Nickel 2012). The marriage institution does not fit this description of rights. Instead, marriage is a *legal* institution in which we afford certain benefits to the group of people we legally classify as being "married."¹⁴ One is not innately entitled, by "human rights," to be married. One is afforded the right to be married by their

¹⁴ It is important to note that one could classify "marriage" as a religious institution *also*. However, in our society as a whole, we ultimately are supposed to abide by a certain set of legal rules—not religious rules. Religions very well may have their own concept of "marriage," but we do not need to equate religious marriage with legal marriage.

society. The right to love whom one chooses to love might be more along the lines of a human right. However, even if marriage involves “love,” it is not the same as love.¹⁵ Marriage, in our society, is “a consensual and contractual relationship recognized by law.”¹⁶

So, if we choose to view marriage as a purely legal institution that affords certain rights and privileges to citizens in a society, the marriage issue becomes simply a legal and not a moral one. And in this country we afford equal rights to *all* citizens, *qua* citizens. If we take the morality out of the discussion of marriage and view it as a purely legal institution (rather than a human right or religious privilege), we appear to be required to enforce “marriage equality” for all citizens. Marriage, as a legal right, should be afforded equally to *all* citizens, not just a select few.

When we pick and choose certain citizens to afford rights to, we treat other citizens as somehow “less worthy” or second-class (Corvino 2012: 58). When voting was afforded to only a select few, the white male landowners, the legal system treated every other citizen as less-than-worthy of voting. This voting restriction denied “equal rights” to all citizens and placed burdens on every other citizen because they were unable to voice their opinions in legal decision-making (affecting everyone’s rights and legal benefits). A similar story can be said for marriage:

¹⁵ As we probably already know, just because two people are married does not necessarily mean they are in love. I do believe, however, that is marriage has a “moral” standard or purpose, and that this would and should be “love.” However, if we take the morality out of marriage, and separate the concept of ‘love’ from marriage for the sake of argument, then we can see and discuss the ramifications of marriage as purely a legal right (without morality’s influence).

¹⁶ “marriage.” Merriam-Webster.com. Merriam-Webster, 2013. Web. 7 July 2013.

marriage, like voting, is a legal right. It is not a right that everyone is *necessarily* entitled to, for instance, by nature; but is a right that is afforded by law in a society. And, if it is a legal right, it should be afforded equally to all citizens in the society. As with voting, by denying marriage to certain citizens we are essentially saying they are less-than-worthy of being married, hence, less than worthy of being full citizens.

These citizens are burdened by denying them the legal right to marriage. By denying marriage to all citizens, we deny them certain tax benefits, estate planning benefits, government benefits, employment benefits, medical benefits, death benefits, and family, housing, consumer and other legal benefits and protections.¹⁷ So, why are we denying these benefits to a particular group of people? If we have the ability to afford these benefits to some citizens, should we not afford them to all citizens equally? In a legal sense it appears we have no reason not to. And in a moral sense, we must.

The “strongest” arguments available against affording these rights to *all* citizens equally are those that are based on religious teachings, and these arguments turn out, on closer inspection, not to be viable. And as previously discussed, if these are the only arguments against affording marriage rights and benefits to all people (thusly placing burdens on the citizens who do not receive marriage rights), we have no reason legally to deny marriage rights to all citizens. When you separate the morality of marriage from the legality of marriage, you are able to see how the denial of marriage rights to all citizens equally is a discrimination issue (Corvino 2012:

¹⁷ For more information see: "Marriage Rights and Benefits." *Nolo.com*. Ed. Lisa Gullen. 2013. Web. 29 July 2013.

79). So, when we remove the morality from the marriage definition, we find the real moral issue at hand: discrimination.¹⁸

If we deny these rights to *all* citizens equally, we engage in discrimination. Same-sex couples are essentially being discriminated against in the eyes of the law, based upon arguments that we have no reason to tolerate or uphold in the eyes of the law. "Gay citizens are citizens, too" (Corvino 2012: 17). Denying same-sex couples the right to marry implies that their family is not worthy of the support, protection and stability that other couples and families are apparently worthy of (Corvino 2012: 63). When we do not afford marriage equality to all citizens, we are promoting something immoral: discrimination.

