INQUIRY INTO SAME SEX MARRIAGE LAW IN NSW

Organisation: National Marriage Coalition
Date received: 28/02/2013
Committee Secretariat  
C/- Legislative Council Standing Committee on Social Issues  
NSW Parliament  
Macquarie Street  
Sydney NSW 2000  

Re: Same sex marriage law in NSW (Inquiry)  

By email: samesexmarriage@parliament.nsw.gov.au  

Dear Committee Members,  

The National Marriage Coalition is pleased to make a Submission to the Same Sex Marriage Law in NSW (Enquiry).  

This Submission will begin with some opening observations; cover the Terms of Reference individually, concluding with final statements and additional articles in the Appendices that address the so-called conservative case for homosexual marriage.  

Gerard Calilhanna  
Coordinator National Marriage Coalition  
http://marriage.org.au/  

About the Organisers:  
The National Marriage Coalition is a coalition of like minded organisations who believe that marriage is the bedrock institution of our society. Marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life. Marriage is important because families are important. Families are important because they are the building blocks of our society. When the family collapses, so does the society. Therefore marriage should be encouraged, strengthened and supported by government, society and individuals in every possible way. (From the Website)
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Summary

The NSW State Parliament is holding an inquiry into the legalisation of homosexual marriage, via the Legislative Council's Social Issues Committee. The Terms of References presuppose that such laws can exist or have a right to. For example, realising from the Tasmanian experience and other commentary that the Constitution and question of Federal jurisdiction prove massive obstacles, this is dealt with softly, yet it immediately moves to a presumption of ‘marriage’ being legislated in another state and the presumption of the same at the Federal level.

This last observation raises other questions. Is the campaign to replace marriage with homosexual marriage a State or a Federal campaign? This reveals a confusion of thinking. If it is a Federal campaign, then why trouble State jurisdictions? State and Territory Parliaments are only being used, therefore, as stepping stones to changes at the Federal levels. Legal support for this position is dubious at best, as according to the Constitution marriage is a Federal power and the Federal Parliament has given the states or Territories no latitude to legislate in the area of marriage, save registration of them. Any conflict with Federal laws renders State and Territory laws invalid and such jurisdictions should not spend time and resources enacting laws that are likely to be invalid and face defending this position in the High Court.

Following on from a critique of the deceptive expression “marriage equality”, Section Two reflects on the strong votes in Federal Parliament in favour of marriage as recently as last year, and the recognition by the Tasmanian parliament that marriage is a Federal issue, irrespective of personal views. Overseas jurisdictions that have legislated for homosexual marriage and those pending make less than ten per cent (10%) of UN Member States. Closer examination of the situation in the United States, France and Britain follow, including the Defense of Marriage Act (DOMA) in the US and the extraordinary protests occurring in both France and Britain as their Governments try to foist homosexual marriage on a divided populace. The four French gays who speak in defense of marriage and the family are absolutely remarkable. Their words merit close study. In Britain, David Cameron has split his Conservative Party, with more voting against than for and he has failed to take his base with him. Notably he denied before the last election that he was planning to legislate for homosexual marriage.

In Section Three we reject alternative models of legislation such as civil unions.

In Section Four, despite the regular 60%+ polling levels in favour of homosexual marriage in Australia, a more nuanced picture is obscured. The Adam Bandt Motion passed by Parliament in 2010 was meant to reveal how widespread
support for homosexual marriage in Australia is, but it backfired spectacularly. An important Survey by the Ambrose Centre for Religious Liberty revealed how little hard support there is for the same and despite a three year campaign with powerful media support the vote in both Houses of Parliament voted strongly to uphold marriage in 2012.

Australia stands as a model nation, in this regard, before the world.
That the Standing Committee on Social Issues inquire into and report on issues relating to a proposed same sex marriage law in New South Wales, and in particular:

1. Any legal issues surrounding the passing of marriage laws at a State level, including but not limited to:

   a. the impact of interaction of such law with the Commonwealth Marriage Act 1961

According to the Australian Constitution S 51 (xxi), Marriage is a Federal power only. This enquiry indulges a lobby that wants change at the federal level, not at the state, otherwise why was the Federal Parliament the target for legislative change over the past three years and not at the State level? State processes should not be abused in this way.

S109 of the Australian Constitution states: “When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.” Therefore any attempt to legalise homosexual marriage is an invalid law and liable to be struck down by the High Court. Why legislate for an invalid law? Does the state of NSW want to spend taxpayers’ money in a matter so open to failure?

The Federal Marriage Act covers the issue of marriage for the whole of Australia. This is the marriage law that governs the country and is thus in accordance with the Constitution. The key proponent of homosexual marriage at state level, Professor of Law at the University of NSW, George Williams, notes in 2010 that:

   Much of what has been written in Australia is based on the false premise that the "marriage" power is exclusive to federal Parliament, but every federal power in section 51 is held concurrently with the states.

   Just as the Commonwealth can legislate for marriage, so too can the states. But in the case of the states, they are not limited by the possibility of a narrow meaning of marriage. A state can pass any law in the area that it wishes, and undoubtedly has the power to provide for both heterosexual or same-sex marriage.

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1 I write as a non-specialist in Law.
Few realise that Australia’s marriage laws have, for most of the life of the nation, been state and not federal laws. It was only in 1961 when the federal Marriage Act was passed that this area was taken over by the Commonwealth. Until then marriage was the domain of the states.\(^4\)

Note in his example that there were State laws on marriage when there was no Federal law. From 1961 the Federal Law governed marriage in Australia and there was no state law covering marriage, save the function of registration, as distinct from solemnisation.

In 1961 the Federal parliament resumed its Constitutional power and has not ceded it. Federal parliament shows that it legislates for the nation, it “covers the field” particularly with its universal recognition of the definition of marriage being “the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.”\(^5\) There is no differentiation in what marriage is, that is, between heterosexual or homosexual – Williams introduces a division which is clearly non-existent. In this he also ignores the full coverage of the issue of marriage laws across the nation. Which part of Australia do these not apply? In fact, Section 8 deals with the coverage of the laws across all States and Territories.\(^6\)

Professor George Williams fails to make the same connection writing two years later. He says:

The constitution grants the Federal Parliament a concurrent, rather than exclusive, power to make marriage laws. As with other areas such as taxation, this means that the states also retain power in the area.

This matches the historical record. At Federation in 1901, Australia had marriage laws in each of the six states. Marriage continued to be regulated in this way until the Commonwealth forged these laws into a single, coherent national scheme in 1961.\(^7\)

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He continues with the splitting of the concept of marriage into two areas, heterosexual and homosexual and believes his argument wins because of the separateness of the two:

In any event, there are good reasons why inconsistency might not arise. This is because the laws operate in different fields, with the federal law covering heterosexual marriage and the Tasmanian bill dealing only with same-sex marriage. It is impossible for a person to be married under both at the same time.\(^8\)

Again he is falsely proposing that Federal Parliament has ceded power to the state to make laws pertaining to marriage, beyond registration. Where is the evidence of this?

Following his lead, the proponents of the State-based homosexual marriage law, identified as the “NSW cross party working group for marriage equality” declared that they “feel confident will stand up to any constitutional challenge”, as they submitted a Consultation Draft of a proposed State Marriage Equality Bill 2013 to this enquiry.\(^9\)

Hence they have “same sex marriage celebrants” in Part 5, as distinct from marriage celebrants; in their Definitions on page 3 they define that “same-sex marriage means the union of 2 people of the same sex, to the exclusion of all others, voluntarily entered into for life” and not a redefinition of the term marriage itself. Yet they cannot but openly confront the Commonwealth law in the following definition, also on page 3:

\*lawfully married\* means:

(a) married under this Act (including a marriage recognised under section 45), or

(b) married under a law of the Commonwealth (including a marriage in another jurisdiction that is recognised by the Commonwealth as a valid marriage).

