

Same-Sex Marriage and the Challenge of Liberalism: A Case of Ideological Drift

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This article addresses the challenge of Liberalism as it relates to the issue of same-sex marriage with an exploration of the following question: how can we accept American liberalism as an ideology of inclusion with its claims of innate human equality and universally shared inalienable rights, when America's history is full of exclusionary policies such as the denial of the right to marriage among same-sex couples? We assert that while the field of Public Administration is enthralled with liberalism as it is articulated with Louis Hartz's (1955) "liberal society" thesis; too much credit is assigned to liberalism as an ideology of inclusion. We will explore America's exclusionary policies on same-sex marriage to show that neither the theory of misapplied liberalism nor that of widespread illiberalism fully explains the ideological origins of America's long-term practice of selective inclusion. Instead, exclusions and liberalism are symbiotic in a large measure because of the ambiguous nature of the traditional liberal ideology. The authors will explore the arguments for and against same-sex marriage using the principle of ideological drift to demonstrate the symbiosis of American rights and American inegalitarian practices such as the banning of same-sex marriage.

A major challenge of liberalism as it relates to the contemporary debate same-sex marriage is one of ideological drift, where political contestations over the meaning of abstract concepts, such as liberalism and marriage, permit the coexistence of American rights and American inegalitarian practices. The case of same-sex marriage will serve as the example to demonstrate this symbiotic relationship between lesbian, gay, bisexual, and transgender (LGBT) rights and LGBT inegalitarian practices, using a principle developed by legal theorist Jack Balkin (1993) called ideological drift. The variation of progress and regress of LGBT rights in general can be explained with the application of this construct

Jack Balkin developed the idea "ideological drift" to describe the historical changes in the moral and political valence of shared values in the law. He argued that "[t]he valence varies over time as they are applied and understood in new contexts and situation" (Balkin, 1993, 870). This notion of drift has two dimensions: "the first is to imagine the content of an idea as held constant and consider the changing political consequences of the idea in changing contexts" (Balkin, 1993, 873). The question becomes whether it is possible to

describe, evaluate or make judgments about competing ideas, theories, and symbols with fixed meanings as the contexts changes. Whether we use multiple interpretations of liberalism or some variation of naturalism to describe, evaluate or make judgments about LGBT policies, we are likely to see different results as the context changes, or at different historical times. The second dimension of this construct is described by Balkin as “. . . the product of a struggle over the meaning and legacy of political and legal ideas” (Balkin, 1993, 873). Ideological drift in this sense means that the very notion of any abstract idea like liberalism or marriage can change their political or moral valence over time because of the adoption of competing interpretations of their meanings. The ground of struggle over the issue of same-sex marriage crosses both dimensions of this construct.

We assert that while the field of Public Administration is enthralled with liberalism as it is articulated with Louis Hartz’s (1955) “liberal society” thesis, too much credit is assigned to liberalism as an ideology of inclusion. We will explore America’s exclusionary policies on same-sex marriage to show that neither the theory of misapplied liberalism nor that of widespread illiberalism fully explains the ideological origins of America’s long-term practice of selective inclusion. Instead, exclusions and liberalism are symbiotic in a large measure because of the ambiguous nature of the traditional liberal ideology.

Liberal ideology serves as an appropriate focus of analysis on the same-sex marriage issue because of its wide acceptance as the modern American governance tradition. This agreement is reflected in the “consensus theory” put forth by Louis Hartz (1955) in his work *The Liberal Tradition in America*, where he characterizes the American political tradition as one that consistently falls within liberal ideas. If we accept the consensus thesis of Hartz (1955), then it becomes reasonable to ask the following question: how can we accept American liberalism as an ideology of inclusion with its claims of innate human equality and universally shared inalienable rights, when America’s history is full of exclusionary policies such as the denial of the right to marriage among same-sex couples?

A logical extension of the question above is the assertion of a symbiosis of American rights and American inegalitarian practices. On the issue of same-sex marriage, and on many others, we can observe the exchange of ideas and purposes that illuminate the entrenched currents of liberalism and LGBT inegalitarianism. The principle of ideological drift offers a tool to analyze the character, operation and significance of the American political tradition in ways that highlight how ideas move through time in politics to produce an American liberalism that changes as ideas and purposes are reproduced over time.

In spite of the recognition of sexual orientation discrimination in international and regional human rights organization, the United States limits its claims to race, national origin, and religion and insists on treating its citizens the same. From a public administration perspective, this can be seen by examining the administrative responsibility literature and its normative assumption that makes a sharp distinction between politics and administration.

