

## MORAL REALISM AND SAME SEX MARRIAGE DEBATE

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### **Abstract**

*This paper reflects on the obnoxious act creeping into the world today and gaining more grounds. This obnoxious practice is called same sex marriage. Conscious of the fact that there are always mind-independent moral facts in the world, and people can make statements about them which are true or false, it will never negate the fact that procreation is natural and sacred and must not be ridiculed. This paper stands against the immoral act called same sex marriage noting that the two major aims of marriage which are companionship and procreation are lacking in it. It also noted that from the ethical standpoint of the moral realist, that same sex marriage is intolerable and as such is both morally and logically unacceptable. It violates the natural order of life. The paper uses expository and historical method to communicate its findings. Having found out that same sex marriage is not beneficial to man in any way, it recommends outright abolishment of it, since there is nothing beneficial about it.*

### **Introduction**

Traditionally, marriage is a legally and socially sanctioned union, usually between a man and a woman that is regulated by laws, rules, customs, beliefs, and attitudes that prescribe the duties and rights of partners and accords status to their offspring (if any). The universality of marriage within different societies and cultures is attributed to the many basic social and personal functions for which it provides structure, such as sexual gratification and regulation, division of labour between the sexes, economic production and consumption, and the satisfaction of personal needs of affection, status, and companionship. Perhaps, its strongest function concerns procreation, the care of children and their education, socialization and regulation of lines of descent.

This traditional understanding of marriage as a legally and socially permitted union between a man and a woman, or even between a man and several women, or a woman and several men (depending on type) is now threatened by the forays of homosexuality leading to talks about same sex marriage. Hence, in most parts of Europe and America and very few areas in America, same sex marriage has either been fully legalized or its legalization is being deliberated. The unconventional nature of same sex marriage has arisen concerns and controversies about the practice leading to several arguments for and against it.

This paper exposes the historical issues surrounding the development and practice of same sex marriage across the universe. It presents the existing arguments for and against the practice. More importantly, the paper evaluates the ontological worth and morality of same sex marriage from a moral realist perspective. From the moral realism perspective, the paper argues that same sex marriage is morally bad and indefensible because it cannot fulfill 'mind-independent facts' of the 'marriage reality' simultaneously which are the twin-ends of

companionship and procreation. It hence concludes that same sex marriage is a modern perversion of the age-long traditional practice and understanding of different-sex marriage.

### **Early Beginnings**

The idea of legally recognizing same-sex relationships began in Scandinavia. In 1989, Denmark was the first in the world to enact registered partnership law. The Danish Government commissioned a national study on the situation of gays and lesbians in 1984, aimed at eliminating discrimination and facilitating permanent relationships for this sexual minority (Lee, 2010, p. 16). Before a report was published in 1988, Denmark had already attempted to establish a level-playing field by reducing inheritance tax payable by homosexual couples to put it on a par with that of married heterosexual couples. At the same time, the government amended the penal code making “vilifying behaviours” and differential treatments in commercial activities based on sexual orientation a criminal offence. In 1989, the parliament finally passed the Registered Partnership Act. The law applies exclusively to same-sex couples with the stated purpose of equalizing the social and legal status of same-sex and heterosexual couples who wish to marry. Gays and lesbians, upon registering their relationships with official registries, are entitled to the same rights and responsibilities once only enjoyed by their heterosexual counterparts (Lee, 2010, p. 16). Nevertheless, registered partners are not free to adopt children or hold official wedding ceremonies in the state Lutheran church. The law also requires one of the partners to be a Danish citizen and hold current residency (Kulow, 2002, p. 12). Some of the restrictions were relaxed in 1999. The introduction of a parliamentary bill in March 2009 may see same-sex couples jointly adopt in future.

### **First Same Sex Marriage**

Changes continued to sweep across Europe as new institutions recognizing same-sex relationships came into being. Starting November 1999, France began registering both same-sex and heterosexual couples under the Civil Solidarity Pact. Owing to the lack of political support, the status did not offer rights and benefits comparable to a marriage. Germany has had the regime of “life partnerships” in place since 1 August 2001. Same-sex couples, upon registration, are entitled to a limited range of rights and obligations. The real breakthrough came from the Netherlands. Although the Netherlands only started to recognize registered partnerships in 1998 – nine years after its debut, it did not take too long before it caught up and outstripped Denmark. The Netherlands was the first country in the world to legalize same-sex marriage in 2001, giving full legal rights to married same-sex couples including the right to apply for stranger adoption for domestic children. (Kulow, 2002, p. 433). The Netherlands was among the very first countries in Europe to decriminalize homosexual activity in 1811, after France in 1791, Belgium and Luxembourg in 1794 (Lee, 2010, p. 18). In fact, as far as the legal protection given to homosexual citizens is concerned, the Dutch have never been much behind. In the late 1980's, two test cases were brought to court where the homosexual couples claimed that the state ban on same-sex marriage violated their human rights. These legal challenges arose because the marriage statute in the Netherlands contained gender-neutral language, which made it possible to argue that marriage could be between people of the same gender. While the cases made no legal breakthrough at a time when the link between marriage and procreation was unquestioned, both the district court and the Supreme Court held that the matter was one for the legislature.