Also, they cannot avoid having to deal with need to alter the term \*marriage\*, which is strong internal evidence revealing their intent. In Schedule 1 – Amendment of Acts on page 32 we find:

\*Interpretation Act 1987 No 15\*  

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\(^8\) Ibid.  
Section 21 Meanings of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

marriage includes same-sex marriage under the State Marriage Equality Act 2013 and married includes married under that Act.\textsuperscript{10}

The exercise, put in the vernacular, is best explained by wanting to have your cake and eat it too. Federal law admits no room or area for marriage to legislate at the state level, beyond registration. The push by the “NSW cross party working group for marriage equality” appears to be a violation of S 109 of the Constitution.

Implications

The implications of marriage redefinition at the State level will mean that two men or two women can claim to be married without having to qualify whether this is state based or otherwise, against couples legitimately married under the Federal laws. These will then detract from the status, standing and meaning of marriage for the latter.

Marriage recognises the committed union of a man and a woman to encourage the stable social context needed for resulting children to be raised to responsible adulthood. Two men can be excellent fathers, separately, or two women can both be excellent mothers, separately, but they cannot be both a mother and a father to a child at the same time.

Children have an inherent right to a mother and a father. Legalising ‘homosexual marriage’ denies this fundamental right.

Marriage redefined redefines all marriages, and severs the inherent link between marriage and children, as two men or two women are intrinsically sterile. This is both an abuse of marriage and unfair against those who are and their children.

b. the rights of any party married under such a law in other States’ and Federal jurisdiction

We reject any capitulation to what any other Australian, non-NSW jurisdiction enacts contrary to the present Federal marriage law.

c. the rights of the parties married under such a law upon dissolution of the marriage;

We reject any capitulation to what any other Australian, non-NSW jurisdiction enacts contrary to the present Federal marriage law.

2. The response of other jurisdictions both in Australia and overseas to demands for marriage equality;

Comments on the concept of “marriage equality”

Prior to evaluating this issue, a digression is necessary to comment on the term “marriage equality”. “Marriage equality” is a loaded term designed to have the propaganda effect of implying that there is somehow an inequality in the current marriage laws in Australia. There is not, not should such a term be used in Parliamentary inquires as it reveals a mindset biased in favour of the objects of the proponents. All are free to marry, but the nature of marriage admits the union of male and female only, husband and wife, in law and in the intrinsic meaning of the word,¹¹ that provides the legal and social protection of the right of a child to a mother and a father, most often their own biological parents, to the point at which the child becomes an adult and is able to care for him or herself.

To achieve what the proponents of “marriage equality”, marriage to another irrespective of their sex, then you no longer have marriage. Marriage, the union of male and female, oriented towards the generation of human life and enshrining the right of a child to a mother and a father in law, is gone. The pro child focus is subverted to the preferential demands of adults. This subversion is also at work in the expression “marriage equality” itself. Marriage is no longer a noun, but an adjective to the term “equality”. Hence we are no longer talking about marriage but equality. Marriage becomes a mere subservient device to this end.

Legislating for homosexual marriage means we are no longer talking about marriage but a new kind of arrangement. Legislating for homosexual marriage means legislating against marriage and imposes on the state a need to protect these laws by other supporting laws.

To test this we need only see what happens when a person’s personal conviction that homosexual marriage is wrong challenges the new law in a society:\(^\text{12}\)

In Massachusetts, which has homosexual marriage, state schools are obliged to teach material promoting this and no opt-out option exists for parents. This occurred after a father was arrested in the course of objecting to material supporting homosexual marriage being taught to his son.

David Parker was arrested Wednesday (27 April 2005) by Lexington Police, allegedly for “trespassing” at his son’s elementary school, while attending a scheduled meeting with the principal and the city’s Director of Education over his objections to homosexual curriculum materials and discussions in his son’s kindergarten class.

According to an “Article 8 Alliance” press release, at the meeting, Parker requested that the school inform him of when homosexual discussions would take place, so he could exclude his son from the activity. He said he would not leave until his request was granted. The Principal and the city’s Director of Education both refused his request. They then telephoned the Superintendent of Schools who also refused. Police were called, who told Parker that unless he left the school, he would be arrested.

Parker was arraigned in Concord District Court on Thursday on one count of trespassing; his attorney entered a plea of not guilty. Parker was freed after paying $1,000 in bail and agreeing not to enter school property. He is due back in court for a trial June 1.\(^\text{13}\)

The matter was challenged in the Federal Court, but the court found in favour of the school.\(^\text{14}\)


\(^{14}\) UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS, DAVID PARKER, ET AL., Plaintiffs, v. WILLIAM HURLEY, ET AL., Defendants, C.A. No. 06-10751-MLW,
When this lower court decision was challenged in the Federal Appeals Panel, the ruling by Judge Sandra L. Lynch was "that the 2003 Goodridge decision held ‘that the state constitution mandates the recognition of same-sex marriage’ and therefore, she implies, the schools must recognize it also.\footnote{MEMORANDUM AND ORDER, WOLF, D.J. 23 February 2007, http://www.massresistance.org/docs/parker_lawsuit/motion_to_dismiss_2007/order_motion_to_dismiss_022307.pdf (accessed 1 April 2012)} The Supreme Court would not hear the case and therefore this ruling stands.\footnote{MassResistance, Federal court denies appeal in David Parker Civil Rights case on homosexual programs in elementary school, 31 January 2008, http://www.massresistance.org/docs/parker_lawsuit/appeal_loss_013108/ (accessed 1 April 2012)} The use of the loaded term “marriage equality” in this term of reference indicates, sadly, that this is more than an impartial inquiry and it must account for such a partisan expression.

\textit{The Australian Federal Parliament}

The Federal Parliament, in both the House and the Senate, comprehensively rejected the push to legislate for homosexual marriage in 2012. These defeats came after a continuous sustained campaign beginning with the introduction of the first Marriage Equality Amendment Bill in 2009, during the period of the ALP in Federal power in their first term to the point of the 2012 votes themselves. The Federal environment is treated at greater length below in the section \textit{Results in the Federal House and Senate during 2012}.

\textit{The Tasmanian State Parliament}


One key vote in this debate was from MLC Jim Wilkinson. Though sympathetic to homosexual marriage, he decided to vote against it:

In a blow to the Tasmanian government, Nelson MLC Jim Wilkinson, who had been expected to support the bill, said yesterday he had developed serious concerns in the past 48 hours.

Mr Wilkinson said that he had asked himself whether he would want his child to be able to marry if they were gay.

``Of course I would. But would I want second best for my child? No and that's what this is."

He said the legislation failed to achieve equality because it created a totally different version of marriage so as not to contradict the federal Marriage Act.

Critics of state moves for gay marriage have argued that federal legislation would override any state laws.

``It's like your vinyl coat compared to a leather jacket. From a distance they look the same but when you get closer you realise it's not the same, it's a knock-off. They want equality, they're not getting equality with this," Mr Wilkinson said.18

He later was reported to say that:

he believed same sex law would continue to be argued. "But I believe it will come back in the Federal arena. In my mind that's where it should be."19

Hence his doubts were constitutional and these decided him.

However, not to be outdone, the matter will be reintroduced later this year in the Tasmanian Upper House by Greens leader Nick McKim and Premier Lara Giddings, most probably after elections in May, so that they will return the desired result.20

Responses in overseas jurisdictions

19 Andrew Darby, ‘Tasmanian gay marriage bill defeated’, op. cit.
The following is a division of the list of Member and non-Member countries in the United Nations (UN) that have homosexual marriage and those which do not. There will be two lists of States in the United States following the same division.

Member states of the United Nations that have legislated for homosexual marriage, as at 22 February 2013: 21

Therefore, twelve of one hundred and ninety three UN Member states, in other words six per cent (6%) of all Member states, have legislated for homosexual marriage.