This paper evaluates the topic of sexual rights using liberal theory and naturalism to evaluate arguments for and against same-sex marriage. It posits that in an attempt to move beyond the assimilationist bias of current administrative practice, the approach of liberalism generates a new set of dangers. Liberalism in its various forms calls upon administrators to engage in essentialism by identity. This means that in order to determine whether public benefits and public recognition are deserving of administrative consideration, a significant amount of administrative discretion is warranted. Even if a public administrator could resolve the conflicting claims over which traits are essential to a group’s identity, such recognition might support the notion that groups have essences.

From a liberal point of view, particular differences between individuals have no bearing on their moral value, and by extension should make no difference concerning the political or legal status of individuals. Liberalism is committed to individualism over the claims of the collective. Liberalism provides a philosophical basis for a broad human identity is considered to be human nature in the sense that there is a common rational core within each of us which is capable of being directed by Reason.

The paper proceeds as follows. The first part outlines frameworks of liberalism of three contemporary political and legal philosophers (John Rawls, Ronald Dworkin, and John Finnis), and uses the principle of ideological drift to develop a critique of the lack of progress in addressing the call for LGBT recognition needed to legalize same-sex marriage. The second part explores the complexity of defining the liberalism of Joseph Raz who provides a philosophical framework for recognizing the competing values in group claims. By treating certain behaviors as constitutive of morality, public policymakers can adopt a paradigm of identity to justify the LGBT citizen inclusion in the public benefits of marriage based on sexual identity. The third part of the paper describes the normative arguments of legal scholar William Eskridge as a complement to liberal thought to help move forward the public debate about same sex marriage.

The Ideological Drift of Liberalism: John Rawls

A useful starting point to explore the ideological drift of liberalism is with the work on noted political philosopher John Rawls who developed a version of liberalism known as political liberalism. John Rawls (1993) provided the influential philosophical framework of political liberalism that has given life to the idea of justice for LGBT populations in public administration. Rawls recognized the incompatibility of philosophical, religious, and moral doctrines used to develop public policy in the United States' constitutional regime and developed a philosophy of political liberalism to separate public from private values. He also recognized that LGBT groups share similar social and historical experiences that often involve forms of discrimination. In doing so, Rawls argued for the development of a system of justice that is compatible with LGBT rights; however, this system falls short of providing the framework needed to acknowledge same-sex relationships in the manner desired by the LGBT community.

This Rawlsian Liberalism is best articulated in his book titled *Political Liberalism*. According to Rawls, "a public conception of justice ... constitut[es] the fundamental charter of a well-ordered human association" (Rawls, 1993, 5). He suggests that the fundamental principles of justice are achieved through a process of negotiation by citizen representatives. A liberal theory based on justice as fairness, according to Rawls, should have two principles: the liberty principle and the difference principle. In the logic of Rawls, citizen representatives who find themselves in a theoretical "original position" would agree on these two principles as the foundation of a just society:

[T]he first requires equality in assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of a society (Rawls, 1993, 14-15).

Of the two principles, the first is known as the liberty principle where there ought to be strict equality of basic liberties such as "political liberty . . . together with freedom of speech and assemble; liberty of conscience and freedom of thought" (Rawls, 1993, 61). Under the

principle of difference, a just society is permitted to have inequalities in the distribution of social and economic goods under the condition that everyone benefits under this arrangement. With guidance from these two principles, Rawls argues that well-ordered and well-functioning democratic societies are possible through public reasoning.

In the political liberalism of Rawls, his conception of justice calls for the separation of public reasoning (a democratic political process with engaged citizens) from personal and associational deliberation (philosophical, religious, and other moral doctrines which should remain outside of the political process). “Thus, ideas of the good in the political conception have to be appropriately political and distinct from those in the more extensive views” (Rawls, 1993, xix). Accordingly, the public reasoning process should be devoid of the variability in values that result from incompatible philosophical, religious and moral doctrines (Rawls, 1993). For Rawls, political values include “toleration and mutual respect, and a sense of fairness and civility” (Rawls, 1993, 122).

In his work *A Theory of Justice*, Rawls does not address LGBT rights directly because this work is more in line with the Kantian notion of individualism with its focus on the abstract and atomistic view of human nature. A challenge to the Rawlsian conception of justice is the absence of a connection to contemporary political philosophy to support the LGBT claims of recognition need to make the case for same-sex marriage rights. While this framework advocates the recognition of group differences based on group cultures, it fails to provide a philosophical rationale for such recognition. The need for recognition has been canonized since the 1994 publication of the Canadian philosopher Charles Taylor’s essay “The Politics of Recognition.” It is this essay that provides the literature with a philosophical shape and substance for the idea of recognition. Essentially, Taylor argues that the fundamental idea of equal dignity for all human beings is rooted in the liberal tradition and that this tradition gives rise to two opposing thought strands: (1) commonality and universalism and (2) difference. It is the recognition of this difference that provides a liberal basis for the contemporary claims to same-sex marriage rights—that is, for an acknowledgment of a group’s claims to equal treatment in the rights extended to those governed by the institution of marriage.

