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Marriage Equality

CHRIS KNIGHT·[THURSDAY, 19 NOVEMBER 2015](https://www.facebook.com/notes/chris-knight/marriage-equality/10153108374260997)

With the likelihood of a plebiscite on marriage equality now looking increasingly certain in Australia, I thought it about time to put forward my arguments on the matter. I am someone for whom this issue affects directly, and have been disadvantaged by the current status quo in several ways. While I'll be outlining those actual cases later on, I'll be starting off with some foundational reasoning and then building up from there. I know many people on both sides of this issue, but this article is really directed at those either sitting on the fence or who are against change. A non-Facebook version is [available here](http://l.facebook.com/l.php?u=http%3A%2F%2Fchris-knight.net%2Fwritings%2Fmarriage-equality%2F&h=0AQFaTKKL&s=1) if desired. This is approximately a 15-minute read and starts from the absolute basics, because that's where the divergence in views on this matter appear to begin.

The Premise

The default state of human society is to allow everyone to do whatever they want - freedom. This isn't just an ideal, it's reality. It is the core basis on which the rest of our legal system sits. From this starting point, laws are then created to curtail our freedom in various ways. We have laws to limit the harm we inflict on others, or to define particular processes for doing things expediently. Ultimately all laws are created to solve particular problems. Ideally, if we are free to do something which causes no problems, then no law should be made to limit it. Note that this design isn't just a feature of modern Western society. Even the most brutal regimes operate this way because the alternative is a ridiculous one: banning everything and then passing laws to make exceptions. It'd be a long list. We'd need to start with laws allowing us to move and breathe. I don't think I need to explain further why this latter approach is completely unworkable.

So if we take freedom to be the correct default state for human society, then it follows that for any given proposed law, the onus is on those who wish to limit freedom to make their case for doing so. It is not the responsibility of anyone to justify their own freedom.

Limiting Freedoms

Having established our basis in freedom, we then need to define a problem and decide whether that problem requires only recommendations, or whether we must limit the freedom of citizens by creating legislation and enforcing it. Making these decisions is not always easy, and sometimes involves a balancing act between conflicting freedoms. Let's look at some examples.

In Australia, smoking inside establishments has been banned; the freedom of smokers curtailed in order to grant the freedom for non-smokers around them to breathe comfortably and stay healthy. The conflicting freedoms are weighed against each other and the freedom that causes harm to others, seen as a problem, is the one that comes out second best. On the recommendation side, we can look at sunscreen. There is no law mandating the use of sunscreen, but it is recommended by government bodies to avoid individual harm. Since a person refusing to use sunscreen is not impinging on the freedom of anyone around them, it would seem draconian to enforce its use. The evaluation process involved in making laws must look at the magnitude of the problem, and weigh this against the potential freedoms being limited.

One of the most important freedoms is freedom of thought. Freedom of religion, too, is required for any society that claims to allow freedom of thought, because religious belief is simply that. Thought. While religions may exist as collectives and organisations, the most important aspect is freedom of thought and belief at an individual level. It is equally important to note, however, that a religious belief does not have merit in itself just because it is a religious belief. It is a thought like any other, and when inserted in to the public discourse, is scrutinised as any other would be. The only universal human standards for analysing the merit of an idea are logic and reason, because these are the only tools that can be utilised by all, including those without religious beliefs.

So it follows that any proposed law to limit the freedom of others must have good reason and sound logic if it is to be enacted. Additionally, it must define a problem that is sufficient in magnitude to justify legislation and enforcement as opposed to just recommendations. A proposed law that is defined entirely through religious beliefs is neither logical nor reasonable. Its enactment would then mean either that freedoms are limited by solving a problem in an unreasonable way, or that freedoms are limited without logical proof that a problem exists. Were this to be done systematically, the enactment of such religious beliefs as law would establish a form of theocracy. Needless to say, freedom of religion cannot exist in a theocracy, and the separation of church and state has been a cornerstone of modern society for this very reason. If laws exist to solve problems, then the problems must be defined using methods other than religious belief. All laws must be proposed by using a form of reasoning that is agreed upon by all. That reasoning must therefore be secular.