The tenacity of those eager to tie the knot did not falter. Rather, subtle progress was

achieved on the sidelines. As Dutch law permits municipalities to maintain an unlimited number of registers, it later provided an opportunity for same-sex couples to demand the setting up of “marriage registers” to officially record their relationships (Maxwell, 2001, p. 142). In the years following 1991, over 130 municipalities started registering same-sex couples. Despite the lack of a legal status, the willingness of the municipalities to register same-sex relationships carried significant political and symbolic values, paving the way for a sequence of legislative initiatives favorable to homosexual citizens. In 1992, the same year when the Dutch Government amended the Penal Code criminalizing discrimination on grounds of homosexuality, a state commission issued a report which recommended adopting Denmark's registered partnership law (Maxwell, 2001, p. 147). In 1994, the government enacted the General Equal Treatment Act which contains comprehensive legal protections for gays and lesbians. (Maxwell, 2001, p. 149). The momentum of change then took on a dual track. Progress continued to made until 1 April 2001, the Netherlands became the first country to legalize same-sex marriages (Lee, 2010. P. 19). The practice has since gathered momentum and received state recognition across many countries in Europe including Belgium, Spain, England, Switzerland and France.

### **The Situation in Canada and USA**

Compared to Europe, decriminalization of homosexuality is a recent phenomenon in Canada. In 1969, Canada decriminalized private homosexual activities between consenting male adults (The Criminal Law Amendment Act, 1968. p. 69) The removal of the legal stigma unleashed the yearning for equal treatment on the part of homosexual rights activists nationwide. In 1996, Canadian government, adopting the Canadian\Human Rights Commission's recommendation made in 1979, inserted “sexual orientation” into the Human Rights Act 1985, marking another leap of equality for the country's gay and lesbian citizens (Canadian Human Rights Commission, 1996. p. 12). This preliminary scene follows the European incremental pattern of achieving one breakthrough after another. What sets the Canadian experience apart is that the momentum for legalizing same-sex marriage originated from the court instead of the parliament. In 1995, the Canadian Supreme Court unanimously read “sexual orientation” into the Canadian Charter of Rights and Freedoms (the Canadian Charter) as an analogous ground of discrimination (Lee, 2010, p. 23). The landmark judgment immediately negated any law which discriminated between heterosexual and homosexual relationships. What followed was a plethora of homosexual litigants fighting for equal rights across the country which culminated in the 1999 decision of *M v H*. This case arose from Ontario's Family Law Act which restricted spousal benefits to heterosexual couples (Lee, 2010, p. 23). The majority of the Supreme Court held that excluding homosexual partners from the meaning of “spouse” violated the equality guarantee under the Canadian Charter. It perpetuated the disadvantages suffered by homosexual couples by degrading their relationships as “less worthy of recognition and protection” (Lee, 2010, p. 23) and was “not demonstrably justified in a free and democratic society.” This sparked serious of litigations, constitutional amendments and civil toleration individual differences and rights in Canada. The climax was the recognition of same sex marriage in the Canadian supreme law in 2005.

The unified action taken in federalist Canada was a far cry from that of its southern neighbor. In the U.S, the legal regimes regulating same-sex relationships are rather fragmented amid court battles, federal law constraints, and other legal complications. To date, not all the States in the U.S. recognize same-sex marriage. Those that have given full recognition to it include Massachusetts, Connecticut, Iowa, Vermont, Maine, and New Hampshire. Legalization

of same-sex marriage in the U.S. is in a state of flux. California provides a case in point. Having ruled in 2004 that the City and County of San Francisco acted unlawfully by issuing marriage certificates to same-sex couples without a judicial green light, the Supreme Court of California declared unconstitutional the state marriage law restricting marriage to heterosexual couples in May 2008. After same-sex marriage had been officially legal since 16 June 2008, things took another sharp turn. On the same day as the U.S. Presidential Election on 4 November 2008, Californian voters approved a state constitutional amendment entrenching the status of heterosexual marriage, which in effect reversed legalization of same-sex marriage in force for only four months. In recent times however there is greater clarity of the law and state or even national support for same sex marriage in America.