The opposing argument to LGBT group recognition and the call for the extension of the right to same-sex marriage are the liberal principles of neutrality and individualism. According to a competing interpretation of liberal theory, the state should not recognize same-sex marriage because it should remain neutral in the competitive play for the common good. In other words, the state should focus its efforts on ensuring the rights of individuals to be treated equally. In this sense, equality is taken to mean sameness in terms of treatment. The result is an equality/difference dichotomy that remains unaddressed for public debate on the normative value of same-sex marriage.

In short, the liberalism of John Rawls does not provide a framework for the recognition of same-sex marriage because it does not permit a discussion of the normative issues that must be debated to reach a consensus on this issue. It is simply not clear how one might frame an argument for same-sex marriage based on the neutral principles of freedom, equality and toleration which constitutes the values open to discussion within a Rawlsian public discourse. In a classical sense of liberalism, consensus has traditionally meant tolerating religious freedom and extending due process to property right claims. On the matter of same-sex marriage, the public consensus not only breaks down, but according to Eskridge, “modern western culture is hostile to the idea” (Eskridge, 1996, 35).

This hostility results from the oppositional use of a different value, morality, with its corresponding meaning, to generate a new competitive struggle. It is in this struggle

where the abstract idea of justice loses the competitive battle for the American political tradition to moral doctrines. It can be argued that the American consciousness is far more effectively shaped by mythology than by the foundations of liberalism. In its pure form, liberalism fails to produce the moral certainty demanded by the broader society to achieve a political consensus on an issue. In contrast, certain mythologies as articulated in religious and other moral doctrines provide simple versions of life's complexities through uncomplicated tales of the origin and contours of life. As a result, it appears easier to reach and American political consensus against the issue of same-sex marriage. This notion would explain the fact the more states in the U.S. have passed bans on same-sex marriage than those which grant its recognition.

The Ideological Drift of Ronald Dworkin's Ethical Liberalism

The work of political philosopher Ronald Dworkin provides a version of liberalism that can deal with the idea of morality in the LGBT community's struggle to produce a new meaning of marriage to overcome the religious and moral objections to same-sex marriage recognition.

Dworkin, in his work *Liberalism in Hampshire's text Public and Private Morality*, emphasizes equality as the core of liberalism. Of the many theories of equality, his work is focused on two. The first idea is to separate political decisions from the competition for an ultimate concept of the good. He refers to this theory as the "constitutive political morality" of liberalism (Dworkin, 1978). It is important to note his rejection of a second theory of equality which holds that "the content of equal treatment cannot be independent of some theory about the good for man or the good for life" (Dworkin, 1978, 127). In his view, policy decisions ought not to be made based on majoritarian views on "sexual morality" because the result would be "the domination of one set of external preferences, that is, preferences people have about what other shall do or have" (Dworkin, 1978, 134).

In some respects, Dworkin's Ethical Liberalism seems quite similar to the Rawlsian liberal framework. Dworkin's "external preferences" are like the comprehensive doctrines of Rawls in that they should be excluded from public reasoning of the political process. He argues for a liberal approach "to determine those political decisions that are antecedently likely to reflect strong external preferences and to remove those decisions from majoritarian political institutions" (Dworkin, 1978, 134). His work is highly critical of the incorporation of majoritarian morality into the formulation of public policy because he believes those who do not abide by majoritarian views will be subject to unequal treatment. He argues in direct response to the work of Lord Devlin thesis that society has the right to protect itself by using criminal law to enforce conventional morality (Patrick Devlin, 1965, 13).

Dworkin reminds us of John Stuart Mill's harm principle in his criticism of the infringement of majoritarian moral values into political choices. In his famous essay *On Liberty*, John Stuart Mill states that "the only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill, 1985, 68). In Dworkin's (1995) view, there is no reasonable justification for using majoritarian morality to employ public coercion because the result is unequal treatment at the hands of the state.