Freedom of Religion

Many of the arguments defining same-sex marriage as a problem are religious in nature. While many are simply invalid for the reasons given above (eg: "God says so"), the more concerning ones are those in which religious people claim that their own religious freedom is impinged by the proposed changes. Unlike the other religious arguments, these are genuine concerns and worth addressing. It seems to me though, that in Australia at least, the concerns are linked to a lack of understanding about existing exemptions in anti-discrimination laws, and when they are and aren't appropriate.

Despite old aspirations to be champions of religious freedom, Western nations have in fact limited many religious freedoms throughout their history, and for good reason. We have banned some practices altogether, such as polygamy, despite religious objections. Just this year, a judge in Australia [ruled that the religious beliefs of Jehovah's Witnesses were not an acceptable argument in relation to the blood transfusion of their child](http://l.facebook.com/l.php?u=http%3A%2F%2Fwww.brisbanetimes.com.au%2Fqueensland%2Fjudge-rules-on-jehovahs-blood-transfusion-20150625-ghxsfp.html&h=KAQFYfepn&s=1). It's not the first ruling of its kind. Some religious beliefs are simply not acceptable to act on: those that do harm to others. Religious observances which don't cause problems are generally not legislated on, with adherents free to observe their various customs as they please. Some laws, understandably, may cause issues for religious people, but exemptions are made to cater for these where it is sensible to do so. For example, mandatory voting in Australia on Saturdays allows for an exemption on religious grounds, so Jews and Sabbatarian Christians can observe their Sabbath. This is deemed acceptable because the freedoms desired by those groups of people far outweigh the small logistical problems they create by way of early or postal voting. No harm is done. Allowing Sikhs to wear their turbans with their uniforms is another obviously acceptable exemption. It is important for all religious people to understand though that their religious freedom will always be, and has always been, limited to the confines of what society deems acceptable.

At some point, and as we saw in the smoking example, some freedoms are bound to come in to conflict with each other. For one who runs a business, his freedom is limited by compelling him to serve people that he would rather not. Religion aside for a moment, we can go back to the basis of this article to see that laws have been enacted to limit his freedom as a business owner, to solve the problem of unfair discrimination. This is why establishments must serve people regardless of their *sex, race, orientation, disability, political opinion,* or *religious belief*. These categories have been given special status in law to ensure respect for all, noting that the impingement on the business owner's freedom, while real, is negligible compared to the problems of those being disadvantaged by being refused service.

This situation has played out several times over the last few years with regard to the topic of marriage equality and religious freedom. The cake store run by Christians, the church-run adoption agency, the pastor or priest, the church itself, the civil marriage celebrant, and the wedding photographer. As we have already mentioned, religious freedom is confined to what society deems acceptable, so how does that play out under current laws? Is it balanced?

The first thing to note is that those situations listed are not all the same. An important overall distinction to make is between entirely religious services, and public services or businesses which happen to be run by religious people. Australian law, and that of similar countries, mandates that a publicly facing business must serve people without regard to their status in the special categories mentioned earlier. The need for this is obvious, especially in places where such business services are limited. If the only place in town is refusing to serve you because you are black, you have very few options indeed. This holds for the wedding photographer, the civil marriage celebrant, and the cake store. But it extends further - many charities are run by religious groups. The aged care home, the adoption agency, meals for the homeless. Unfair discrimination is not allowed in these cases either, and indeed, with so many of them relying on government grants for funding, it makes no sense for taxpayers money to be used in a way which contravenes the same standards those taxpayers are bound to when carrying out their own business. This is the reality of the situation in Australia right now. Our anti-discrimination laws have served us well for some time.

On the other hand we have entirely religious services. Church services, baptisms, or weddings where the pastor or priest is the celebrant. Wide-ranging exemptions to anti-discrimination law are already granted to these, up to and including allowing a religious celebrant to refuse to admit anyone for any reason. If a pastor or priest conscientiously objects to holding your wedding because you are not from his congregation, he is allowed. If he objects because you are blind, or gay, or Chinese, or a communist, he is allowed. These exemptions are granted because they are required to ensure the internal integrity of the religious organisation, of which these ceremonies form an integral part. It is left entirely up to the believers within the organisation as to what is and isn't integral to their faith in this area. The nature of belief makes it both difficult and entirely unnecessary to limit their freedoms in this area. There is no obvious benefit to society as a whole in doing so, as these are private clubs, not public facing services. Again, this is the reality of the law in Australia right now.