### **The Nigerian Experience**

Same sex marriage and all forms of homosexual activities are forbidden before the law in Nigeria, In 7 January 2014, Nigerian President Jonathan Goodluck signed his assent to the Same Sex Marriage (Prohibition) Act (SSMPA), 2013. Several elements of this legislation contravene Nigeria's Constitution as well as its binding international obligations, which guarantee fundamental rights to dignity, equality, nondiscrimination, privacy, freedom from arbitrary arrest and detention and freedom of expression and association, some have complained. Under pre-existing law, Nigeria already criminalizes consensual same sex sexual activity in private which attracts a maximum penalty of 14 years imprisonment (*Criminal Code Act*, Chapter 77 Laws of the Federation of Nigeria, 1990. Sec. 352.). The SSMPA provides that:

- Only marriages contracted between a man and a woman shall be recognized as valid in Nigeria.
- Any marriage contract or civil union entered into between persons of the same sex is prohibited.
- A marriage contract or civil union entered into between persons of the same sex is invalid and illegal and shall not be recognized as entitled to benefits of a valid marriage.
- Marriage contracts or civil unions entered into between persons of the same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefits accruing therefrom by virtue of the certificate shall not be enforced by any court of law in Nigeria.
- Marriage or civil union entered into between persons of the same sex shall not be solemnized in any place of worship either Church or Mosque or any other place whatsoever called in Nigeria. No such certificate shall be valid in Nigeria (Nigeria: Same-Sex Marriage (Prohibition) Act, 2013).

### **The Same Sex Marriage Debate**

According to the Pew Research Center (Masci and Sciupac 2015), there are twenty-three countries in which same-sex marriage is legal: Argentina (2010), Belgium (2003), Brazil (2013), Canada (2005), Colombia (2016), Denmark (2012), England/Wales (2013), Finland (2015), France (2013), Greenland (2015), Iceland (2010), Ireland (2015), Luxembourg (2014), The Netherlands (2000), New Zealand (2013), Norway (2009), Portugal (2010), Scotland (2014), South Africa (2006), Spain (2005), Sweden (2009), the United States (2015), and Uruguay (2013). For those who believe that same-sex couples should have the right to marry, in less than twenty years we have seen an extraordinary amount of progress on the issue of same-sex

marriage and gay rights more generally, at least in these twenty-three countries. It is still the case, however, that most countries in the world do not grant same sex couples the right to marry. Some of those nations (e.g., Italy, Germany, and Chile, to name a few) allow for various legal designations for same-sex couples that offer some, but not all, of the rights and recognition that different-sex married couples enjoy. Moreover, according to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), seventy-five nations have laws criminalizing same-sex sexual activity (Carroll & Itaborahy, 2015); Nigeria and the majority of African nations are in this group. In some countries where same-sex marriage is legal, such as the United States, opponents of same-sex marriage insist that the issue is not settled. For example, Sherif Girgis (2014), one of the most outspoken critics of same-sex marriage, has compared the debate to the debate over abortion, claiming that continued argument and advocacy on the whole range of marriage and family issues, including same-sex marriage, remain crucial. Not only does social action make long term defeat less likely, it also serves the broader value for which legal victory is just a component and condition: the shaping of hearts and minds and lives in line with the truth” (Girgis, 2014). The following two sections, effort is made to summarize the emerging arguments for and against same sex marriage.

## Arguments against Same Sex Marriage

### *The Definitional Objection*

Anyone who has followed the same-sex marriage debate is familiar with what is called the definitional objection to same-sex marriage. The definitional objection goes something like this: marriage *just is* the union of one woman and one man, and no law can change that any more than a law can make a shark a wombat (Arroyo, 2017, p. 5). Of course, the “just is” motivating the definitional objection needs some explaining. The most philosophically sophisticated explanation appears in the writings of the new natural law theorists. Natural law is the name given to a host of related ethical, legal, and political theories that find their origin in the writings of Aristotle and Plato. Although it is difficult to identify a set of characteristics that all natural law theories share (Buckle, 1993, p. 161), natural law theories of ethics are ones that purport to demonstrate that we can discover objective ethical standards by examining human nature and the nature of the world. Perhaps the most well-known classical natural law theorist is Thomas Aquinas (c. 1225–1274). New natural law theorists are so named because they claim to have developed their own interpretation of the natural law theory found in the writings of Aquinas. By drawing on this interpretation they have developed a sophisticated sexual ethic that forms the basis of their definitional objection to same-sex marriage.