As it relates to advancing individual liberty, Dworkin is arguing for state neutrality on the competing convictions about what is good versus bad. The incorporation of majoritarian morality into political choice has the effect of assigning more weight to sexual morality of majority against that of the minority. This is precisely the kind of argument used

to repeal U.S. sodomy laws. This line of reasoning, however, is insufficient to justify recognizing same-sex marriages because there is a difference between punishment of an activity perceived to be immoral (to criminalize homosexual sodomy) in the eyes of the majority, and a state's unwillingness to recognize same-sex marriage. Neutrality on normative values simply does not move the argument in favor of same-sex marriage forward. If we are to witness the effects of Dworkin's principle of equality, normative arguments must be presented to show why LGBT citizens are worthy of equal treatment.

In the political contest over same-sex marriage, Dworkin's version of liberalism loses to religious and moral doctrines in those states that have adopted constitutional bans on this practice. In some respects, federal laws and regulations continue to be influenced more so by inegalitarian forces than by liberal ones. As the social movement of the LGBT community calls into question such bans on same-sex marriage, it will help to shape a new social meaning of marriage to help re-shape the state and federal constitutional principles. One legal strategy is convince the Supreme Court to conclude, following its reasoning in *Romer*, that a ban on same-sex marriage is an irrational form of government regulation and therefore violates the Equal Protection Clause of the Fourteenth Amendment. The Perfectionist Liberalism of Joseph Raz provides the best and most comprehensive liberal paradigm for LGBT rights because it provides a coherent framework for the full incorporation of the normative value of same-sex relationships into a rights discourse regarding LGBT marriage while at the same time emphasizing the intrinsic good of personal autonomy which rejects government paternalism and coercion.

The Ideological Drift of Liberalism: The Impact of Natural Law

The symbiosis of American rights and American LGBT inegalitarianism can also be explained by a drift in American Liberalism whereby ideas such as naturalism are adopted by American liberals and incorporated for new purposes to bridge over deep cultural divides. When we deconstruct history, we notice how the social meaning of liberal principles and their practices change as their applications are contested politically. In articulating the principle of ideological drift, Balkin (2006) describes this phenomenon in the following manner: “[p]rinciples once uncontroversially accepted become counterintuitive and produce uncomfortable results as they are applied to new situations and problems . . .” (p. 929). States that currently recognize and permit same-sex marriage have all experienced this process.

A close reading of the political liberalism of John Rawls permits us to see that one fundamental tenet of liberalism is the superordinate position of the right over the good. As a result, liberals are more likely to value individual autonomy in deciding among ethical and practical priorities to achieve alternative forms of human flourishing. In contrast, natural law theorists such as John M. Finnis, argue that a set of basic values are a constitutively connected to any form of human flourishing.

According to Finnis, there are by nature, a set of basic principles and values governed by natural law which he defines as “a set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realized, and which are in one way or another used by everyone who considers what to do, however unsound his conclusions” (Finnis, 1980, 2-3). In his view, human goods such as life, knowledge, and aesthetics are self-evidently good, as opposed to good in an empirical or historical fashion.

Natural law theorists provide the framework for moral arguments toward LGBT communities; including the traditional Christian perspective the non-reproductive sexual

acts are unnatural. Christian theologians such as Saint Thomas Aquinas viewed the pursuit of sexual gratification as an end to itself as immoral.

While the claim that non same-sex intimacy is immoral has religious roots, John Finnis developed an argument regarding its immorality based on secular reasoning. He argues that non same-sex intimacy is always wrong and immoral and that this claim can be “. . . defended by reflective, critical, publicly intelligible and rational arguments” (Finnis, 1994, 1055). He makes a distinction between the public and private lives of citizens, arguing that parents and voluntary association have an obligation to uphold morality, while the state has the responsibility to discourage public displays of LGBT affection (Finnis, 1994, 1052). In the words of Finnis, government has an appropriate role in helping the young “to avoid bad forms of life” and emboldening all people “in their resistance to being lured by temptation into falling away from their own aspirations to be people of integrated good character, and to be autonomous, self-controlled persons rather than slaves to impulse and gratification” (Finnis, 1994, 1053). He equates homosexuality to bestiality in that both are “destructive of human character and relationships” (Finnis, 1994, 1069). As a result, he argues that political communities are duty-bound to shield its institutions (e.g. marriage and family) from the potential harm of LGBT citizens (Finnis, 1994, 1069).