It is clear from existing laws that publicly facing businesses, including those run by religious charities or individuals, are to provide their services in line with existing anti-discrimination laws. In light of marriage equality, it would make no more sense to exempt the baker from baking a same-sex wedding cake, than it would to exempt him from baking a cake for a Chinese kid’s birthday or a disabled couple’s anniversary. All businesses in the public sphere operate under the same laws. In the same way that religious freedom does not exempt a bakery from food safety laws, it does not exempt them from anti-discrimination laws either. If a person cannot in good conscience do their job, they should find another one.

It is also clear from existing laws that, in light of marriage equality, churches and their clergy will be no more obliged to do anything more against their beliefs than they are already, when operating within the confines of their own organisation. A Rabbi can already refuse to marry a Muslim couple. A priest can already refuse to let his church be used for a black couple's wedding, or a tall couple's. A pastor can refuse to baptise someone who is too Arab-looking or too fat. The protections offered to religious bodies are enormous, and do not need strengthening should marriage equality become reality. If you have heard about some churches in Europe being compelled to do such things, it is because those churches are run by the state and are not exempted from anti-discrimination laws. That is a problem for Europe, and a timely lesson on the need for complete separation of church and state. Lacking a state-run church, Australia's situation is very different.

The Essence of the Case

Having read the above it should be fairly easy to see where I am going with this. With the default state of human society leaving people free to do as they wish, the laws around marriage should be constructed to allow any type of marriage as a starting point, and then grow to exclude certain types of marriages depending on the problems that arise. While I will detail these later, it is safe to say that Western society has already decided that allowing people to marry inanimate objects and animals creates problems. Likewise, forced marriages are problematic, as are polygamous/polyamorous ones, underage ones, and incestuous ones. Rational, logical cases have been made over the centuries to limit freedoms in this area, independent of religious beliefs. Re-analysing them today yields sufficiently similar results to continue excluding them from recognition. At the same time though, re-analysing the limitations around the sex of the people involved seems to have yielded some different results.

As yet, no reasonable, logical case has been made to define same-sex marriage as a problem worth legislating against. The arguments which have been made either do not stand up to scrutiny, or are religious in nature, and hence cannot be rationally scrutinised in the secular sphere of the legal system. Arguments about freedom of religion being impinged by the lifting of this limitation have focused on areas which are either already covered under existing anti-discrimination law (such as businesses) or are already covered by existing exemptions to anti-discrimination law (such as ceremonies). Remaining arguments have since focused on the definition of the word marriage and its relation to children, the slippery slope of allowing alternatives, and the lack of harm done by the current status quo. So, let's deal with them now.

Definitions, Traditions, and Slippery Slopes

A common argument I've seen lately has simply been an appeal to authority along the lines of *"The meaning of the word marriage is that it is a union of a man and a woman"*, followed by requests to check the Latin word root or check a dictionary. While I can't help but mention that the Oxford Dictionary has since updated its definition to be more inclusive, the thrust of my argument here is thus: A dictionary is descriptive, not proscriptive. It does not define what each word means, it records the commonly held definition that already exists in society for each word.

All words in all languages are defined by their users. It is merely by convention and agreement that the words we use carry the meanings that they do. This is why languages change over time. This is why dictionaries grow in two ways: both by adding more words, and adding more meanings under each word. If a society progresses to a certain point on a certain topic and the language changes to reflect that, then there is no point appealing to any dictionary or any other authority to revert that change. If the change is not popular, it will die out on its own. Societies and language change each other. Whether those changes happen colloquially or with approval of those in power, it doesn't change the fact that meanings of words can change. This is why it's *terrific* to be *cool*, and why that phrase would make no sense two hundred years ago. There is no word in the English language that can avoid having its meaning expanded or altered unless there is absolute agreement from *everyone*.