UN Member states that have not legislated for homosexual marriage:

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<tr>
<th>Argentina</th>
<th>Belgium</th>
<th>Canada</th>
<th>Denmark</th>
<th>Finland</th>
<th>Iceland</th>
<th>Netherlands</th>
<th>Norway</th>
<th>Portugal</th>
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Afghanistan  China  Guatemala  
Albania      Colombia  Guinea    
Algeria      Comoros    Guinea-Bissau 
Andorra      Congo (Republic of the)  
Angola       Costa Rica   Haiti     
Antigua and Barbuda  Côte d’Ivoire  
Armenia      Croatia     
Australia    Cuba        
Austria      Cyprus      
Azerbaijan   Czech Republic  
Bahamas      Democratic People’s 
Bahrain      Democratic Republic of the Congo 
Bangladesh   Republic of Korea  
Barbados     Democratic Republic of the Congo  
Belarus      of the Congo  
Belize       Djibouti    
Benin        Dominica    
Bhutan       Dominican Republic  
Bolivia      Ecuador     
Bosnia and Herzegovina  Egypt  
Botswana      El Salvador  
Brazil       Equatorial Guinea  
Brunei Darussalam  Eritrea  
Bulgaria     Estonia     
Burkina Faso  Fiji       
Burundi      France      
Cambodia     Gabon       
Cameroon     Gambia      
Cape Verde   Georgia     
Central African Republic  Germany  
Chad         Greece      
Chile        Grenada     

14 of 45
The two non member states of the UN, the Holy See and Palestine also have not legislated for homosexual marriage.22

Therefore 181 of 193 Member states do not have homosexual marriage on their statute books. In other words, 93.7% of Member states support marriage. This is hardly a landslide of opinion and legislative change in favour of this across the world.

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Member states touted as likely to change are:

United Kingdom  
France  
New Zealand  
Nepal

*Mexico City has legislated for homosexual marriage and its Supreme Court ruled that other Mexican states must recognise these, though they have not legislated for it.

With changes in the first four nations, this would mean 8% of UN Member state nations have legislated for homosexual marriage. Again, this is no landslide and legislating for homosexual marriage because another legal jurisdiction does is lame reasoning and reflects a weakness of self identity.

**United States**

States/Districts that have homosexual marriage, either by court ruling or ballot:

Maine  
New Hampshire  
New York  
Vermont  
Massachusetts  
Connecticut  
Maryland  
District of Columbia (Washington D.C.)  
Iowa  
Washington

Therefore, forty-two states do not have homosexual marriage and of these, thirty-one have state constitutional amendments protecting against homosexual marriage. These are:

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23 Hand, op.cit. Hand does not mention New Zealand, but mentions Luxembourg.

24 Ibid.


Passed by both Houses in 1996 and signed into law by then President Bill Clinton,

The Defense of Marriage Act (DOMA) does two things. First, it provides that no State shall be required to give effect to a law of any other State with respect to a same-sex "marriage." Second, it defines the words "marriage" and "spouse" for purposes of Federal law.27

Further to this:

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."28

DOMA is in force though US President Barak Obama opposes it and supports its overturning. In 2011,

28 Ibid.
The Obama administration said Wednesday (23 February 2011) that it will no longer defend the federal law that bans the recognition of same-sex marriage because it considers the legislation unconstitutional.29

To his credit, the Leader of the House Republicans accepted the challenge to defend the US Government’s laws when the President and his party would not:

Speaker John Boehner (R-Ohio) announced Wednesday evening that the House will defend in court the constitutionality of the Defense of Marriage Act. The action comes after President Obama instructed the Justice Department last month to no longer defend the law, which bans the federal recognition of same-sex marriage.

"Today, after consultation with the Bipartisan Leadership Advisory Group, the House General Counsel has been directed to initiate a legal defense of this law," Boehner said in a statement. "This action by the House will ensure that this law's constitutionality is decided by the courts, rather than by the President unilaterally."30

By mid 2011,

The Obama Administration has now completed a full turn on the federal Defense of Marriage Act (DOMA), arguing before the courts that the law is unconstitutional and should be voided.31

During 2012 Barak Obama declared his support for homosexual marriage32 and during his Second Inauguration Speech indicated that these anti-DOMA, anti-marriage measures would intensify:

Our journey is not complete until our gay brothers and sisters are treated like anyone else under the law — (applause) — for if we are

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truly created equal, then surely the love we commit to one another must be equal as well.\textsuperscript{33}

Marriage is stripped of its child centred focus, with the child’s right to a mother and a father at centre, and becomes purely an emotional attachment between adults and everybody’s marriage – including the Obamas - must be redefined and severed from its intrinsic connection to children.

The Republican controlled House, again to its great credit, remains committed to defending DOMA in the courts.\textsuperscript{34}

\textbf{Further Observations - France and Great Britain}

Much is being made of the nations which enacted homosexual marriage. Some are advancing in this direction, namely France and Great Britain.

\textbf{France}

Of the push to change legislation in France, what does not receive much attention in Australia, not zero, but not much, is the extent of the domestic opposition to this. We have the usual surveys that show a 65\% level of support, but in the days around the massive public demonstrations against these laws, Sunday 13 January 2013, support dropped to 50\%.\textsuperscript{35}

This not only demonstrates a nation evenly split, but a fifteen percent swing over a weekend also suggests that the numbers in true support are soft and that the French nation really has no certain idea of where it stands. The Socialist President Francois Hollande is determined to push ahead regardless and as of the present, the matter has passed the National Assembly.

\textsuperscript{33} President Barack Obama, \textit{Inaugural Address by President Barack Obama}, The White House, Office of the Press Secretary, 21 January 2013, \url{http://www.whitehouse.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama} (accessed 25 February 2013)


One of the most remarkable aspects of the protests is the amount of openly gay/homosexuals that have joined the campaign. Here are the stunning testimonies of four – note the last testimony appears first and then counts back:

**Gay Voices Against Gay Marriage: Jean Marc**

JANUARY 11, 2013 – 12:00 PM  
Here is a fourth voice -- Jean Marc -- a mayor who is yet another gay voice in France who opposes President Hollande’s proposal to legalize gay marriage.

As before, we offer an approximate English translation below, done by one of supporters:

I've been living with a (guy) for 20 years. As well, I'm mayor of my village, here in Bergueil… Speaking of the planned law (for gay marriage), I have an unusual position. My view isn’t being heard in the media.

What to say about the LGBT movement?

The LGBT movement that speaks out in the media… Nobody voted for them. No homosexual voted them in. They don’t speak for me. They don’t speak in place of me.

What reasons for your opposition?

As a society we should not encouraging this. It’s not biologically natural. We (gays) do not have the fertility, in the sense of making a baby. We have plenty of other forms of fertility. Artistic, for example, and other forms of fertility. In my case, I feel I’ve connected with my village, and I’ve reinvigorated a village that was dying, fading. I know how to create ties within my community. In summary, the law I advise would be whatever’s best for the child. One must favor what is best for the child. Nobody can deny, I believe, that it’s best for a child to have a mother and a father who love each other as best they can.

**Gay Voices Against Gay Marriage: Xavier Bongibault**

JANUARY 11, 2013 – 10:00 AM  
As we’ve written about before, there is a rising chorus of gay voices in France who are expressing opposition to President Hollande's proposal to legalize gay marriage.

Here is a third voice -- Xavier Bongibault.

As before, we offer an approximate English translation below, provided by one of our supporters:
Xavier Bongibault, I'm 21 years old, I'm a homosexual and a business manager.

**Do all homosexuals think the same way?**
People tell us that all homosexuals are for this proposed law, but that's an absolute lie! The majority of Homosexuals could care less about it and have the right like everybody else to have common sense.

Most homosexuals make fun of this proposed law, because they had a mom and dad like everyone else. They want it to be that way for all kids.

**The reasons for your opposition?**
I think first and foremost we need to protect the child. In France, marriage and child-rearing are extremely tied together. To oppose this marriage [for all] is equivalent to opposing a drastic change in the nature of child-rearing. I'm involved for the protection of the child.

**The other claims?**
This proposed law is tied to the proposal to legalize gay adoption. But not so fast; it's necessary to take a closer look. We have to keep in mind procreation that's medically assisted as we go into the debate among leadership in January. If we begin with the opening idea that "equality" is sacrosanct, consider this: If two women can have a child, thanks to science, then in the name of equality men must have this too, which brings us to gestation in someone else's womb. So it falls upon the minister for the rights of woman to step in and prohibit prostitution. It's scandalous that a woman would rent out her vagina, so how do we encourage women to rent out their uterus? It strains belief, it doesn't sit well in my head.