American LGBT Exclusionary Policies

From America’s Colonial Period until June of 2003, local government sanctions made it dangerous to be a member of the LGBT community. Both religious and secular moral doctrines influenced state policies that identified, segregated, harassed and criminalized the intimate and personal relationships of this marginalized group. As early as the 1630s in Colonial Virginia, sodomy laws made same-sex sexuality illegal. From that time until the 2003 *Lawrence v. Texas* Supreme Court decision, street level bureaucrats such as police officers were empowered to arrest, harass or extort same-sex couples under a variety of loitering, solicitation and disorderly conduct laws (Bernstein 2005). Employment and housing discrimination against LGBT citizens was legally permitted. During the 1950s, LGBT citizens were scapegoated and banned from government employment (Johnson 1994-5). According to Leonard (1993), prohibitive liquor licensing laws outlawed LGBT bars; and state sodomy laws deemed it illegal for LGBT citizens to organize or meet socially because of the assumption that such meetings would result in the promotion of LGBT sexuality. Religious doctrine considered LGBT sexuality immoral, and the U.S. medical establishment considered it to be the result of a disease (Bayer 1987).

The peak of the hostile climate of LGBT persons was reached in the 1950s during the period often referred to as the “Lavender Scare.” LGBT minorities were linked with communists in public discourse and targeted under the auspices of a national security threat. According to a 1950 Senate report, “sex perverts, like all other persons who by their overt acts violate moral codes and laws and the accepted standard of conduct, must be treated as transgressors and dealt with accordingly” (United States Senate, 1950, 3). In 1952, Congress created a category of psychological illness to re-define LGBT citizens as persons of “constitutional psychopathic inferiority” to justify their exclusion from emigrating to the United States (The Immigration and Naturalization Systems of the United States, 1950). By 1953, President Eisenhower issued Executive Order 10450 which raised “sexual pervasion” as a threat to national security thereby making LGBT citizen ineligible for government jobs (Executive Order 10450, 1953).

For most of the 20th century, the US Supreme Court was not always a friend but not

a complete foe of the LGBT community. A sign of hope was sent in 1958 when the Supreme ruled unconstitutional the government action of a postal seizure of copies of the early LGBT movement's magazine titled ONE on the grounds of obscenity for discussing homosexuality. As a result, the LGBT movement became better politically organized.

Alternatively, the Supreme Court displayed its hostility in its 1967 ruling in *Boutilier v. INS* (1967) where it affirmed the federal government's power to deport LGBT minorities for possessing "psychopathic personalities." It was so clear to scholars such as Joyce Murdoch and Deb Price that the Supreme Court was unwilling to accept the concept of full legal and citizenship status for LGBT minorities that they concluded that it ". . . joined the government war against homosexuals" (2001, 134).

The 1970s witnessed a rise in the number of challenges to state sodomy laws on the grounds of their unconstitutionality. By the early 1980s half the states had repealed their sodomy laws in response to activist lobbying and ALI recommendations. In 1986, the US Supreme Court confirmed the moral majority's view on sodomy with its ruling on *Bowers v. Hardwick* that the constitution did not support a LGBT citizen's right to privacy. It took another seventeen years for the US Supreme Court to reverse the *Bowers* defeat when it declared sodomy laws unconstitutional in the 2003 *Lawrence v. Texas* ruling.

From a legal perspective, the *Lawrence* decision signaled a new era for the existence of the LGBT community. This decision mark the beginning of the separation of moral judgments from the law in a manner that is consistent with the political liberalism of John Rawls; and it characterized LGBT person in more positive terminology, so much so that in his dissenting opinion, Justice Antonin Scalia commented that the door for the court's recognition of same-sex marriage had been opened.

Despite the legal progress of *Lawrence* for LGBT personhood, US federal law and policy did not follow suit and continued to deny status and full personhood to LGBT minorities. While the ban on federal employment was lifted in the 1970s, the ban on military service remains with caveats, and the immigration law continues to discriminate against this group. Same-sex marriages performed in other countries are not recognized in the US, and the path to citizenship for this group differs in markedly negative ways. In short, LGBT minorities are excluded from a range of federal laws.

Aside from the federal sphere, US state law has moved in the direction of extending recognition to the status of LGBT families through the acknowledgement of same-sex relationships and parenting responsibilities. By 2010, more than fourteen US states recognized same-sex relationships. Alternatively, by 2012, at least 30 states have passed constitutional amendments to ban same-sex marriage.

As we study the contours of American liberalism over the brief history detailed above, we uncover the movement of political ideas such as naturalism into America's liberal democracy. As a result we can more directly assess the interplay of inegalitarian practices with American rights.

Against Same-Sex Marriage: The Natural Law Argument

Natural law theorists such as Finnis appeal to historical theology-based arguments against same sex relationships and marriage when they argue that inherent good results from procreative intimacy. When such standard arguments are evaluated closely the inconsistencies emerge. For example, Finnis defines LGBT intimacy as conduct in pursuit of orgasmic pleasure only.

