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# The Illusion of Moral Neutrality –Robert George on Marriage

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Originally published in 1998, George’s essay is a powerful refutation of arguments for moral neutrality, commonly put forth in today’s debate over the legalization of same-sex marriage. George, who now serves as McCormick Professor of Jurisprudence and Director of the James Madison Program in American Ideals and Institutions at Princeton, marshals an array of moral arguments to destroy what he calls the “illusion of moral neutrality.”

George begins by reciting a comment frequently heard among students: “I believe that marriage is a union of one man and one woman. But I think that it is wrong for the state to base its law of marriage on a controversial moral judgment, even if I happen to believe that judgment to be true. Therefore, I support proposals to revise our law to allow same-sex ‘marriages.’” As George observes: “The thought here is that the state ought to be neutral as between competing understandings of the nature and the value of marriage.”

Without skipping a beat, George quickly corrects the fundamental assumption behind claims of moral neutrality by insisting that “the claim that the law ought to be morally neutral about marriage or anything else is itself a moral claim.” In other words, a claim for moral neutrality on an issue as fundamental as marriage is not actually a morally neutral proposal. Or in other words, “It is obvious that neutrality between neutrality and unneutrality is logically impossible.”

Summoning evidence from both natural and civil law, George argues that “implicit in our matrimonial law is a (now controversial) moral judgment: namely, the judgment that marriage is inherently heterosexual—a union of one man and one woman.” He freely concedes that other moral judgments can and have been made. Other cultures have decided (at least in some cases) to recognize polygamy and other arrangements. Nevertheless, this culture—joined by the majority of cultures throughout world history—has put marriage as the union of a man and a woman at the very center of its order, in both personal and social dimensions.

When Professor George originally published this article, the most pressing legal threat to the definition of marriage appeared to be posed by the Supreme Court of the State of Hawaii which, at that time, appeared “on the verge of requiring officials of that State to issue marriage licenses to otherwise qualified same-sex couples under the Equal Rights Amendment to the Hawaii Constitution.” Concern about the situation in Hawaii was later to be transcended by the legalization of same-sex marriage in Massachusetts and the succession of legal challenges that continue to wind their way through the courts. George rightly explains that it was the threat of same-sex marriage in Hawaii that led Congress to pass the Defense of Marriage Act, signed into law by President Bill Clinton in 1996. This act was intended to protect other states from being forced to recognize same-sex marriages solemnized in any other state. As George notes, President Clinton “quietly signed it into law literally in the middle of the night,” after having previously denounced it as “both mean-spirited and unnecessary.” Most observers interpreted President Clinton’s late-night signing of the law as an act of

political necessity due to the fact that the bill arrived at his desk during the 1996 presidential election. George warned that the law, even then, was not safe because “a second opportunity for a veto effectively rests with any five justices of the Supreme Court of the United States.” This threat explains the necessity for a Federal Marriage Amendment as proposed by President George W. Bush.

Writing with a skilled professor’s ability to isolate the issues and explain alternatives, Professor George explains that there are two ways to present the argument for same-sex marriage as a responsibility of government. “The first is to deny the reasonableness, soundness, or truth of the moral judgments implicit in the proposition that marriage is a union of one man and one woman. The second is to argue that this moral judgment cannot justly serve as the basis for the public law of matrimony irrespective of its reasonableness, soundness, or even its truth.”

Of course, that second argument is precisely what is most commonly offered by proponents of same-sex marriage, both in the law courts and in the court of public opinion.

Setting the record straight, George offers a summary of the traditional understanding of marriage. “Marriage is a two-in-one-flesh communion of persons that is consummated and actualized by acts which are reproductive in type, whether or not they are reproductive in effect (or motivated, even in part, by a desire to reproduce). The bodily union of spouses in marital acts is the biological matrix of their marriage as a multi-level relationship: that is, a relationship which unites persons at the bodily, emotional, dispositional, and spiritual levels of their being. Marriage, precisely as such a relationship, is naturally ordered to the good of procreation (and to the nurturing and education of children) as well as to the good of spousal unity, and these goods are tightly bound together.”