**Marriage for all?**
In no way is marriage an institution for love. If it were only love, then based on what do we refuse to recognize the marriage of three people deeply in love with each other? What about a father who loves his daughter? One allows that to suppress equality in the meaning of family, or in the meaning of a couple. So when one suppresses all the genetics of the child, one is then willing to destroy the familial circle, and therefore, to destroy the first venue for the socialization and social cohesion of the child.

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**Gay Voices Against Gay Marriage: Jean Pier**
JANUARY 10, 2013 – 1:00 PM
As we’ve written about before, there is a growing chorus of gay people in France who oppose President Hollande’s proposal to legalize gay marriage.

Here is a second voice -- Jean Pier -- explaining his views (we also offer an approximate English translation by a French-speaking supporter):

I am Jean-Pier and I'm forty-nine years old.

I am a documentary author for TV and I'm homosexual.

What is your opinion of the proposed law?

The law they're proposing, this marriage for all; I have to take pause. I have to wonder, "who's this law for?" I say to myself, "is it made for homosexuals?" I live in Provence and I work in Paris. I know very few homosexuals who wish to marry beyond the PACS (civil unions) they already have. In fact the number of people in PACS unions in France, couples of the same sex, is minimal. Therefore who's this law for? If it's for the 5,000 people who live in the district of Le Marais, then it's just a militant act. But behind it all, it must be a question of the child.

Freedom, equality for all?

Me, I'm not part of any political party or any association. For me, the question behind this, the fundamental issue, is the child. Among the responses I've heard, I've had this business of freedom and equality. Then I pose this question: What of the freedom and equality of the child? The child won't have its equality vis-a-vis its friends in school. Its peers may have divorced and blended families, but they have, at least, a father and mother.

What about adopting?

Twenty five years ago -- remember, I'm 49 -- I truly wondered about having a child. Like everyone else, I wanted to have a child; it was a question of transmitting my heritage. But then I realized very quickly that if I were going to have a child that way, it would be for the wrong reasons.

What alternatives?

The desire for a child, for me, is fulfilled. I am a writer and creator. I create stories for children. That's a way to address children and respect them. That's an act of love for them.

Final thoughts?

Finally, when I look at this proposed law, I conclude that it's a law for gays, but not for homosexuals. I do not want to support it.
Gay Voices Against Gay Marriage: Phillippe Arino

JANUARY 10, 2013 – 11:00 AM
There is a growing chorus of gay people in France who oppose President Hollande’s proposal to legalize gay marriage.

Here is one voice -- Phillipe Arino -- explaining his views (we also offer an approximate English translation below by one of our generous French-speaking supporters):

I am Philippe Ariño, 32 years old, essayist about homosexuality and Spanish teacher.

Your thoughts on "marriage" for all?
I oppose this proposed law. I believe it’s homophobic. First off, I think society is giving this to homosexuals for the sake of society itself, but it’s without meaning.

Even worse, another reason that I think this is homophobic is this: This law encourages homosexual couples to think they can copy and fit in the way heterosexual couples do. It makes them think they have to follow the example of man, woman, and child, without respecting sexual difference. It denies respect to homosexual couples in reality, with regards to their specificity and who they really are. Gay couples do not exist so that they can be procreative; one doesn't recognize that (if one turns these into marriages). Even if you present this to gay couples like it's a gift, it's still denying who they really are.

But then, what about equality of rights?
It's not a question of equality. Equality isn't inherently positive. There are bad/wrong equalities. We call that conformism, uniformity. A lack of recognition to the realities of people. The gay activists who treat equality as sacred do not differentiate between equal rights and the equality of identity. Equality of the law, and equality of self-respect or dignity.

Adoption?
In my view, all kids need more than just two parents who love each other. They need two biological parents -- mother and father -- who love each other. Nobody is speaking about that condition for the development of the child. It would be a condition where desire and nature are conjoined. Let's say a child knows of its biological parents but knows that its parents do not really love one another. That's a trauma that it will carry like a burden, all its life. When people talk about gay adoptive parents, they talk a great deal about the feeling of the parents toward the child, but they don't speak about the difference of sex which is "crowned" with love. That's
central, that will be with one for all one's life. One must know that one had more than just a biological origin -- also, that one came from true desire. And one must know that the two are linked.36

This also raises the point that identifying as gay does not mean a reflexive support for homosexual marriage and those featured above present excellent reasons for not legislating for it.

**Britain**

In Britain, the measure has passed the House of Commons through the advocacy of Prime Minister David Cameron, 400-175.37 However, he has split the Conservative Party doing so, with more Tories voting against it than for it, despite enormous pressure on party members to vote in its favour. In the context of a conscience vote, he was yet to persuade the Conservative Party's base and the wider population of his intentions.38 The UK organisation, Coalition for Marriage, has so far collected over 641,000 signatures in opposition to David Cameron’s push.39

Former Thatcher Government Minister, Gerald Warner reminds us that:

> just three days before the last general election, on 3 May, 2010, in an interview on Sky News, Cameron was asked outright by Adam Boulton whether he would introduce same-sex marriage and replied: "I am not planning that."40

The matter has yet to face amendments before proceeding to the House of Lords.

Some historical perspective is necessary and Brendan O’Neill writing in *The Australian* provides it:


Gay marriage a feelgood fight for issues-lite elite

HAS there ever been a weirder political issue than gay marriage? A cool-headed look back at events in Britain last week, where David Cameron's gay marriage bill was passed in the House of Commons, suggests, no, there hasn't been.

Think about it. Here we have politicians who have little commitment to the idea of rights (Cameron's Tories) offering to expand marriage rights to people who have never traditionally wanted to get married (gays), and they have been cheered on by liberal commentators who think marriage is a naff institution ("Marriage is no more than a mystical word," said one fulsomely pro-gay marriage columnist on the day of the Commons vote).

And yet all of this political freakiness, this bonkers expansion of marriage by those who don't much care for it to those who have never needed it, is treated as perfectly normal by observers.

More than that, it is depicted as a glorious moment in human history, on a par with blacks in America winning civil rights or women getting the vote. Has the world gone mad? I hope so, because otherwise I definitely have.

Nothing in Britain's gay marriage debate adds up. For example, we're told the passing of the gay marriage bill is an historic victory for the brave gay activists who despite being mocked as perverts and poofs took part in London's first gay pride parades in the 1970s.

Yet this fantastically overlooks the fact that those marchers denounced marriage and the family as "patriarchal prisons" that "enslave women, gays and children".

For all the harebrained attempts to doll up the passing of the marriage bill as the endpoint to 50 years of gay agitation, the truth is early gay radicals campaigned against marriage, not for it.

Marriage is a "rotten, oppressive institution", said the 1970 Gay Manifesto. Homosexuals are "in revolt against the nuclear family structure", said the influential Gay is Good tract of 1972.

The cranky claim that a Tory PM giving gays the right to get hitched represents the realisation of the dreams of those Stonewall rioters of 1969 (who actually wanted to abolish "all existing social institutions") should be causing far more eyebrows to rise.

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Or consider the claim the passing of the bill is a product of people power, with one gay soap opera actor, who I think bravely took part in a couple of gay marriage fundraisers, even embarrassingly comparing himself to Rosa Parks.

In truth, it's the differences between this campaign and the old black civil rights movement that are most striking. In order to have their demands taken seriously, Rosa Parks and those who followed her had to go through hell -- marching and boycotting for years, getting attacked by police dogs, whacked with water cannons, shouted at, spat on, jailed.

The gay marriage lobby, by contrast, had only to say "Hey, let's redefine marriage!", get a few national treasures like Elton John to do likewise and, hey presto, their demands were feverishly embraced by a massive swath of Britain's elites.

The decisive factor in the rise of this issue to the top of the political agenda was not the bravery or grit of tiny handfuls of sharp-suited gay lobbyists, but the desperation of the opinion-forming set to find an issue through which it might define its decency and do a bit of Rosa Parks roleplay.