Attaching procreation to the definition of marriage likewise does no service. Society has never barred the barren from getting married, and modern society places no restriction on having children outside of wedlock. They have been completely decoupled from each other. Expectations around child support, surrogacy and adoption have all likewise come to be handled irrespective of the marriage status of the parents involved. Reflecting this, they are handled by a different set of laws to marriage in every state and territory of Australia. Unmarried couples can already have or adopt children. Same-sex couples can already have or adopt children. Marriage equality brings no changes to this situation, aside from allowing more children to have parents who are married.

It is also worth noting that many other ideas from cultures that were once important to their understanding of marriage are no longer considered as such. We do not see the wife as being submissive to a husband who is the unquestioned head of the household. We no longer see women as unequal, as property to be transferred between families for a dowry or other payment. We no longer force a marriage to remain permanent when divorce becomes the better option. There are many traditional understandings of marriage in various cultures, and in many cases, they have been horrific. Tradition is not in itself a reason to do or believe anything.

And then we come to the slippery slope. *"If we allow same-sex marriage, what will be next? Will we start allowing marriages with three people? With their pets? With their doormat?"* It never ceases to amaze me. It is as if changing the definition of marriage will open up the floodgates to all kinds of weird never-before-tried unions between all sorts. So let me frame this in a way that fits with the original basis of this article: We have already seen societies give too much freedom in this area, and we have already seen the problems they cause, and the reasoning for the laws limiting them.

* Underage marriage is illegal because it has been tried and we have seen the negative effects it has on children.
* Polygamous or polyamorous marriages are illegal because we have seen the negative effects on the individuals involved.
* Incestuous marriage is illegal because we have seen the negative effects it has on families.
* Forced marriage is illegal because it limits the freedom of whoever is being forced in to it.

Allowing same-sex couples to marry won't lead to any of the above, because they have all been outlawed for their own reasons, independent of each other and of the other definitional arguments. Indeed, all of the above have happened in the past, and were still called marriages.

The Status Quo

The final argument I am used to seeing thrown about can be simply put as this: *"Same-sex couples already have all the same legal rights as married couples in Australia, so why do they need anything else?"*. Using the basis of this article however, we have shown that it is not the supporters of marriage equality who need to answer this question. If we are allowing freedom except where needed to prevent problems, the onus is on the opponents of marriage equality to argue why LGBTI people should be denied this freedom. What problem does it cause that is so serious as to be worth legislating against?

Despite this, it is not hard to see where difficulties arise for same-sex couples despite the legal changes in recent years. Some of these have affected me personally in fairly small ways, while others have been caught up in some truly ridiculous events.

In my case, I have a NSW Registered Relationship with my partner. This confers legal benefits on us as a couple and is recognised throughout Australia. When we moved to Germany in 2012, we were told by the German consulate in Sydney that it might not be recognised as equivalent to a German "Eingetragene Lebenspartnerschaft" (or Registered Life Partnership). Taking the risk, we accepted the job and moved there anyway, relieved to find that they did indeed recognise it and we had few problems. As his spouse, I was entitled to stay in Germany despite not having any reason to be there other than to be together. It was only a year after we moved, however, that the German constitutional court ruled that life partnerships were entitled to all of the same tax benefits as married couples there. The difference between registered relationships in different jurisdictions means you never know just how disadvantaged you are going to be, and in our case even the various authorities of that jurisdiction were not all sure themselves. Marriage does not have this problem, as the understanding of the relationship is universal.

Towards the end of our time in Germany, my partner accepted an interview for a position in the USA. After doing some homework, we found that I would not be able to move there with him, as I would not be recognised as his spouse by their immigration department. We had to be married for that, and while the USA now allows for same-sex marriage, visa rules made it impossible for me to go there until we were married first. Obtaining a visitor visa or using an ESTA visa waiver for the purpose of getting married and then staying is forbidden. To be fair on the Americans though, they are treating all couples equally, regardless of sex.