This definition suggests that LGBT relationships lack the emotion of love. Roger Scruton is helpful in providing a practical definition of the otherwise meta-physical concept

of love with: "Love has an aim which is separate from desire. Love seeks companionship, in mutual well-being will be the common purpose; it is nourished on counsel and conversation, on gifts and tokens, on affection, loyalty and esteem" (Scruton, 1986, 216). The communicative and emotional aspects of LGBT intimacy are characterized by Andrew Koppelman as "for at least some same-sex couples, sexual intercourse is valued, not merely as a pleasurable experience unintegrated with the rest of one's life, but as an activity that is an important constituent of one of the primary relationships in one's life, exactly as is the case with heterosexual couples" (Koppelman, 1997, 209).

The natural law argument against same-sex marriage is essentially that marriage is an intrinsic good when it is between a man and a woman because of the possibility of reproduction. It assumes that LGBT couples are only interested in using their bodies for sexual satisfaction. It would appear that Finnis cloaks the traditional sexual ethics of the Catholic Church in a secular framework with a promise of rational argument and public intelligibility. The key assumption of his moral argument is that only heterosexuals can realize the common good of their relationships when they engage in procreative sex. When this assumption is evaluated using rationality, logic, experience and reflection, it becomes challenging to accept his conclusions. The ethical sexual structure of Finnis is that LGBT intimacy is inherently immoral and hence its public manifestation should be discouraged by the state.

When one evaluates the arguments against same-sex marriage of natural law theorists what becomes self-evident is the normative nature of the debate on this issue. The response from political liberals such as John Rawls is to shield the LGBT minority from the morality of the majority with a protective wall. A more direct approach is to simply acknowledge that LGBT intimacy in the context of a committed relationship is equally valuable as heterosexual intimacy in terms of mutual love and affection. The exclusion of LGBT couples from the institution of marriage amounts to granting a privilege to one type of human relationship. The public debate should be focused on whether LGBT relationships are worthy of being recognized and included in the marriage category with its corresponding privileges.

The Ideological Drift of Liberalism: The Perfectionist Liberalism of Joseph Raz

A challenge with the political liberalism of John Rawls is its inability to address the reality that morality can and does play a valid role in the political process. The assumption that morality has no role in the public policy process results in laws that are shaped by the definition of the natural law theorists (e.g., moral marriages are those between a man and a woman). Perfectionist liberalism is a political and moral theory that lies between the two extremes of excluding moral discussion in public deliberations and defining morality in very narrow terms. With its focus on the liberal ideal of personal autonomy, it permits the normative discussions needed to determine appropriate conceptions of the good to be promoted by government. Perfectionist liberals posit that the ideal of personal autonomy is among the forms of intrinsic human goods and as such should direct a liberal society in determining what is *right*. Under this paradigm, government has the duty to adopt policies that both promotes and encourages personal autonomy as a matter of moral good as opposed to as an individual right

In the view of perfectionist liberals, personal autonomy is the best model of the good because of its inherent goodness. Correspondingly, they believe in the possibility of making normative assessments among the competing varieties of the good in a manner

which upholds the values of alternative liberal principles such as equality. Joseph Raz is among the leading theorists of perfectionist liberalism. His theories provide a better liberal framework to advance the debate on same-sex marriage.

For Raz, the intrinsic value of liberty (or freedom) is self-evident. In his view, liberty should not be valued for what it can produce, but as an end as oppose to an instrumental means to an end, provided it is “exercised in pursuit of the good” (Raz 1986, 381). He departs from the traditional notion of government neutrality when he suggests that “[t]he main purpose of government . . . is to assist people . . . to lead successful and fulfilling lives, or, to put the same point in other terms, to protect the well-being of people” (Raz, 1993, 113).

According to Raz, there are two serious challenges with political liberalism. First, it ignores the reality that there are public debates about what is good and appropriate for government to promote. Second, the traditional view of political liberalism does not recognize the relationship between individual goals and the broader social condition of society.

Among the more interesting aspects of Raz’s perfectionist liberalism is his departure from the traditional liberal view on autonomy and political liberty. While traditional liberals tend to focus on government enforcement of individual rights, Raz presents an interesting argument for advancing collective rights. In his view, the free market is a collective good, in spite of the fact that it is often defended in terms of individual rights. When examined from this perspective, Raz convincingly makes the case that rights can serve the dual purpose of protecting and serving. Traditional liberals argue for government to protect individuals from the whims of the majority, while Raz argues rights-based protection of the common good to . . . “serve the interest of the majority” (Raz, 1994, 273).

When the concept of rights is viewed from this perspective one sees a new role for government that goes beyond the traditional role of protecting individuals from coercion at the hands of the state to incorporate the provision of opportunities required to achieve personal autonomy. For Raz, the ideal of personal autonomy is a moral good that should be promoted by the state.