It was the political class's need for a feeling of historic momentum which propelled gay marriage to the centre of the political sphere. Indeed, easily the most striking thing about Britain's gay marriage campaign has been its elitist nature. The vast bulk of the public is unmoved by this issue that so overexcites politicians.

Gay marriage promoters love pointing to polls which show a majority of Brits support gay marriage, but neglect to mention that the same polls reveal that an even bigger majority think it isn't an important issue.

So a recent poll did indeed find that 55 per cent of Brits support the idea of gay marriage, but it also found that a measly 7 per cent think gay marriage is "important". Another poll showing that 45 per cent support gay marriage was loudly trumpeted by campaigners; its discovery that a whopping 78 per cent think gay marriage shouldn't, however, be a parliamentary priority was swept under the carpet. These polls reveal something fascinating: the great majority of Brits are tolerant towards gays, but just don't get gay marriage or why it has so speedily ascended the political ladder.

That isn't surprising, because this campaign really did come from nowhere. It emerged not from street struggles or public debate or the historic campaigning of yesteryear's radicals, but from the minds and needs of a political elite keen to fashion a platform from which it might proclaim its right-on credentials.
Gay marriage is an entirely invented issue, magicked up by a morally bereft political class desperate to appear meaningful, purposeful. So now they congratulate themselves for having made history while ordinary Brits look on in bamboozlement, decidedly unconvinced that history has happened or that our aloof, principle-lite rulers are the new Rosa Parks.

Brendan O’Neill is editor of online magazine spiked

Both cases reflect adventurous governments ramming through this controversial legislation, generating domestic upheaval, and yet continuing on in contempt of these effects. Should the legislation pass the full social and political consequences are yet to be felt.42

3. Any alternative models of legislation including civil unions; and

Proponents of homosexual marriage in Australia, particularly “Australian Marriage Equality” have a longstanding position against legislating for civil unions, reaffirmed recently on 20 September 2012 under the press release title: “Call on MPs to oppose civil unions / Advocates will campaign against ‘failed experiment’”.43

Of note, the push at the state level is to legislate for homosexual marriage, not for civil unions. This is consistent with the stance of “Australian Marriage Equality”.

We oppose civil unions also, but for different reasons.

First, these detract from marriage. The state, or Commonwealth, has a raw interest in marriage because it has an interest in its own future, which lies with the next generation, with the children born and raised, ideally, by their biological parents. According to Dr Patrick Parkinson in his 2011 report, For Kids’ Sake, “The overwhelming evidence from research is that children do best in two-parent married families.”44 The state has no interest in purely affective relationships.

44 Professor Patrick Parkinson AM with Antoine Kazzi, For Kids’ Sake: Repairing the Social Environment for Australian Children and Young People, Faculty of Law, University of Sydney July 2011, 48,
Civil unions mean that the state declares an interest where it has none in terms of relationships. If the state legislates for heterosexual civil unions, it provides an incentive not to marry and thus detracts from marriage directly – as already exists in NSW and elsewhere in the form of Relationship Registers, passed in 2010. If the state legislates for homosexual civil unions it will take further territory reserved for married couples by virtue of declaring an interest in such relationships, where it has none, and at the same time overlaps with a declaration of interest in married couples for the sake of children. The action muddies the importance of marriage and its unique place in Australian society, thereby decreasing its standing and importance.

Second, these are always a platform for a future launch to change the marriage laws of a nation or state that has the power to enact them, such as in the United States. Other examples include the legislative bodies of countries now pushing for changes to their marriage laws, namely France, Britain and New Zealand. All have civil union laws currently in place. The approach forms part of a longstanding incremental strategy:

Jenni Millbank, writing in 2005 in a work titled *Same-sex Families*, observed the following,

“No country anywhere in the world has passed laws going from absolutely no form of same-sex relationship recognition directly to same-sex marriage. Rather, over a period of many years, a series of changes have built incrementally on one another. Generally progress has gone along the following sequence: decriminalisation of gay sex, implementation of anti-discrimination protections, some limited recognition of relationships either through de facto relationship recognition or limited registration systems, and then through one or more stages a move to broader relationship recognition, then (usually) some parenting recognition, then a status similar to marriage but called something else such as ‘civil union’ or ‘registered partnership’, and then, some years later, marriage.”

In summary, we see civil unions as detracting from marriage and a stepping stone to homosexual marriage. For both reasons, though each is sufficient on its own, we oppose civil unions outright.


4. Changes in social attitudes (if any) to marriage in Australia.

Much is made of the regular surveys commissioned by Australian Marriage Equality showing over 60% support for homosexual marriage. These are regularly upheld with great fanfare, echoed dutifully by press outlets that magnify the ‘voice’ of the result, leading to a usual chorus of claims of “inevitability” that these laws will pass – echoing the Marxist idea of “historical inevitability”, and other claims including ‘why haven’t they passed this already?’ and that we all should be on “the right side of history”, etc.

As Christopher Pearson from The Australian, who has long identified as being homosexual, observed in 2010 that

The most obvious thing about the arguments in support of same-sex marriage is their shallowness. The best Greens senator Sarah Hanson-Young could manage last week was to remind us breathlessly that we are living in the year 2010, as though that settled the matter.

Later in the same article, he observes in contrast to the then 62%-in-favour-survey released by Australian Marriage Equality:

Far more substantial polling comes from Roy Morgan's Single Source face-to-face surveys, which reach more than 50,000 people each year. His data uses proxy questions: Do you think homosexual activity is immoral and are you in favour of gays getting adoption rights?

Attitudes vary widely, of course, between the regions and the inner and outer suburbs, which is why Galaxy’s 62 per cent in favour should be treated with caution.

The strongly negative territory included most of regional Queensland, traditional Labor turf comprising three western Sydney seats (Blaxland, Chifley, McMahon), three more in Sydney’s southwest (Barton, Banks, Watson), some parts of suburban

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Melbourne (Lalor, Hotham, Bruce) and the north Tasmanian seats of Bass and Lyons. ⁴⁸

Bases of support for homosexual marriage certainly exist in Australia, but figures in favour should be regarded with caution, as suggested by Pearson, and there is good evidence to support this.

**The Bandt Motion: 2010 – 2011**

On 18 November 2010, the House of Representatives passed a motion, by a single vote, 73-72, introduced by the sole Greens MP, Adam Bandt and was amended to read:

> That this House calls on all parliamentarians, consistent with their duties as representatives, to gauge their constituents’ views on ways to achieve equal treatment for same sex couples including marriage.⁴⁹

Then a sustained period of intense lobbying from all sides of the debate commenced. This was the great moment to validate the surveys showing overwhelming support for homosexual marriage.

MPs were not set a date to report back to Parliament their results, but the eventual date was 24 August 2011 — *nine full months from the date the original motion passed*. For the supporters of homosexual marriage, the results were disappointing. Paul Kelly of *The Australian* revealed something of the media mobilisation support favour of the change when he observed that the result was a “conspicuously under-reported event this week”.⁵⁰ The widespread support they counted on to materialise not only failed to, but a strong support for marriage in the community revealed itself despite the strength of the lobbying to change the Marriage Act (1961).

First, thirty MPs, or twenty per cent of all MPs in total, spoke on the Motion. For surveys revealing sixty per cent in favour of change there should have been an overwhelming amount of MPs clamoring to speak! Yet this did not happen. More so, of the thirty that spoke, twenty were against, with only seven in favour.

⁴⁸ Ibid. My emphasis.
and three non-committal.\(^{51}\) This is clear evidence that the claim for broad support in the community to legislate for homosexual marriage is not present.

**Ambrose Centre for Religious Liberty findings - 2011\(^{52}\)**

In September 2011 the Ambrose Centre for Religious Liberty\(^ {53}\) published a more nuanced study on this subject and produced more insightful appraisal of current attitudes in Australia.

The first questions repeated the phrasing and terminology of the standard commissioned Galaxy Polls by those in favour of redefining marriage and reproduced the same results. The assessment of this from the report reads:

> Our poll produced results similar to the widely reported Galaxy polls (2009 –2011) on the topic of same sex marriage, when the question focused on “rights”, “discrimination”, “committed loving relationships”, and “valuing marriage”.