The rebuttal that same-sex couples in fact already enjoy the same rights to marry as opposite-sex couples, because they do have the ability to marry anyone they choose as long as that person is of the opposite sex, does not suffice (Corvino 2012: 89). As John Corvino points out, this argument has the same form as the argument for anti-miscegenation laws: "whites can marry within their race; nonwhites can marry within their race; therefore everyone has equal marriage rights" (Corvino 2012: 89). Once marriage is provided "as an option" for heterosexual couples, it is unjust to deny marriage as an option to same-sex couples (Corvino 2012: 89). Denying rights to certain groups of citizens is unjust—there is enough marriage to share (Corvino 2012: 89).

¹⁸ This is not to say that I believe morality *should* or *needs* to be taken out of the marriage definition, but rather that when we remove the cloud of morality (which many people seem to have differing opinions on), when we can seek the basic issue with (the current) marriage definition: legal discrimination.

8. “Separate is Never Equal”: Why not ‘Civil Unions’?

So, if some citizens have a problem with including same-sex couples in the “marriage” institution, why not just create a separate institution for same-sex couples with the “same” and “equal” rights as the marriage institution, but call it by another name? We’ll call them “civil unions.” This solves the marriage equality problem, right? Wrong.

As we know from past experience, “separate” never ends up being equal (Corvino 2012: 32). Separate is never “the same.” Separate is never “equal.” When you “separate” something from another thing, you are distinguishing it from that other thing—distinguishing it as something different.¹⁹ This is true of other “separate” things in our society, such as men’s and women’s restrooms.²⁰ If you have been in both types of restroom, you know that these facilities are never “the same”; they are differently designed. Depending on the location of the restroom (e.g., in a department store) the women’s restroom tends to have a “lounge” area, extra mirrors for “priming,” or it might have changing tables for children. Often (but not always), men’s restrooms do not have these features. The men’s restrooms also always have one thing a women’s restroom never has and never will have (for obvious and practical reasons): a urinal. Although

¹⁹ “separate.” [Merriam-Webster.com](http://www.merriam-webster.com). Merriam-Webster, 2013. Web. 7 July 2013

²⁰ Thank you to Dr. Jessica Berry for bringing this point to my attention.

this is not to say that separate restrooms are “wrong,” it does exhibit the notion that separation reflects dissimilarity. If we separate same-sex marriages, as “civil unions,” from opposite-sex marriages, treating them as distinct entities, we are placing them on an unequal footing. Thusly, they will not be treated in *the same* way, because they are two *distinct* concepts, instead of the same *one* concept.

“Civil unions” will not suffice to solve the “marriage problem.” The goal is equal rights, not separate or unequal rights. In order to achieve equal (marriage) rights for all citizens, all citizens must be afforded the same marriage rights under the same name in order for the rights to be considered equal. We should not separate the terminology and the concepts from one another: if we call “gay marriages” “civil unions” then we should call *all* marriages “civil unions” or vice versa.

Consider this question: If marriage is simply a legal institution, then why would it matter what it was being called? If marriage has only legal significance to us, then we could rename all legal marriages “civil unions,” and no one should object. As long as equal rights were being afforded to all citizens, it should not necessarily matter what title these sets of rights were given—as long as it was the same, one title. As it stands now, that title is “marriage.” So, if we choose to change this title, it should affect *all* citizens, not just a select few.

9. Morality vs. Legality

It is “OK” to view marriage as upholding a morality or virtue. However, if we are to view marriage as a moral or virtuous thing, we need to make sure it is the appropriate moral or virtue for all people—not a religious virtue that only applies to citizens adhering to that religion. If marriage is to uphold some sort of virtue or moral standard, it is the virtue of romantic love. However, marriage can also be seen as purely a legal right afforded to citizens in their society. Regardless of whether marriage upholds some sort of moral value, such as love, or is simply a legal right, we have no reason to deny marriage equality to all citizens (regardless of sex, race, etc.).²¹ For marriage equality fits into both the moral and virtuous model of marriage and the purely legal model of marriage.

10. Our Options

So, all in all, what are our solutions to the “marriage problem?” To me, it seems there are three options: (1) recognize all marriages equally, (2) rename all “marriages” (e.g., call them all “civil unions”), or (3) do away with (the) marriage (institution) altogether. In the end, I believe the best solution is one in which we rename all “marriages” and identify both opposite-sex and same-sex marriages under one concept and term.