Thus, marriage is the uniting of a man and a woman in a relationship that is clearly sexual, but is not merely an instrumental good. Marriage is itself an intrinsic good, and the goodness of the marital relationship is seen in the fact that the sexual union of the man and the woman is “reproductive in type.”

As George puts it, “According to the traditional understanding of marriage, then, it is the nature of marital acts as reproductive in type that makes it possible for such acts to be unitive in the distinctly marital way. And this type of unity has intrinsic, and not merely instrumental value. Thus, the unitive good of marriage provides a noninstrumental (and thus sufficient) reason for spouses to perform sexual acts of a type which consummates and actualizes their marriage. In performing marital acts, the spouses do not reduce themselves as bodily persons (or their marriage) to the status of means of extrinsic instruments.”

When children are born to such a union, they are to be received as gifts which are deeply rooted in the marital life of the parents. Thus, children born from the marital relationship and the marital act are not “products” which the parents have made, but are guests that are given to the marriage in the form of persons.

“It goes without saying that not all cultures have fully grasped these truths about the moral status of children,” George observed. “What is less frequently noticed is that our culture’s grasp of these truths is connected to a basic understanding of sex and marriage which is not only fast eroding, but is now under severe assault from people who have no conscious desire to reduce children to the status of mere means, or objects, or property.”

In the face of various claims for diversity and acceptance, a society may be tempted to argue that nothing more than “love” constitutes the basis for a family. Insofar as committed love is claimed by homosexual partners, they should have equal access, some argue, to the institution of marriage. To deny same-sex couples the sanction of marriage is to discriminate between forms of “love,” same-sex marriage advocates argue.

But George argues that the reduction of marriage to “sexual expression” regardless of “plumbing” is a misconstrual of marriage itself. He insists that the one-flesh communion of persons that constitutes marriage cannot be replicated when the sexual expression is not reproductive in type.

Note carefully that Professor George does not argue that infertile heterosexual couples are capable of anything less than the fullness of marriage. To the contrary, he argues that precisely because a heterosexual couple is committed to sexual acts that are “reproductive in type,” a marriage fully exists. In such a marriage, there is no refutation of the reproductive function of marriage. Or, as George states his case, “acts which fulfill the behavioral conditions of reproduction are acts of the reproductive-type, even where the nonbehavioral conditions of reproduction do not happen to

obtain.”

Those who argue that government must assume a stance of moral neutrality on the question of marriage misunderstand either moral neutrality or the essential nature of marriage. For the government to adopt a position of true moral neutrality, it must decide that marriage is not essentially a one-flesh union of a man and a woman. In adopting a supposed stance of moral neutrality, the government would actually be deciding that marriage is nothing more than a matter of consensual partnership related to nonspecific sexual acts that have nothing more than bodily pleasure and sexual fulfillment as goal.

This, George contends, would lead to cultural disaster. Government bears a responsibility to “try hard to embody in its law and policy the soundest, most nearly correct conception” of marriage and family.

Finally, George argues that any effort to assume a stance of genuine moral neutrality “will inevitably prove to be self-defeating.”

Why? Professor George’s answer is both clear and profound, for he argues that the law is a teacher. “And it will teach either that marriage is a reality that people can choose to participate in, but whose contours people cannot make and remake at will . . . or the law will teach that marriage is a mere convention which is malleable in such a way that individuals, couples, or, indeed, groups, can choose to make it whatever suits their desires, interests, subjective goals, and so on.”

The survival of marriage requires that this society understand what marriage is and is not, and thus choose marriage with understanding. Yet, as George reminds, “people’s ability properly to understand it and thus to choose it, depends upon institutions and cultural understandings that transcend individual choice.”

Our struggle for the preservation of marriage will require that Christians learn how to make intelligent arguments in the public square. A society committed to no ideal higher than individual autonomy cannot possibly understand the organic nature of marriage. This prophetic essay should serve as a cogent reminder to us all. This society is soon to decide what we will recognize as marriage. In the end, we will either regain moral sanity and recognize marriage for what it is, or we will chase the mirage of moral neutrality. We are indebted to Professor George for demonstrating so convincingly that moral neutrality on the question of marriage is nothing more than an illusion.