Recently, (SherifGirgis, Ryan T. Anderson, & Robert P. George, 2012, p. 48) have developed their version of the definitional objection. They insist that marriage is a basic good with an “objective core,” which is fixed by our nature as embodied, sexually reproductive (and, hence, sexually complementary) beings. Marriage, they go on to argue, is not reducible to a changing and changeable societal conception of the institution. True marriage, according to Girgis, Anderson, and George, possesses three essential and related features: marriage should be understood as “a union of will (by consent) and body (by sexual union); inherently ordered to procreation and thus the broad sharing of family life; and calling for permanent and exclusive commitment, whatever the spouses preferences” (2012. p. 6). Same-sex couples cannot marry, according to this view, because same-sex couples are incapable of achieving the comprehensive union of persons that is characteristic of true, “conjugal marriage.” Girgis, Anderson, & George

regard bodily union as a necessary component of a genuinely comprehensive union of persons, and their definitional objection turns on this conception (2012. p. 99). According to them, bodily union occurs when different-sex couples engage in coitus because only in this activity do the woman and man join to form an organic whole. They explain their position by way of an analogy with the human body: “your organs are one body because they are coordinated for a single *biological* purpose of the whole that they form together: sustaining your biological life. Just so, for two individuals to unite organically, *their bodies must coordinate toward a common biological end of the whole that they form together*” (2012. p. 25). In their view, only one biological (i.e., bodily) activity can unite two people in this way, namely, coitus, since “in coitus, and there alone, a man and a woman's bodies participate by virtue of their sexual complementarity in a coordination that has the biological purpose of reproduction- a function neither can perform alone.” Since, according to Girgis, Anderson, and George, two men or two women cannot achieve this kind of organic, bodily union, two men or two women cannot form a comprehensive union of persons, which is just to say that same-sex couples cannot marry.

### ***Objections Based on Marital Norms and the Harms of Same-Sex Marriage***

Closely related to the definitional objection is the argument that tries to establish that legalizing same-sex marriage will harm the marriages of different-sex couples. This argument is often misunderstood by defenders of same-sex marriage, since they take the harm at issue here to be material harm. According to this argument, however, the harm of same-sex marriage is much subtler and pervasive than mere material harm. Proponents of this argument, such as David Blankenhorn (2007) claim that it is not that same-sex marriage will cost different-sex married couples money, or result in damage to their property, or keep different-sex married couples from owning a home or starting a family; rather, the central harm of same sex marriage is the erosion of marital norms. The thinking here is that just as reading trashy novels can erode one's capacity to identify, appreciate, enjoy, and produce great literature, so, too, bad marriage laws sap one's ability to identify, appreciate, enjoy, and achieve the goods of true marriage (Arroyo, 2017. p. 6). John Finnis (2008), another proponent of the harm argument, for example, argues that marriages “are *factual* realities whose coming to be and lasting depends upon people's grasp of marriage's truth (“reality,” “worth”) as an *ideal*” (p. 401). Finnis (2008. Pp. 398–399) insists that “concern for one's own people as a lasting community linking past, present, and future, justify and indeed mandate the defense even of modern marriage against such evacuations of [marriage's] meaning and intelligibility as an ideal and a summons to a thoroughgoing commitment for a non-illusory common good.” Same-sex marriage, according to this argument, would amount to such an evacuation.

Girgis, Anderson, & George, (2012. Pp. 1-2) also predicted that legalizing same-sex marriage will undermine what they take to be the central norms of true marriage. They hold that defenders of same-sex marriage want to replace true, conjugal marriage with “the revisionist view of marriage.” In their telling of the revisionist view, marriage becomes nothing more than an intense emotional (loving) bond that distinguishes itself from other kinds of relationships by virtue of its intensity and that lasts only so long as both “married” partners feel this intense bond. Were such a conception of marriage to become the norm, Girgis, Anderson, and George believe that marriage would no longer be understood to be a sexually exclusive and permanent bond. In their view, the revisionists have no grounds for asserting such exclusivity and permanence (2012. Pp. 18–21), since, according to Girgis, Anderson, and George, procreation and the raising of children are the reasons why marriage is permanent and sexually exclusive. Consequently,

according to this argument, different-sex couples would have to persevere in the hard and permanent work of true marriage surrounded by the bad example of elective and merely transient bonds.

There are, however, further harms to marriage, at least as far as this line of reasoning is concerned, ones that are based on the erosion of true marital norms. For example, some proponents of this way of thinking predict that legalizing same-sex marriage will result in a threat to moral and religious freedom, insofar as such legalization threatens to make defenders of conjugal marriage falsely appear to be bigots, which, they fear, will result in society outlawing “traditional” marriage (Girgis, et al. 2012. Pp. 62–64). They claim that legalizing same-sex marriage will also undermine genuine friendships, insofar as the revisionist view of marriage provides no clear way to distinguish a marital relationship from other kinds of committed relationships (pp. 65–66). Additionally, they argue, to redefine marriage law to allow for same-sex marriage is to threaten limited government, since redefining marriage will do away with the kinds of protections conjugal marriage provides for children, and this withering away of such safeguards will require the government to step in to play the role of protector (pp. 57–58).

