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What Are We Fighting For?

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The same-sex marriage debate raises some difficult questions. Is same-sex marriage really worth fighting for? What would same-sex marriage mean for us? What exactly is marriage anyway?

Many advocates of same-sex marriage seem to assume that marriage is a purely legal institution, consisting of a cluster of legal rights, obligations, and benefits. Married couples have mutual rights and obligations, such as the right to mutual financial support and (in the event of divorce or separation) to alimony and an equitable division of property; and they also receive certain state-provided benefits such as tax breaks, preferential immigration treatment, tenancy succession rights, health insurance benefits, and so on.

If marriage is no more than this, however, then it is not marriage itself that matters, but only its constituent rights and benefits. But the best way to secure these rights and benefits for same-sex couples may not be to try to get them through 'marriage' as such. After all, the mutual rights and obligations of marriage can already be re-created by means of private contracts, wills, and power-of-attorney agreements. And some of the other legal benefits of marriage are already being split off from marriage and provided to same-sex couples. Even though same-sex marriage does not exist anywhere in the world, same-sex partners already receive health insurance benefits from many employers, preferential immigration treatment from some countries, tenancy succession rights in some cities, and so on. If these legal rights and benefits are all that matter, then it is probably a mistake to try to secure them all at once by fighting for full same-sex marriage.

As most people intuitively sense, however, marriage is more than just a cluster of legal rights and benefits. Of course the legal aspects of marriage are important. But marriage involves more than this. Marriage is a fusion of law and culture. It is a legal status that not only confers legal rights and obligations, but also has crucial effects on how the married couple is regarded by society.

The point is not that the law requires or encourages people to approve of and support the married couple's relationship—the law does nothing to deter me from disapproving of a friend's marriage, or even from persuading my friend to get divorced, if I see fit to do so—but that society as a whole has certain generally shared expectations about the kind of relationship that married couples typically have (while it lacks any such clear expectations about relationships of other sorts). Once a

couple is legally married, society will come to expect that their relationship is of this kind. These expectations include, at least in our society, that the **couple engage in intimacy** and probably sex; that they have shared finances and a **shared household**, or at least co-operate extensively in coping with the **necessities** of life; that they have a serious long-term commitment to their relationship; and that the relationship involves certain legal rights and obligations, notably the right to mutual financial support.

The legal aspects of marriage complement and undergird society's shared expectations of marriage. Marriage is a legal status: the question 'Is Chris married to Jo?' is a legal question; it is the law that determines who is married and who is not. This means that there is general agreement about who is married and who is not, thus allowing the married couple to be regarded as married by society as a whole (not just by their particular circle or subculture). The legally binding mutual rights and obligations of marriage reflect society's expectations of marriage, and when necessary are enforced, thus providing an assurance that these expectations will be fulfilled. For example, rights such as the right to spousal support and (in the event of divorce or separation) to alimony and an equitable division of property reinforce the generally shared expectation that marriage involves a serious mutual commitment to long-term economic and domestic partnership. In this way, these legal aspects of marriage, together with the fact that marriage is so familiar, provide an assurance that society as a whole will share these generally shared expectations of marriage, and that the married couple's relationship will be regarded in the light of these expectations.

This helps to explain what attracts couples to the institution of marriage. Couples get married because they not only want to make a legally binding commitment to each other, but also want to get the rest of society to understand that they have a serious commitment to an intimate relationship, which involves long-term domestic and economic partnership. It is the public recognition of the status of 'married' that constitutes the most important benefit of marriage, and what is most crucially abridged when the State discriminates against gay couples who want to marry.

Same-sex couples want to get married for the same reasons that heterosexual couples do. They not only want the legal rights and benefits of marriage; they also want to be regarded as married by society. It is all too easy for the rest of society to ignore same-sex relationships, and to assume that they are only sexual, or involve no serious long-term commitment or sharing of finances and household responsibilities. Many gay and lesbian couples want to make it clear to everyone that they have a relationship of the same general kind as society expects of married couples. Domestic partnerships are just less effective for this purpose. If you say, 'Chris and I are domestic partners,' your audience may wonder, 'Do domestic partnerships expire every month unless they are renewed?'

Are the partners obliged to support each other financially? Do they have a sexual relationship—or are they just roommates who want to keep the rent-controlled apartment if the other dies?’ For society at large, domestic partnerships and commitment ceremonies are less familiar than marriage; they lack the resonance of marriage.

Same-sex marriage would clearly not deprive anyone else of any important benefits of marriage, and would not fundamentally change its definition (intimacy, shared household, mutual commitment, and so on). Other elements that may be included in this definition, such as procreation, are far from being as categorical as the ones I’ve specified. Thus, for example, while there may be a general expectation that many couples will have children together, society has never expected all married couples to do so. 9

Some opponents of same-sex marriage are concerned that if marriage were extended to couples who obviously cannot procreate together, this would weaken the association between marriage and procreation, reducing married couples’ motivation to have children. Others worry that same-sex marriages would be more liable to marital breakdown than heterosexual marriages, but this is mere speculation in the absence of any accumulated experience with same-sex marriage. 10

The ban on same-sex marriage certainly cannot be justified on the grounds that it serves to express and reinforce the view, which a number of people hold, that heterosexual unions are superior to homosexual unions, based on religious credos or moral statements. The State cannot justify its actions by appeal to such controversial moral or religious views, any more than it can justify them by appeal to the view that Christianity is superior to Judaism. The ban on same-sex marriage is opposed by some because it seems to install homosexual relations as equal in value to heterosexual ones. Technically, it does no such thing. The state allows convicted wife-murderers, child-abusers, and rapists to marry, even while in jail; it is not expressing any sort of approval of these relationships. 11

Once we understand what marriage is, we can see what marriage would mean for us, and why it is worth fighting for. Same-sex marriage would not force anyone to honor or approve of gay or lesbian relationships against their will. But it would enable those of us who are involved in gay or lesbian relationships to get the rest of society to understand that we take these relationships just as seriously as heterosexual married couples take theirs. And without marriage, we remain second-class citizens—excluded, for no good reason, from participating in one of the basic institutions of society. 12