In the end, my partner accepted a job in France. Thinking it would be similar or even more liberal than Germany, I was surprised to find the French consulate saying that our registered relationship would not be recognised. Unlike the Americans though, the French were happy to give me a visitor visa with the option of getting married after arrival. What this meant in practice however, was that I had to finance my own health insurance at substantial cost, whereas a married couple would have both been covered under the social insurance of the employed spouse. Additionally, I was put on a separate waiting list to my partner for my residence permit - a difference of months - throwing important travel plans up in the air. While these are fairly small things, they did turn out to be expensive. More importantly, they are both things a straight couple from Australia would have easily avoided just by being married already - an option not available to us. If we need to stay in France for more than one year, we will have to get married - on the other side of the world from our friends and family.

Living in a globalised society, those couples who move around for work are at a distinct disadvantage if they lack a marriage certificate. Given the common shared values between Western democracies, it makes no sense to maintain this situation. Australia remains the only sovereign nation in the Anglosphere that impedes some of its citizens from advancing their international careers by dragging its feet on marriage equality.

Enough about me though, how is the status quo affecting others? [The Guardian reported](http://l.facebook.com/l.php?u=http%3A%2F%2Fwww.theguardian.com%2Fcommentisfree%2F2015%2Fnov%2F13%2Fwith-a-marriage-certificate-ben-jago-could-have-laid-his-partner-to-rest-without-it-he-was-a-stranger&h=1AQEURtsd&s=1) only a short time ago about a Tasmanian man who was not recognised as his deceased partner's legal next of kin, despite the law saying he should have been. He was not recognised by the police, nor by the coroner - people who you would have thought would be familiar with the laws of the state. Marriage brings with it a universal understanding of the nature of a relationship, an understanding that such couples as this deserve to have been given.

But it gets worse. Current laws in various states, while just recently coming under review, actually force transgender people to get a divorce before they can have their desired gender officially recorded, to prevent the marriage from becoming between a same-sex couple. Imagine that - a couple who has been married for decades being forced to get a divorce by the government. For intersex people, many born with organ differences that mean they don’t identify as either male or female, and some of whom have fought for years and finally won the right to obtain a third official sex option, cannot choose that option to be on their official records while they are married. They must choose between having their real identity recognised, or staying married to who they love.

It is ironic that some laws seeking to "protect traditional marriage" are explicitly designed to force loving married couples to divorce. Make no mistake: the status quo in Australia is unjust and untenable.

Conclusions

An ideal society is one which maximises freedom while minimising problems. By default, humans should be free to do as they please, and laws to curtail freedoms must only exist in order to solve problems. When justifying any law, the onus is on those who seek to limit others freedoms to define what the problem is, and why it is serious enough to justify the enactment of legislation and enforcement. This justification must occur in the secular realm using logic and reason, not religious belief or tradition.

Such a system inevitably gives rise to conflicting freedoms. When considering laws to deal with these, proposals should be weighed in favour of those who would be more disadvantaged or harmed in the given situation. This means businesses must adhere to anti-discrimination laws when serving any member of the public, regardless of the religious beliefs of the staff. So bake that wedding cake. Let that couple adopt a kid. Religious freedom, while hugely important, has always been limited in many ways by what society deems acceptable. This is nothing new, and existing laws ensure that religious practise outside of the public sphere can and will remain free to discriminate as adherents see fit. In the public sphere however, society's expectations are different, and so the laws are designed accordingly.

So, from the perspective of conflicting freedoms, arguments against same-sex marriage appear to fail. This means opponents to marriage equality must instead seek to limit the freedom of same-sex couples by defining the problems that such freedom to marry would entail. These "problems" have so far been at best specious, with arguments about the definition of marriage being easily set aside with the realisation of the dynamic nature of language, and the irrelevance of procreation to the issue at hand. Points put forward about preserving existing norms and traditions make little sense when looking at the appalling history of some marriage traditions over time, against the ability and willingness of modern society to make improvements. Appropriately, the slippery slope argument falls flat on its face when considered in light of the fact that all of the potentially absurd things that could happen have, in fact, already happened in the past, and have been legislated against for their own valid reasons.

Finally, the arguments about preserving the status quo are raised with ignorance of two key points. The most visible is that of the actual disadvantages still faced by LGBTI people right now, despite existing legislation in Australia. But beyond this is a misunderstanding of the role of the legal system: to place restrictions on freedoms only when there is a proven need to do so. No argument yet presented has provided this proof, and the onus is still on opponents of marriage equality to do so.

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