### ***Objection to Same-Sex Marriage Based on the Harm Done to Children***

This last point about the threat to limited government brings me to one final harm alleged by opponents of same-sex marriage, namely, the harm that same-sex marriage will do to children. The strongest proponent of this line of argument is Maggie Gallagher (2012). Although Gallagher does not self-identify as a new natural law theorist, she endorses many of their arguments. For example, she agrees with their conception of marriage as a comprehensive union of persons, and she endorses their version of the definitional objection (2012. Pp. 95-102). In particular, she shares Girgis, Anderson, & George's conviction that the United States needs a strong marriage culture in order to promote the values and norms of conjugal marriage. Central to Gallagher's account of a strong marriage culture is her claim that the norms of 'traditional' marriage “stem from centuries of experience in the always-evolving, ever adapting task of reconciling male and female in a way that is satisfying to both and most likely to protect the children they create” (2012. P. 142).

Gallagher grounds her argument about the importance of marriage for the wellbeing of children in what she takes to be three persistent truths about human beings everywhere: (1) “the overwhelming majority of us are powerfully attracted, and not by reason, to an act that makes new human life”; (2) “society needs babies”; and (3) “children ought to have a mother as well as a father” (2012. Pp. 108–109). Gallagher defends this third point by invoking the results of certain social scientific studies that conclude that children are better off when they are raised by their respective biological mothers and biological fathers. Quoting a Child Trends research brief from 2002, Gallagher claims that “research clearly demonstrates that family structure matters for children, and the family structure that helps the most is a family headed by two biological parents in a low-conflict marriage” (p. 110). According to Gallagher, a child *wants* to be raised by his biological mother and father, which stems from his “desire to experience both male and female love and to experience his own creation as an act of love by both his parents” (p. 113). In other words, according to this way of thinking, differences between the way mothers and fathers love their children are real and not merely socialized, and a child needs both kinds of love in order to have the best chance of developing into a mature, flourishing adult. This is the case, according to Gallagher, because of basic, natural (i.e., not socially constructed/learned) differences between women and men. “We need a cultural mechanism,” Gallagher summarizes, for attaching fathers

to the mother-child bond and for communicating to young adults in the middle of erotic, romantic, psychological, and emotional dramas that they need to act with restraint and even self-sacrifice if they are to obtain this great good for their children (p. 113).

## Arguments in Support of Same Sex Marriage

### *The Equal Treatment Argument*

The equal treatment argument comes in a variety of forms, each of which draws the same basic conclusion: to allow different-sex couples to marry but not allow same-sex couples to do the same is unjust, since there are no morally relevant differences between different-sex and same-sex couples that can justify such different treatment (Arroyo, 2017. p. 12). Hence, according to this line of reasoning, to allow different-sex couples the right to marry while denying this right to same-sex couples is discriminatory, plain and simple. Three versions of this kind of argument deserve attention: the analogy with anti-miscegenation, the sterility objection, and the sexual orientation caste system argument. However, consideration the scope of this paper, only the first two shall be exposed.

***The Analogy with Antimiscegenation:*** This argument concerns an analogy between race and sex; just as race is irrelevant when it comes to whether two people may marry, so, too, is sex. The key legal precedent in the United States, where this argument has particular sway, is *Loving v. Virginia* (1967) (cited in Arroyo, 2010. p. 18), the United States Supreme Court case in which Richard Loving (a White man) and Mildred Jeter (a Black woman) challenged the Virginia court's ruling that their marriage entailed a violation of Virginia's Racial Integrity Act of 1959. The Court, in a majority opinion written by Chief Justice Earl Warren, judged that antimiscegenation laws are unconstitutional and that different-race couples enjoy the right to marry as much as same race couples. Proponents of the analogy between antimiscegenation laws and laws against same-sex marriage invoke *Loving v. Virginia*, arguing that the position of those who would outlaw different-race marriages and the position of those who would outlaw same-sex marriages share a number of formal similarities. As William Eskridge (1996) explains:

Those defending the prohibitions in both cases relied on arguments that deny marriage's social and contingent features. Specifically, the supporters of antimiscegenation statutes made the same kind of definitional and natural law arguments that supporters of statutes barring same-sex marriage now make. *Loving* rejected all those arguments and exposed them as pretexts for a discriminatory race-based classification for which the state could advance no compelling interest (pp. 153–154).

Since discrimination with respect to race is wrong when it comes to the issue of who may marry, it is equally wrong, according to this line of reasoning, to discriminate with respect to sex.