To accompany the ideal of personal autonomy, Raz suggests that the state also recognize the need for moral pluralism to reconcile the incompatible yet valuable variability in choices available to individuals. Accordingly, if there is to be a wall around the actions of the state, then it should be around providing choices so that individuals can strive toward his own autonomy while avoiding selecting any particular option for such individuals

Ideological Drift of Liberalism: Raz from an LGBT Perspective

Under the traditional framework of political liberalism, the LGBT community could argue for the enforcement of individual rights based on the concerns of privacy, tolerance and equality to alleviate public discrimination and the regulation of their intimate relationships; however, the argument for the public recognition to achieve the benefits of marriage is not supported by the aims of such a traditional form or liberalism. In recognizing marriage as a collective good, Raz explains this limitation in this way:

It is true that one need not live in a society at all . . . to cohabit with another person. But doing so is not the same thing as being . . . married. . . . In many countries a homosexual can cohabit with, but cannot be married to his homosexual partner, since to be married is to partake of a socially (and legally) recognized and regulated type of relationship. . . . The existence of a society . . . with recognized homosexual marriages is

a collective good . . . In a society where such opportunities exist and make it possible for individuals to have an autonomous life, their existence is intrinsically valuable (Raz, 1986, 205-206).

In his view, marriage is an excellent example of the type of collective good that should be valued because it permits an opportunity for the achievement of an autonomous life, notwithstanding the radical feminists' objections to the institution of marriage for its historical patriarchy and oppression of women. The relationship between marriage and autonomy can be debated along normative lines, but such debates will quickly become immobilized in the traditional political liberal framework. Perfectionist liberalism will at least open the floor to the debate.

The advancement the debate over same-sex marriage requires either an expansion of the traditional liberal principles of equalitarianism and government neutrality or the rejection of liberalism altogether to embrace a new framework such as social constructionism to permit the incorporation of normative considerations. The views against LGBT intimacy have deep-seated roots in America. Far too many Americans believe LGBT intimacy to be immoral, and as a result they present strong opposition to the idea of same-sex marriage. Such political resistance is partly based on normative views, and as a result it is simply not practical or realistic to exclude normative arguments from the public deliberations on same-sex marriage in the manner that traditional liberalism requires.

The Ideological Drift of Same-Sex Marriage: The Normative Dimension

The perfectionist liberalism of Raz provides the philosophical underpinnings for a true debate of the issue of government recognition of same-sex marriage. Using the liberal principle of personal autonomy, Raz suggests that governments ought to encourage and promote any moral good that falls within a range of acceptable options that would permit citizens to live an autonomous life. To advance the debate on same-sex marriage, the notion of morality must be addressed directly. If America is to reach a consensus to recognize same-sex marriages, then it must first recognize the value of committed LGBT relationships. There is simply no way to avoid the normative assessment of LGBT rights that political liberalism discourages in the public domain. The LGBT community wants the same tangible benefits of marriage that other communities enjoy based on the inherent goodness of such relationships.

Eskridge (1996) presents a normative argument using a social constructionism framework. As an alternative to traditional liberal thought, this framework permits Eskridge to view marriage as a human creation as opposed to a naturally evolved institution. As such, it is argued to be a dynamic creation of the competitive power forces of society. Similar to America's miscegenation laws, he suggests that the denying (opposition) to same-sex marriage is based on fear of LGBT relationships just as different race marriages were denied based on racial anxiety.

As a socially constructed institution, Eskridge suggests that same-sex marriage would be normatively valuable because of the "civilizing" effects it offers to LGBT committed relationships and on society at large. It would permit LGBT citizens an opportunity to settle in common households, and offer a "commitment device" which could curb any public health and moral concerns about relationships with lesser commitments. The expansion of the institution of marriage to include LGBT couples is argued to be valuable because of the incentives provided to those who remain married and barriers to relationship drift and dissolution. An important distinction to be noted by Eskridge's use of the adjective

“civilizing” is that he does not imply that the LGBT relationships are uncivil in the sense of being immoral. His use of the term “civilizing” is meant to convey the idea of a fuller incorporation of same-sex relationships into civil society. Unfortunately, there was a time in US history when criminal sodomy statutes were the only laws with direct effects on the LGBT population. In the view of Eskridge, the process of “civilizing” the LGBT community began with LGBT antidiscrimination laws and will not be complete until same-sex marriage is recognized and encouraged (Eskridge, 1996, 8).