²¹ These need not be mutually exclusive (morality and legality). It is simply that no matter which lens you look at marriage through, whether through morality, legality, or a combination of the two, you can find no reason to deny marriage equality to all citizens.

While this may sound somewhat radical, I believe renaming and uniting all “marriages” under a single new concept would give “marriage,” and citizens, the best chance for true equality. Under a new name (perhaps something other than “civil unions”), all citizens would be afforded equal opportunity to enjoy the same rights and benefits. There would also most likely be more of an “all-inclusive” feeling under a new name, as there is not under the traditional “marriage” terminology.

If same-sex “marriages” are still be referred to as such—as something separate and different from “traditional” “straight marriages”—the social stratification that we find today among same-sex and opposite-sex couples would continue (though there would likely be increased, but not complete, social acceptance for “same-sex” marriage among the masses). So, although marriage could become “equal” in the technical, legal sense, many people (opposite-sex and same-sex couples alike) might feel as though their marriage is not up to the same standard as others’ because it was only recently included in the concept of “marriage” or was not always included in the concept of marriage to begin with. However, under a new name, all such unions would begin as equals. There would not be a “previous” standard, such as “traditional” *marriage* *versus* “new and all-inclusive” marriage—there would simply be “legal unions” (or whatever name was decided upon to call it) and the rights, benefits, protections, rules and regulations that

go along with them. In this way, we might eliminate the prejudice that would ensue from “traditional” marriages and “same-sex” marriages.

And while doing away with the marriage institution altogether might appear to be a viable option as well, I do not believe it is the best answer. Many people are in favor of doing away with the marriage institution, largely because it is an incredibly flawed institution. However, many of these flaws seem to be with the inequality and discrimination it promotes amongst citizens. The marriage institution favors married people, legally and socially. In the legal system, marriage is promoted and rewarded by the awarding of legal benefits (to married couples), such as tax benefits—these same benefits are not awarded to unmarried couples or single adults. And in society, unmarried couples or single adults tend to be seen as atypical, and may be treated thusly by their community and peers. By giving marriage a new name, we will eliminate a lot of the inequality it currently produces in society, and eliminate a lot of the current qualms with marriage as an institution.

11. Final Remarks

As we have seen in the landmark case, *US v. Windsor*, the highly popularized arguments against marriage equality (e.g., the religious arguments) simply do not hold up (any longer) in the legal system. According to the decision:

Under DOMA, same-sex married couples have their lives burdened, by reason of government decrees, in visible and public ways. By its great reach, DOMA touches many aspects of married and family life, from the mundane to the profound. It prevents same-sex married couples from obtaining government

healthcare benefits they would otherwise receive.... DOMA divests married same-sex couples of the duties and responsibilities that are an essential part of married life and that they in most cases would be honored to accept were DOMA not in force. (United States 12-307)

The Supreme Court appears to have concluded, for similar reasons as I did, that the burden that DOMA placed on same-sex married couples is discriminatory and unjust. The “traditional” view and definition of marriage (i.e., as between one man and one woman) is no longer accurate for our society and no longer needs to be “protected.”

The dissenting opinion in the case does not point to many substantive arguments in the defense of “traditional marriage,” but rather attempts to defend DOMA as a non-intentionally discriminatory statute. This opinion does not seem to get to the real matter at hand, and does not do any work actually to defend “traditional marriage” itself. Instead, it attempts primarily to defend the lawmakers that created and enacted DOMA, claiming that DOMA was not intended to cause harm or burden to same-sex couples. While I would like to agree that the lawmakers who created and enacted DOMA did not do so with the intention of malice towards same-sex couples, that is not the issue at hand. Whether or not to grant marriage equality, to all citizens regardless of sexuality and race, is the issue at hand.

All in all, no matter how you slice it (using either your morality knife or your legal knife), “marriage equality” should be afforded to all citizens. Perhaps this institution should take on a new name, for the betterment of the social community surrounding marriage. However, what is most important is that we eliminate the true moral problem behind marriage—not the

religious problem currently widely associated with marriage (that same-sex marriage is inherently wrong), but the immoral discrimination problem. The only way to stop this discrimination is by affording equal (marriage) rights to all citizens. The specific name we choose to call these rights is less important--as long as it is *the same* name for *every* citizen, regardless of sexuality.

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