

What Same-Sex Marriage Means

by ANDRE ARCHIE

Debating Same-Sex Marriage, John Corvino and Maggie Gallagher, Oxford University Press, 296 pages

We opponents of same-sex marriage are fighting a rear-guard battle. Recently Maine, Maryland, Minnesota, and Washington passed referendums in support of legal unions for gay couples. If the latest polls are to be believed, a substantial majority of Americans in the not too distant future will judge same-sex marriage to be morally equivalent to heterosexual marriage. What accounts for the radical shift in public opinion from a traditionalist understanding of marriage to a progressive one?

In *Debating Same-Sex Marriage*, authors Maggie Gallagher (co-founder of the National Organization for Marriage) and John Corvino (associate professor of philosophy at Wayne State University) debate the philosophical arguments for their respective positions. As they explain in the introduction, their purpose is to “achieve disagreement” in order to uncover “where they differ and why.”

Gallagher’s argument against same-sex marriage is divided into two parts. The first part contends that marriage refers to a “natural kind” that law did not create. The second part claims that historic and cross-cultural understandings of marriage are grounded in its natural foundations. Gallagher begins by stating the traditionalist view of marriage, a view she says elites now find incomprehensible: “Marriage is intrinsically a sexual union of husband and wife, because these are the only unions that can make new life and connect those children in love to their co-creators, their mother and their father.”

According to Gallagher, marital unions are unique insofar as they consolidate basic goods like sex, love, babies, rearing children, and mother and fathers. These basic goods tend to fragment outside the marital union. Since marriage is the institution that best functions to tie together the basic goods, it is intrinsically moral.

Gallagher argues that the word marriage refers to a natural kind. Believers in natural kinds hold that words, taxonomies, and classifications track the divisions within nature. Unlike a corporation, which is an institution that comes into being and is regulated through legal decrees and definitions, marriage “has meaning prior to and outside a current legal definition.” Likewise, the component parts of marriage, the basic goods, are prior to and outside legal definition. For example, one way of talking about sexual relations when construing marriage as referring to a natural kind is to argue that sexual relations require a male and female body for the purpose of reproduction. Law may regulate sexual relations, but law cannot decree that male bodies unite for the sake of reproduction. In this view, marriage can be affirmed, denied or regulated by the law, “but law alone cannot create marriage in a socially meaningful way.”

Although Gallagher acknowledges in a footnote that her view of marriage is only partially indebted to theorists such as Robert P. George and John Finnis, it is clear that her conception of marriage is deeply grounded in the natural-law tradition.

In the second part of her argument—“What is Marriage: The Case for Our Historic, Cross-Cultural Understanding”—Gallagher states that “marriage is a virtually universal human social institution. It exists in vir-

tually every known human society.” She briefly mentions various forms that marriage has taken across history and cultures from the jungle of the Amazon, the steppes of Asia, the deserts of Africa to the forests of America and Europe. The recurrence of the marriage idea in diverse human societies, she says, confirms that the institution is grounded in nature and that it “addresses three persistent truths about human beings everywhere.”

The first truth is that marriage provides a context in which men and women both satisfy and tame their sexual desires. The second truth is that marriage provides the context in which society replenishes itself through reproduction. The third truth regarding marriage is that a child ought to have a mother as well as a father. Gallagher supplies historical context to emphasize the importance of this third truth by explaining that in the 1970s many educated elites ar-

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gued that nontraditional family structures were good. Single mothers and unmarried women with children were all considered liberated from “archaic moral norms.”

Gallagher rightly points out that the elites were wrong. Subsequent social-science studies have shown that children tend to do better emotionally and intellectually when they are brought up by married mothers and fathers. Gallagher’s arguments are bolstered by the recent social-science research done by Mark Regnerus on adult children of parents who have same-sex re-

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relationships. His major finding is that these children of parents have some of the same social problems as the children of co-habiting parents or single parents.

If marriage refers to a natural kind that consists of a mother and a father, and it is not created by law because it is prior to law, why does the law regulate marriage? Because civic order, according to Gallagher, has a stake in regulating the sexual behavior of men and women for the purpose of ensuring that children are raised by married mothers and fathers in a context that provides a sense of familial perma-

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nence, monogamy, and fidelity.

Corvino offers a radically different conception of marriage. He defines marriage as involving a "couple's commitment to each other and to society that they are each other's main line of defense in the world, for life. It [marriage] is an exclusive commitment, not in the sense a spouse doesn't care for other people (children, friends, parents), but in the sense that only one person can be your Number One Person."

From Gallagher's perspective, Corvino's definition of marriage is radical because it is genderless and purposeless. It strips marriage of its role in regulating sexual contact for the purpose of reproduction. Even if one were to argue that sexual contact within marriage is not always for the sake of reproduction, it is still the case that sexual contact between a husband

and wife may potentially result in reproduction. Even when conception cannot take place in a heterosexual marriage due to infertility, purpose resides in the couple's organic bodily union. Corvino's definition of marriage merely describes an emotional relationship.

Corvino argues that the word marriage does not refer to a natural kind. Like most words that are governed by convention, marriage acquires its meaning through a "shared understanding across a community." According to Corvino, Gallagher has fallen into the error of thinking that marriage has a static referent that is independent of law and social custom. To illustrate her confusion he cites two examples. The first concedes Gallagher's point that some words, like the word mother, refer to a biological reality: "the mother is the person who bears the child with her body." But Gallagher also states that through law and custom a mother who "can-

not or will not perform her maternal function for the child" can be replaced by another mother who can perform her maternal function. Similarly, Corvino argues, the traditional definition of marriage can be replaced by one that includes same-sex couples. Same-sex couples, according to Corvino, can perform social roles that are associated with married couples like romantic partnering and exclusive commitment.

His second example highlights the elasticity of conventional institutions such as marriage by analogizing it to the introduction of the designated hitter rule in baseball. The rule allowed someone else to hit for the pitcher. Purists objected to the rule, but it became an accepted feature of the game. Today the word baseball includes the designated hitter rule. Corvino's point is that social practices like baseball

and marriage, contra Gallagher, are not prior to custom and outside current legal definition. These social practices are the product of custom and law.

Gallagher's argument against same-sex marriage is motivated by the natural-law tradition, which states that marriage requires procreative-type acts. Corvino takes issue with natural-law theorists who argue that homosexual conduct is wrong because "it violates the sexual organs' 'natural purpose' of procreation." One of the questions he raises is whether a sterile heterosexual couple violates the natural purpose of procreation. If the answer is no, Corvino responds, would not the same hold for a same-sex couple? Another question is whether the natural-law tradition would allow paraplegics to marry legally. The inability of the sterile heterosexual couple or the paraplegic to realize the natural purpose of their sexual organs leads Corvino to conclude that the natural-law theorists' arguments in opposition to same-sex marriage are incoherent.

Debating Same-Sex Marriage is an important book that lays bare the philosophical arguments for and against the legalization of same-sex marriage. Although I am partial to Gallagher's arguments, Corvino's position is well argued and more in tune with the times. Perhaps the traditionalist's view of marriage as a heterosexual institution should consider the position recently advocated by David Blankenhorn, a former opponent of same-sex marriage who has come to believe that marriage as a social practice will be strengthened by including homosexual couples in such a conservative institution. Whether or not Blankenhorn is correct, whichever side wins the debate over same-sex marriage, the losing side will be permanently marginalized. ■

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