These results are unsurprising, given that the question asked respondents to indicate their level of support for applying secular values to a minority group.\(^ {54}\)

Crucially, these initial findings must give the remainder of the survey results solid credibility with those advocating change based on the standard Galaxy poll finding. To argue with the remainder is to bring into question the standard findings.

Further questioning about specifically changing the Marriage Act to legalise homosexual marriage reveals are more deeply divided Australian populace, “with little chance of consensus in the foreseeable future.”\(^ {55}\)

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55 Ibid., 3.
Further ahead, other questions produced some stunning results, at odds with the simplistic findings of the regular Galaxy Polls referred to above. Note that these results come from the same group that provided the 60% in favour of homosexual marriage result:

It seems that it’s okay to talk about allowing same sex marriage, but when it comes to doing something about it – changing the law – there is less support – why?.............

The question asked was: “I will list some arguments for keeping the definition of marriage unchanged, that is, applying only to a man and a woman and not to a same sex couple, and ask if you agree or are neutral or disagree with each one”.

% who agree (Base = All respondents)

Marriage between a man and a woman and them having children together is an important social institution and we should uphold marriage and its traditional meaning ......................................... 69%

Marriage is not just about love and commitment between two adults. It is also the best way to help ensure that children are raised by their own mother and father .................................... 59%

Where possible, as a society we should try to ensure that children are raised by their natural mother and father, and promote this ................................. 73%

Debating same sex marriage is a distraction and a waste of resources, and our politicians need to re-focus on the more important issues that really matter to mainstream Australians ..............................................61%

Same sex marriage would be a significant change to Australian society, and we should not rush into this without knowing the social impact, especially on children .............................................. 59%

Children will usually grow up happier if they have a home with both a mother and a father ................................................................. 53%

56 My emphasis – bold and in blue
It would seem that changing the law is seen to have implications for more in society than just same sex couples. Our survey shows that a majority of the respondents are concerned about the potential impact on children and on the status of traditional families.

There is also a majority view that Australia should not implement social reforms without a full understanding of the social impact, especially on children.

These results help to explain why there is less than 50% support for changing the Marriage Act – whilst rights for same sex couples are regarded as important, protecting social institutions and the well-being of children are also regarded as important – and both aspirations are not necessarily seen as complementary.

**A significant proportion of those in favour of changing the Marriage Act also agree with these arguments**

<table>
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<tr>
<th>% agree</th>
<th>(Base = Those who support changing the Marriage Act)</th>
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<tr>
<td>Marriage between a man and a woman and them having children together is an important social institution and we should uphold marriage and its traditional meaning.</td>
<td>44%</td>
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<tr>
<td>Marriage is not just about love and commitment between two adults. It is also the best way to help ensure that children are raised by their own mother and father</td>
<td>36%</td>
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<tr>
<td>Where possible, as a society we should try to ensure that children are raised by their natural mother and father, and promote this.</td>
<td>54%</td>
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<tr>
<td>Debating same sex marriage is a distraction and a waste of resources, and our politicians need to re-focus on the more important issues that really matter to mainstream Australians.</td>
<td>40%</td>
</tr>
<tr>
<td>Same sex marriage would be a significant change to Australian society, and we should not rush into this without knowing the social impact, especially on children</td>
<td>35%</td>
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These results suggest that many people hold simultaneous but contradictory beliefs, which might explain why there is not a strong consensus one way or the other in the Australian population on this issue.

Also, of those who strongly support a change to the Marriage Act, the figure is only 14%.\textsuperscript{57}

These results also demonstrate that the present reliance upon the spate of Galaxy Polls or polls posing similarly phrased questions obscures the fuller picture and does not merit complete trust.

These findings further reinforce the existence of a divided Australia, but which strongly values marriage, sees the clear connection with children, their right and need to be raised by a mother and a father, and which is not passionately committed to redefining marriage. This was borne out in the results in the Federal Parliament during 2012.

\textbf{Results in the Federal House and Senate during 2012}

The recent campaign to legalise homosexual marriage began formally with the first Marriage Equality Amendment Bill in 2009, introduced by Greens Senator Sarah Hanson-Young, and was defeated in the Senate on 25 February 2010. It continued with the strong Greens performance in the Federal Election later in the same year, leading to Senator Hanson-Young lodging the Marriage Equality Amendment Bill 2010 on the first sitting day of the Senate after the election, to be brought forward at a time of her choosing.\textsuperscript{58} The Bandt Motion, as referred to above followed and kept the issue sustained for nine months, while at the same time reeling from the attack on the Left from The Greens, Labor flew into panic.\textsuperscript{59}

The Left Faction of the ALP voted on 24 October 2010 to support homosexual marriage.\textsuperscript{60} Two weeks later, then Senator Mark Arbib called for the Party to change its Policy on homosexual marriage\textsuperscript{61}, and State Labor Conferences

\textsuperscript{57}Ibid., 4-6.
\textsuperscript{59}Eleanor Hall and Lyndal Curtis, ‘Labor left calls for MP gags to be lifted’, from \textit{The World Today}, 25 October 2010, \url{http://www.abc.net.au/worldtoday/content/2010/s3047219.htm} (accessed 20 February 2013)
passed motions calling on the Federal Government to legalise homosexual marriage, save in NSW, in the lead up to the next ALP National Conference. The next Conference was next due in mid 2012, but brought forward to 3 December 2011 due to the clamour over this issue. The ALP at its National Conference abandoned its support for marriage and replaced it with support for homosexual marriage, while narrowly voting to allow for a conscience vote amongst its members.

In 2012 there was also a House inquiry into the issue, which led to an inconclusive committee report and a Senate inquiry that found in favour 4-2. Of note was the amount of contributors to dissenting reports.

Finally after three years of sustained build up the matter was brought before both Houses of Parliament. The House voted on a Bill brought forward by Labor's Stephen Jones on 19 September 2012 with a resounding, overwhelming No - 98 votes against and 42 in favour. In the Senate, not long afterwards, the vote on a Bill brought forward jointly by four Labor Senators, Trish Crossin, Carol Brown, Louise Pratt and Gavin Marshall lost again, 41 votes against to 26 in favour.

The loss is significant, though falsely played up as more of a success by homosexual marriage advocates. If there had been no sustained campaign at all they might have a case, but given the relentless push for change over three years and the enormous volume of coverage in the press and social media, the level of failure is astounding. It also begs the question, if there was really such

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69 Australian Marriage Equality, ‘Call on MPs to oppose civil unions / Advocates will campaign against ‘failed experiment’, op. cit.
an overwhelming level of support for the legalisation of homosexual marriage, where is the hard evidence for it when it counts?

Of note, there has been no hue and cry after Federal Bills failed in Senate and House from the general populace.

The Coalition, to its credit, stood its ground in favour of marriage, despite calls for it to shift to a Conscience vote. No doubt pressure will remain on this point, but Kevin Andrews MP noted that had this occurred for the recent votes, “There would have been half a dozen people... who would have voted the other way.”

He also was reported as saying,

Addressing the Australian Christian Lobby's national conference in Canberra today, Liberal frontbencher Kevin Andrews said that the battle to protect marriage in the federal parliament “was conclusively won”. He said most MPs would now take the view that the matter was settled for some period of time.

“The battle will now move to the states,” he said, adding that he believed state governments did not have the constitutional power to make changes to marriage laws.

He said there would likely be High Court challenges against any state legalisation of gay marriage.

It would be an “extremely adventurous High Court" to fly in the face of the commonwealth parliament, which has twice in the past decade decided to keep the status quo.70

Changes in social attitudes have had three years to develop and register with Federal Parliamentarians, but despite the exposure and propaganda to this effect it has not shifted a significant amount. Support for marriage is both strong and resilient despite efforts to: change this, proclaim the contrary, and declare such change “inevitable” - as if to declare a fait accompli. It hasn’t worked. The real evidence for change is not there.