***The Sterility Objection:*** The second equal treatment argument emerges directly as a response to the definitional objection. Just like the analogy with antimiscegenation, this argument relies on the formal notion of consistency. Although he did not invent the phrase, the strongest proponent of the sterility objection is Stephen Macedo (1996). Macedo develops the sterility objection within the context of his more general critique of the sexual ethics of the new natural law

theorists. According to Macedo, opponents of same-sex marriage such as the new natural law theorists are committed to an “unexplained inconsistency” in their position. They insist that an essential condition for morally good sex is the organic (biological) unity that is achieved in coitus, which is open to procreation, yet these same people also insist that different-sex couples who are sterile can and do achieve the kind of unity requisite for genuine marriage, despite the impossibility of procreation. In Macedo's own words,

What is the point of sex in an infertile marriage? Not procreation: the partners know they are infertile. If they have sex, it is for pleasure and to express their love or friendship or some other shared good. It will be for precisely the same reasons that committed, loving gay couples have sex. Why are these good reasons for sterile or elderly married couples but not for gay and lesbian couples? And if, on the other hand, sex detracts from the real goods shared by homosexual couples, and indeed undermines their friendship, why is that not the case for infertile heterosexual couples as well? (Macedo. 1996. P. 36).

The crux of the definitional objection to same-sex marriage is that same-sex couples cannot achieve the kind of bodily union available to different-sex couples in the form of coitus, the so-called reproductive-type of act. According to Macedo and those who agree with him, if we allow sterile different-sex couples to marry despite being unable to procreate or to engage in sexual acts that are open to procreation, then we should, on pain of contradiction, allow same-sex couples to marry, too.

### ***The Benefits of Same-Sex Marriage***

Just as a number of opponents of same-sex marriage argue that granting same-sex couples the right to marry would cause a number of significant harms, a number of defenders of same-sex marriage argue that legalizing it would in no way cause the harms alleged and would, in fact, lead to a number of goods. For example, William Eskridge & Darren Spedale (2006) examined almost twenty years of data concerning same-sex domestic partnerships in Scandinavia and found no evidence to support the harm claims and predictions of opponents of legalizing same-sex marriage. Indeed, they argue that legalizing same-sex domestic partnerships has had a significant positive impact on many different aspects of Scandinavian society, and not merely for gays and lesbians (pp. 131–167). For example, they argue that legalizing same-sex domestic partnerships tends to foster closer relationships between members of same-sex couples and their respective friends and family members (pp. 149–154). Additionally, defenders of same-sex marriage are quick to point out, these kinds of benefits extend to the children of gays and lesbians. For example, contrary to the view of someone such as Maggie Gallagher, defenders of same-sex marriage can cite social scientific evidence that purports to show that children who are part of gay or lesbian families are not thereby harmed, and, in fact, seem to do as well as children raised by parents who are in a different-sex relationship, even though the sample sizes tend to be small in these studies (Meezan and Rauch, 2005).

Jonathan Rausch (2004) has made his case for expanding the institution of marriage to gays and lesbians on the grounds of the alleged benefits of same-sex marriage. Rauch argues that despite the various functions marriage has had throughout history and across cultures, one of the main points of the institution today is caregiving (p. 18). In other words, marriage is good for married people because “they have someone to look after them, and they know it” (p. 23). On his view, there is, therefore, no good reason to deny this good to same-sex couples. Actually, he argues that such a denial positively harms gays and lesbians, particularly in our marriage-positive

culture. He argues, “With all due respect to opponents of same-sex marriage, discriminating in order to pin a badge of inferiority on some group or another is not a legitimate use of law. . . . The law's job is not to punish the disadvantaged by excluding them but to help them make the most of their lives, or at least to give them the same benefit of doubt which is accorded everyone else” (Rauch, 2004. Pp. 100–101). The benefit of allowing same sex couples to marry, according to Rauch, goes well beyond granting these couples the same rights and legal benefits of different-sex married couples. As he puts it:

Sex, love and marriage go together. Each works better in conjunction with the other two; each gives shape and direction to the others. Sex without love and love (at least romantic love) without sex both tend to be hollow, unstable, and difficult to integrate into healthy emotional life. And marriage is just as important as the other two. From early adolescence, the prospect of marriage and the expectation of marriage (and the knowledge that society expects marriage) condition the meaning of love. Every kiss, every passion, from the first crush and the first date, has a different, deeper meaning in the context of possible marriage (Rauch, 2004. p. 59).

According to Rauch, legalizing same sex marriage would signal an important cultural change for gays and lesbians, one that would allow them to embrace and enjoy the rights, responsibilities, and norms of marriage. In other words, the norms of married life, as they currently exist, would have a knock-on effect, creating more stability for lesbians and gays communities and their families, particularly as they get older. Standing behind these arguments is the conviction that same sex relationships and same sex sexual activity can be every bit as good as different-sex relationships and different-sex sexual acts. That is, the foregoing proponents of the good of same sex marriage insist that homosexuality (i.e., engaging in same-sex sex acts) is not immoral.