To use the words of American lifestyle doyenne Martha Stewart, marriage is “a good thing.” The benefits of a happy, healthy marriage are numerous. Beyond the 1,138 rights and benefits afforded to married couples through the Federal government, (U.S. General Accounting Office, 2004), marriages have other tangible and intangible benefits. Happily married heterosexual couples tend to have better physical and mental health (Simon, 2002), more financial security, and social support (Herek, 2011) than their unmarried peers. Indeed, marriage has myriad benefits that have historically been bestowed upon a man and women. Herek (2011) cites emergent research suggesting same-sex couples who are legally married in jurisdictions with marriage equality experience many of the psychological benefits of marriage, including feeling more supported in their relationships and feeling more connected to their communities. In contrast, Herek (2011) argues that civil unions and domestic partnerships are not perceived similarly by LGBT individuals or heterosexuals, and therefore function to deny same-sex couples the benefits that convey with state-sanctioned legal marriage. The literature suggests legal marriage has many benefits that are both unique and well documented.

Given this knowledge, it is possible to view marriage from a public health lens. Marriage can be seen as valuable because of its properties as prophylactic measure against psychological distress. In his famous essay *On Liberty*, Mill (1859) asserted that one purpose of governmental power “...is to prevent harm to others.” Denial of marriage equality given the institution’s well-known benefits is the antithesis of Mill’s argument, particularly since doing so does nothing to weaken or invalidate the marriages of heterosexuals. If we understand marriage to be a good thing, then a government that denies access to it for all its citizens is akin to a researcher who would deny participants in a control group access to an efficacious treatment. In both cases, the entity in authority has privileged the wellbeing of one population to the detriment of another. Herek (2011) describes this as structural sexual stigma, and he contends structural stigma fosters internalized sexual stigma within LGBT and heterosexual populations. Thus, state-sanctioned marriage inequality not only denies access to something known to have psychological benefits but also creates psychological harm in doing so. From a public health perspective, marriage inequality as a policy is problematic.

Scholars have effectively argued that being part of a marginalized population leads to psychological sequelae resulting from social stigmatization using the minority stress model (DiPlacido, 1998; Meyer, 1995, 2003). Levitt and her colleagues (2009) cited extensive research about the negative consequences of minority stress among LGBT people, including decreased relationship satisfaction, increased participation in risky sexual practices, and various mental and physical health outcomes. In their qualitative study of the negative effects of anti-LGBT initiatives, the authors found participants felt fearful, dehumanized, hurt, and angry as a result of legislation aimed at denying marriage equality. Herek (2011) argued that LGBT people, and gay-affirming heterosexuals to a lesser extent, experience stress produced by the often vitriolic political campaigns waged against marriage equality. Bumper stickers, yard signs, commercials, and other media through which anti-

marriage equality messages are promoted may serve to alienate, anger, invoke fear, or any combination of the aforementioned emotions among those who are in support of marriage equality. Hence, the campaigns around anti-marriage equality legislation in addition to the actual legislation likely have deleterious consequences on the mental health of LGBT Americans. Mill's harm principle would suggest that lawmakers have an obligation to mitigate harm or the threat of harm to others. It stands to reason, therefore, that since we have clear evidence that being stigmatized because of one's non-heterosexual orientation causes harm and we support Mill's contention that our government should take care to prevent its citizens from being harmed by other citizens that the continued denial of marriage equality is morally questionable at best.

With these arguments, a normative position in support of same-sex marriage can be developed. While some positions do not fall within the philosophical framework of liberal perfectionism, these arguments can be employed under this paradigm to call for the recognition of the inherent value of same-sex relationships needed to make the claim for the right to same-sex marriage. The principle of ideological drift recognizes the expansive nature of liberalism as ideas are taken from a broader realm of intellectual thought and coopted into newer version of American liberalism.

Conclusion

We have examined four theorists of the orthodox narrative of modernity, a period where equality of moral status is taking as the norm, and as a result all men are equal citizens and hence are granted equality before the law, and we believe that we have shown (using the principle of ideological drift) that ideas which may appear radical at the start, later become accepted and sometimes as the new orthodox. We use the term modernity here to refer to the implied humanism and egalitarianism of liberalism, where assumes the normative personhood of all humans without regard to sexuality. The political struggles around sexuality often involve the quest for recognition and equal citizenship rights such as same-sex marriage. The exclusionary experience of the LGBT community produces a counternarrative of LGBT subordination that is not developed well theoretically. The principle of ideological drift allows us to re-conceptualize liberalism, personhood and egalitarianism in ways that illuminate the symbiosis of American rights and LGBT inequality. It also offers the hope and the promise of progressivism because it demonstrated that moral principles can become "unstruck" from their religious and doctrinal connections to forge new principles and applications. In short, the right to same-sex marriage is more certainly within reach than not.

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