The push now at the State and Territory level is a begrudging reference to this failure.

Final Statement

The National Marriage Coalition rejects any proposed homosexual marriage law at any level of Government and that, according to the Constitution, legislating in the area of marriage is clearly a Federal power and the Federal parliament has not devolved any authority in this area to the States or Territories beyond the function of registration. Any attempt to do so will face blockage by S109 of the Australian Constitution.

Though some overseas jurisdictions have legislated for homosexual marriage, this amounts to less than 10% of all UN Member States. Australia, at all levels needs to maintain this perspective and we commend the recent decisions in both Houses of Parliament in Australia and in Tasmania for upholding marriage.

All such proposed legislation of homosexual marriage deprives a child of his or her right to a mother and a father, redefines marriage for everyone and is therefore intrinsically harmful. We believe that the NSW Parliament should abandon any consideration of it immediately and redirect its resources and energies to needed areas.
APPENDICIES

Articles refuting the so called conservative case for homosexual marriage follow. Please note that in the United States, in general, “Conservative” refers to the political Right, while “Liberal” refers to the political Left.

Is There a Conservative Argument for Gay Marriage?
February 20th, 2013 Betsy

By Jennifer Thieme, Director of Finance & Advancement for the Ruth Institute

This article was originally published at Clash Daily on February 1, 2013.

There is a small but steadily growing idea among conservatives that they can support gay marriage and remain conservative. My position is that this is not possible. Here’s why.

Gay marriage does not exist as a stand-alone policy issue. Nor is it a conservative issue, because it requires the natural family to be dismantled at the level of public policy. True conservatives support limited government, and they understand that there are other institutions which serve to limit government power. Two of these institutions are the natural family and religion.

Same sex marriage, which as a policy removes the gender requirement for marriage, is a great vehicle for those who wish to increase the scope and power of the government, as it forces these other institutions to diminish. These other institutions can no longer act as an effective barrier against government intrusion into the personal details of people’s lives. As these institutions diminish, government will step into the vacuum.

In order to accommodate gay couples into the institution of marriage, all gendered words are removed from the law, words such as bride, groom, husband, wife, mother, father. These are replaced with gender neutral words such as partner, party, applicant, and parent.

Some here may recall that in 2011, the Dept. of State tried to replace the words “mother and father” with “parent 1 and parent 2” from passport applications in a bow to LGBT pressure. I predict that as so called gay marriage gains traction, there will be stronger and stronger calls to remove these words from birth certificates as well. France is completely up in arms over gay marriage for precisely this reason – it un hinges biological parents from their children at the policy level. In Canada it has already happened.

This change means that marriage, as a public policy for every couple and family, becomes genderless. Individuals have gender, of course, but to accommodate gay couples, there is no
“gay marriage” as a public policy. A policy of accommodating gay couples into the institution of marriage might look like “bride and groom” for traditional couples, with the addition of “bride and bride” or “groom and groom” for gay couples, but that’s not what happens. It’s “partner 1 and partner 2” or “party A and party B” or “applicant A and applicant B” as the policy ... and it applies to ALL couples, not just gay ones. The new policy removes the traditional requirement that one of each gender be present in the union.

People don’t realize that in addition to there being no gay marriage as a policy under genderless marriage, there is also no traditional marriage. Some on the left will ask: “How does gay marriage harm YOUR marriage?” The answer is quite simple: traditional marriage will cease to exist as a public policy. Without gender, how can it?

So the next logical questions should be these:

1. Does marriage exist without sex?
2. Do we really believe that it will be a good thing to eliminate traditional marriage as a distinct policy?
3. What will society look like after a generation has passed without traditional marriage as a distinct policy?

There is, in my mind, absolutely no case for a true conservative to support sexless marriage as a public policy. Liberals, yes. It fits into their worldview quite well to have each individual beholden to the state and to no other institution such as their own natural family or their church ... but conservatives? No way.71

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**Gay Marriage and the Growth of State Intervention**

Gerard Calilhanna

In her defence against fellow members of the Liberal Party for her vote in favour of homosexual marriage, New South Wales MLC Catherine Cusak said:

> I don’t see it actually as being about gay people, I just actually see it as being the state shouldn’t be defining our relationships ... It’s a very philosophical view and it’s one that’s reasonably widespread within the Liberal Party.[1]

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It is for the reason of state involvement, precisely, that she voted the wrong way. The “philosophical view” of the Liberal Party, as reflected by Cusak, on the question of “homosexual marriage” must merit any Liberal Party member’s total opposition. To begin with, a fundamental redefinition of marriage in Australian law to legalise “homosexual marriage” redefines every marriage and has the immediate effect of severing the inherent biological link between marriage and children. The change to the institution is not cosmetic but complete, to bear no resemblance to its role, function and purpose in society.

In 1689, John Locke completed his *Two Treatises of Government*, a key work influencing English liberalism, and thereby formative in Australia’s development.[2] Locke is one of the thinkers who shaped modern liberalism,[3] especially in his assertion that the real purpose of the state is “to protect the liberty of the subject”. [4] Hence what he says about marriage is of considerable interest. In his *Second Treatise of Government*, [5] Locke explores the origins of political society, noting that “the first Society was between Man and Wife, which gave beginning to that between Parents and Children”. [6]

Locke continues:

> Conjugal Society is made by a voluntary Compact between Man and Woman: and tho’ it consist chiefly in such a Communion and Right in one another’s Bodies, as is necessary to its chief End, Procreation; yet it draws with it mutual Support, and Assistance, and a Communion of interest too, as necessary not only to unite their Care, and Affection, but also necessary to their common Off-spring, who have a Right to be nourished and maintained by them, till they are able to provide for themselves.[7]

Later he adds, in examining marriage and the role of the state:

> For all the ends of Marriage being to be obtained under Politick Government, as well as in the state of Nature, the Civil Magistrate doth not abridge the Right, or Power of either naturally necessary to those ends, viz. Procreation and mutual Support and Assistance whilst they are together; but only decides any Controversie that may arise between Man and Wife about them.[8]

For Locke, then, marriage is pre-state society, and the state’s authority is limited to intervening in marital difficulty.

**Massive Government Intervention into Society**

In the UK, the Prime Minister, David Cameron, in launching the push for homosexual marriage is on record as saying last year:

> We’re consulting on legalising gay marriage. To anyone who has reservations, I say: Yes, it’s about equality, but it’s also about something else: commitment. Conservatives believe in the ties that bind us; that society is stronger when we make vows to each other and support each other. So I don’t support gay marriage despite being a Conservative. I support gay marriage because I’m a Conservative.[9]

A reader will immediately note the complete absence of any reference to children, or a child’s right to a mother and a father.

One prominent and genuine Conservative voice from the UK, Norman Tebbitt—former minister in Margaret Thatcher’s government and former Chairman of the Conservative Party—chides David Cameron for this, commenting:

> Within the can of worms that Mr Cameron is determined to open there are several nests of snakes. Why should a marriage be confined to just two persons? What is the barrier to the marriage of sisters, brothers or even parents and children? Mr Cameron’s justification for all this is that he believes in it “because he is a Conservative” is absurd. Conservatives do not turn over long-standing (several thousands of years across
widely different cultures all over the world, in this case) with so little thought. He did not mention it when he set out his stall in the Conservative Party leadership election not long ago. Did he believe it then? [10]

Tebbitt’s view is a classic expression of Burkean thinking. Another major problem for a so-called “conservative case for homosexual marriage” is that it calls for an enormous level of government intervention into society. This is contrary to basic tenet of conservative politics.

To illustrate this we can turn again to David Cameron, who claims:

> Nearly two years on from coming into office, brick by brick, edifice by edifice, we are slowly dismantling the big-state structures we inherited from the last government. We are putting people in control, giving them the choices and chances that they get in almost every other area of life. [11]

Or, as Ronald Reagan stated in his Inaugural Address in 1981:

> In this present crisis, government is not the solution to our problem; government is the problem. From time to time we’ve been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. Well, if no one among us is capable of governing himself, then who among us has the capacity to govern someone else? All of us together, in and out of government, must bear the burden. [12]

Cameron and others, who claim to be conservative yet profess to support homosexual marriage, therefore work against their own principles. In her pamphlet *The Limited Government/Libertarian Case for Man Woman Marriage*, the American writer Jennifer Roback Morse explains:

> This suggestion makes plain how deeply redefining marriage alters our idea of parenthood. The biological principle of determining parentage has to be suppressed, and eventually replaced with another principle. That principle will be that the state will decide who counts as a parent.