### ***Argument from History: Marriage is a Changing Institution***

Part of the argumentative strategy of the conservative case is to use the idea of “traditional” marriage to its advantage. This strategy emerges because some opponents of the right of same sex couples to marry claim that they are merely defending 'traditional' marriage—that is, the idea that marriage is between one woman and one man and has procreation and the raising of a family as its essential ends. But some defenders of same sex marriage are quick to respond that there is no such thing as “traditional” marriage. The institution of marriage, so the argument goes, is an invention of humans, one with no natural purpose or structure (Arroyo, 2017. Pp. 17). Historian Stephanie Coontz (2005) has done significant work to document the history of marriage. According to her, the history of marriage is the history of an ever-changing and evolving institution, one whose purpose and structure was shaped by, and helped to shape, the societies in which it existed (p. 24). According to Coontz, “for most of history marriage was not primarily about the individual needs and desires of a man and a woman and the children they produced. Marriage had as much to do with getting good in-laws and increasing one's family labour force as it did with finding a lifetime companion and raising a beloved child” (p. 6). The reality is that for much of human history the institution of marriage was primarily a way for families (i.e., the male heads of families) to build political alliances and gain economic security (Coontz, 2005, Part Two). Only in the seventeenth century did we begin to see the changes take place that result in the idea of marrying for love (Coontz, 2005. Pp. 145–154).

Actually, some thinkers would contest the idea that legalizing same-sex marriage signals a new development in human history. William Eskridge (1996) gives a detailed history of the

ways in which a variety of cultures- including Western European, Christian cultures- at various points in history have allowed for same sex unions and marriages. For example, he describes the ways in which certain civilizations (such as those in classical Greece, the Roman Empire, medieval China, and certain Native American tribes, to name a few) recognized same sex marriages or at least recognized some same sex relationships as equivalent to marriages (Eskridge, 1993, pp. 1437–1469). Accounts such as Eskridge's are not trying to say that same sex marriage was the norm in those cultures and societies. Rather, Eskridge's point is to provide what he calls a “social constructionist history of marriage,” which is one that “emphasizes the ways in which marriage is 'constructed' by society over time, with 'exclusions' from the institution being viewed as reflecting larger social power relations” (1993. Pp. 1421–1422). If marriage is a social construction in Eskridge's sense, and if throughout history there have been various ways in which the institution has functioned and been understood, then proponents of this line of argument contend, there is no such thing as “traditional marriage,” and there is no *prima facie* reason why the institution of marriage cannot change yet again to include same sex couples.

### **Moral Realism: Basic Concept**

Moral realism (also called ethical realism) is the ethical stance that argues that there are mind-independent moral properties/facts. Moral realists maintain (1) that in making moral judgments – for instance, that cruelty is wrong or generosity required or justice a virtue – people are purporting to report moral facts (and not just expressing their tastes or preferences) and (2) that there are such facts to report, so that some such claims are actually true and the world is, really, in those cases as claimed (Sayre-McCord, 2013. p. 4369).

Jonathan Dancy (2003. p. 1) notes that If one is a full-blown moral realist, one probably accepts the following three claims. First, moral facts are somehow special and different from other sorts of fact. Realists differ, however, about whether the sort of specialness required is compatible with taking some natural facts to be moral facts. Take, for instance, the natural fact that if we do this action, we will have given someone the help they need. Could this be a moral fact – the same fact as the fact that we ought to do the action? Or must we think of such a natural fact as the natural 'ground' for the (quite different) moral fact that we should do it, that is, as the fact in the world that makes it true that we should act this way? Second, realists hold that moral facts are independent of any beliefs or thoughts we might have about them. What is right is not determined by what I or anybody else thinks is right. It is not even determined by what we all think is right, even if we could be got to agree. We cannot make actions right by agreeing that they are, any more than we can make bombs safe by agreeing that they are. Third, it is possible for us to make mistakes about what is right and what is wrong. No matter how carefully and honestly we think about what to do, there is still no guarantee that we will come up with the right answer. So what people conscientiously decide they should do may not be the same as what they should do.

### **The Morality of Same Sex Marriage: A Moral Realist Position**

In this section effort is made to examine the stance of proponents of same sex marriage from the ethical standpoint of moral realism. Recall that moral realists make moral judgments based on the following foundational assumptions:

- That there are mind-independent moral properties/facts;
- that moral facts are independent of any beliefs or thoughts we might have about them;
- That in making moral judgments (for instance, same sex marriage is right or wrong)

people are purporting to report moral facts (and not just expressing their tastes or preferences).

- That there are such facts to report, so that some such claims are actually true and the world is, really, in those cases as claimed.
- That [ethical](#) (judgments) express [thoughts](#) that refer to [objective](#) features of the world (that is, features independent of subjective opinion), some of which may be true to the extent that they report those features accurately.