> In short, redefining marriage from the union of a man and a woman to the union of any two persons jettisons three principles that we now take for granted. First, children are entitled to a relationship with both parents. Second, legal parenthood ordinarily tracks biological parentage. Third, the state recognizes parentage, but does not assign it ... [13]

Libertarians have every reason to respect marriage as a social institution. Marriage is an organic institution that emerges spontaneously from society. People of the opposite sex are naturally attracted to one another, couple with each other, co-create children, and raise those children. The little society of the family replenishes and sustains itself. Humanity’s natural sociability expresses itself most vibrantly within the family. A minimum-government libertarian can view this self-sustaining system with unadulterated awe ... [14]

> If the state commits itself to “marriage equality,” the state will have to enforce this idea upon the populace. “Marriage equality” is a completely artificial creation of the state, which cannot sustain itself. And precisely because it is an unnatural idea that does not spring unbidden to the human mind, the state will end up intervening in every aspect of society that touches upon marriage or gender or parenthood. This is far too much power to grant to the state, far too much social engineering, far too much thought control ... [15]

The state has no right to take over marriage and redefine it out of existence, or redefine it to suit its own purposes ... [16]
In her contribution to the 2006 book *The Meaning of Marriage*, Seana Sugrue returns to Locke’s idea of the pre-state Conjugal Society:

*Given the pre-political nature of conjugal society, the state regulates it [marriage] rightly by recognizing it as a natural fact with its own norms and purposes. The state ought not treat conjugal society as its own creation. Where there is evidence that parents are failing in their duties to each other or to their children, the state may intervene. Absent from this, however, the state ought to leave conjugal society, rooted in the union of one man and one woman, alone.*[18]

This pre-political conjugal society, “the existence of which is independent of the state, is precisely what advocates of same-sex marriage seek to change”.[19] Sugrue continues:

*Same-sex marriage is necessarily a political institution, whereas marriage is pre-political. Marriage has an existence independent of state power; same-sex marriage does not. The reality of children, and the duty of care imposed upon mothers and fathers to rear their offspring, would exist absent a political order ...*[20]

*Same-sex couples can only marry insofar as the state decrees that they can. In claiming for homosexuals the right to marry, the state also claims for itself the ability to declare what constitutes marriage. It endows itself with the prerogative of defining its terms. It transforms marriage from a pre-political obligation into its own creation. At the same time, it replaces marriage as an obligation within conjugal society to marriage as a choice and a means of self-gratification. In this way, it changes the character of marriage not just for same-sex couples, but for everyone. By allowing same-sex marriage, the state decrees that, henceforth, marriage is what the state says it is. Marriage then loses its status as a fundamental institution of civil society, and becomes a right, granted by the state, for the desiring self.*[21]

Here we have a major example of extreme statism, where a crucial pre-state institution that limits the power of the state is suppressed and replaced by an institution that depends on the state for its existence. The role of the state intrudes into an area where hitherto it has been absent. A key plank of limiting government is removed and the reach of state power takes an enormous step forward. In consequence, Sugrue observes:

*Being entirely a creation of the state, it [homosexual marriage] is an institution that needs to be coddled, and which demands a culture in which it is protected. It is desperately in need of state intervention to support it. For these reasons, once marriage becomes a statist institution for the sake of consenting adults, the state will be increasingly called upon to create the social conditions to protect these unions. The need of same-sex unions to be culturally coddled also increases the likelihood that the state will use public education for this end. In this way, same-sex marriage affects not just those who participate in it; it affects everyone, and especially our children.*[22]

The evidence of intended state protection of these proposals in Australia is already present. The political rhetoric that displays the intent to legislate already exists.

During the 2011 Queensland ALP State Conference, which passed a motion in favour of homosexual marriage, Andrew Dettmer, the Queensland Branch President, declared that opposition to homosexual marriage was as bad as racism:

*Queensland branch president Andrew Dettmer said the move, if passed at national level, would end the last vestige of discrimination against non-heterosexual couples. “The point I think we are all agreed about in our party is that discrimination against people on the basis of their gender or their sexual orientation is just as abominable and just as unsupportable as discrimination on the basis of race,” Mr Dettmer said.*[23]

Therefore any legal provisions penalising racial discrimination will extend to opponents of homosexual marriage should it ever become law in this country.
Similarly, Greens Senator Sarah Hanson-Young is on record as saying, “The idea of marriage only being between a man and a woman is not just outdated, but extremely, extremely defamatory.”[24] Those who publicly support marriage would be guilty of defamation.

Further to this threat will be the mandate to teach homosexual marriage in schools. Overseas examples are instructive.

In Canada, which has suppressed marriage and replaced it with homosexual marriage, one gay activist, Robin Perelle, boasts in response to an objector to the “Out in Schools” program:

“There is a moral and ethical question in all of this,” retired teacher Ben Seebaran said on Simpson’s radio show. “Society has evolved in such a way that those who do not subscribe to the view that gay marriages or differences in sexual orientations are quite acceptable, are made to feel less of a human being.”

This is a moral question, I agree. Just as the black civil rights movement changed the rules of what is and isn’t acceptable for racism, the gay rights movement is shifting norms in Canada. And with that comes a message to those who won’t evolve: your outdated morals are no longer acceptable, and we will teach your kids the new norms.

[25]

In Massachusetts, which has homosexual marriage, state schools are obliged to teach material promoting this, and no opt-out option exists for parents. A father was arrested in the course of objecting to material supporting homosexual marriage being taught to his son.

David Parker was arrested Wednesday [April 27, 2005] by Lexington Police, allegedly for “trespassing” at his son’s elementary school, while attending a scheduled meeting with the principal and the city’s Director of Education over his objections to homosexual curriculum materials and discussions in his son’s kindergarten class.

According to an “Article 8 Alliance” press release, at the meeting, Parker requested that the school inform him of when homosexual discussions would take place, so he could exclude his son from the activity. He said he would not leave until his request was granted. The Principal and the city’s Director of Education both refused his request. They then telephoned the Superintendent of Schools who also refused. Police were called, who told Parker that unless he left the school, he would be arrested.

Parker was arraigned in Concord District Court on Thursday on one count of trespassing; his attorney entered a plea of not guilty. Parker was freed after paying $1000 in bail and agreeing not to enter school property. He is due back in court for a trial June 1.[26]

The matter was challenged in the Federal Court, but the court found in favour of the school.[27]

When this lower court decision was challenged in the Federal Appeals Panel, the ruling by Judge Sandra L. Lynch was “that the 2003 Goodridge decision held ‘that the state constitution mandates the recognition of same-sex marriage’ and therefore, she implies, the schools must recognize it also”. [28] The Supreme Court would not hear the case and therefore this ruling stands.[29]

Not only is there no “conservative case for homosexual marriage”, there are also alarming reasons and implications to steadfastly oppose it. Any member of the Liberal Party, or of other conservative parties in Australia, who professes to support homosexual marriage must endorse a policy of more government rather than less. They must either abandon conservative politics or abandon support for “homosexual marriage”. There is no in-between.
This article is adapted from Gerard Calilhanna's Submission to the Marriage Equality Amendment Bill 2010 Senate Enquiry, Senate Standing Committees on Legal and Constitutional Affairs, Submission Number 134, National Marriage Coalition, 15-20


[6] Ibid., #77, 319. His emphasis.

[7] Ibid., 319.

[8] Ibid., 321-322.


[14] Ibid., 8

[15] Ibid., 11. My emphasis

[16] Ibid., 12

[17] Ibid., 13

[19] Ibid., 181.

[20] Ibid., 188.

[21] Ibid., 189.

[22] Ibid., 190.