All the arguments put forward by the proponents of same sex marriage fall short of the moral foundations of moral realism. What are the issues in contention in the same sex marriage debate? The issues specifically concern whether same sex marriage fits in with the ends of marriage as it were in different-sex marriage. What are these ends? There are basically two of them- companionship and procreation. Every marriage relationship aims at fulfilling these purposes. Marriage is meant for companionship. Marriage is meant for procreation. In moral realist terms or expression, these two are the mind-independent properties/facts concerning marriage. These two are the intrinsic good and worth of marriage. For every marriage to be considered morally sound or good, it must have the inherent capacity to fulfill these two ends. These ends are not imposed on marriage; they are not the subject of artificial creation. They are automatically implied in the act of marriage.

Companionship and procreation are moral facts of marriage that are independent of any beliefs or thoughts we might have about them. That is why in every culture and religion since Adam, these ends of marriage are naturally perceived and honoured among men. Hence, when a child is born outside marriage, he or she is considered a bastard; and when a man and woman live together outside marriage and enjoy sexual intimacy such is condemned and described as concubinage. This moral disposition is common among all cultures irrespective of differences in beliefs and customs. Therefore, companionship and procreation as ends of marriage are what every union expects. Hence any moral (judgments) to be made on the worth of marriage must refer to these features of the world of marriage. These features thus become the ultimate criteria to test the morality of any marriage?

For the moral realist therefore to determine the morality of any marriage; check if the bond is between persons capable of enjoying each other's company; check if the bond is inherently (naturally) endowed with the capacity for procreation. These are mind-independent variables, devoid of cultural, parochial and religious sentiments. Every marriage must have the inherent capacity to fulfill these two needs, not one or the other- both. Moral realism is therefore totally opposed to same sex marriage. The practice is a pervasion of the natural norms of marriage which is supposed to be a union between a man and a woman in order to fulfill the needs of companionship and procreation. Same sex marriage cannot fulfill both needs. The use of the term 'inherent' is intentional.

Some may argue that same sex marriage can fulfill both needs since the couple can also be of company to each other and they can use other means (IVF, Surrogacy, etc.) to procreate. Yes, companionship is possible in same sex marriage; but procreation is *inherently* impossible. No same sex marriage has the inherent biological capacity to procreate. Some can also argue that there are different-sex couples who are not capable of procreating, therefore, the 'inherent procreation' argument being made here is not logical. This is not true. Inherence here means that the marriage bond must be between persons of different gender (male and female). Only a man and woman has the capacity, the natural capacity to produce a child. This capacity is inherent (inborn); not artificial. A man or woman may lose it due to some existential challenge; this does

not however suggest that such a person is born without such inherent capacity. Such inherent capacity and the loss of it (accidentally) cannot be said of in a same sex union.

There are some fundamental questions proponents of same sex marriage need to deal with. If different-sex marriage is a mere creation of culture and culture is changeable; therefore, contemporary man can decide to reconstruct the marriage culture to permit same sex marriage, why then do we have two gender-type, two sex types in every species? Is the law of opposites and reproduction – male and female meeting to have a new borne- a myth in the human instance? If every man decides to marry a fellow man, every woman decides to marry a fellow woman, what becomes of the human race in the future? Wouldn't such threaten the continuous existence of mankind? If companionship is so important to same sex bonds to the extent they don't consider marrying their opposite sex in order to procreate naturally, why do same sex partners still use artificial means to bear children? Why wouldn't they stay alone and enjoy their childless companionship? At the end, it is obvious that the same sex marriage ideal is merely a perversion of the true marriage tradition. It is not ethical, customary or natural to man or even the lower animals.

### Conclusion

This paper made rigorous attempt to expose the historical development and controversies related to same sex marriage. Effort was also made to access same sex marriage from the ethical standpoint of moral realism. Notice that in the course of the discourse in this paper, careful attempt was made to avoid using arguments from religion to negate same sex marriage. This is because while this paper does not consider such arguments to be facile; it is motivated by the awareness that most proponents of same sex marriage are not inclined to religion. Hence, the desire to use only philosophical and commonsensical arguments founded on moral realism to argue against same sex marriage.

Same sex marriage is the fullness of the clamour to legalize homosexuality in the contemporary world. The two practices are closely related; for the ones in a same sex marriage union is incontrovertibly a homosexual. Homosexual sexual orientation birthed same sex marriage. This paper is aware of this. Nevertheless, it paid attention specifically to the issues surrounding same sex marriage. The conclusion here is that from the ethical standpoint of the moral realist, same sex marriage is intolerable and both morally and logically unacceptable because it cannot fulfill the twin-ends of marriage which are companionship and procreation. Proponents of same sex marriage can provide arguments to justify it and hence nullify the 'companionship' end of marriage. However, no argument whatsoever can undo the 'procreation end and hence seek the justification of same sex marriage on those grounds.

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