

A FAIR AND BALANCED ARGUMENT IN FAVOR OF GAY MARRIAGE: ONE PHILOSOPHER'S PERSPECTIVE

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Let me begin with some words about the title of this talk: The familiar phrase “fair and balanced” occurs in the title because I intend in this paper’s argument to be fair to my opponent; that is, I will not be knowingly committing fallacies in order to make my arguments. I am a philosopher, not a political scientist, nor an activist. While political commentators, politicians, marketers, lawyers, and comedians have the luxury of using whatever argument they can find to prove their side correct, market a product, or make people laugh, philosophers are concerned with actually finding and articulating good reasons for believing that a conclusion is true, as well as directly addressing objections against their arguments. Thus, look at this paper as my attempt (remember, “one philosopher’s perspective”) to respond to some popular objections I’ve heard against same sex or gay marriage and to argue in favor of gay marriage, given that we are living in the United States. My argument will not necessarily apply to those living in other countries with different constitutions and laws.

Next, to my knowledge, it so happens that the most vocal opponents of gay marriage that I am aware of are Christians, so many of the objections against gay marriage will be their objections, and many of my replies will deal somewhat with the Bible and church history. Please do not interpret any of my remarks as an assessment of the value of Christianity as a religion, and certainly not a negative assessment of Christianity. As I said above, I am not intending to be unfair in any way to my opponents; I am seeking a consistent position from my opponents as well as from myself. If I find that my opponents are not consistent or have poor reasons for their view, I will leave it to them to resolve the problems that might arise.

Let me now review eight of the arguments that I have heard against gay marriage (I’ll refer to these arguments as objections, though they are put in the form of arguments), and present my replies to them. When I am finished covering the objections and my replies in turn, I will present an argument in favor of gay marriage. Without further ado, then, here is the first objection that I’d like to address against gay marriage:

OBJ1: THE NO PROCREATION (UNNATURAL) OBJECTION: If the only legitimate goal or the central purpose of marriage is to reproduce and raise children, then gay marriage is wrong (Implied: Homosexuality is unnatural because homosexual sex cannot lead to procreation); Therefore, gay marriage should be illegal (because it would legitimize homosexuality).

I have four replies to this argument:

REP1: ST. THOMAS AQUINAS ENDORSEMENT(?): The Christian theologian St. Thomas Aquinas argues that “there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals; and in virtue of this inclination, those things are said to belong to the natural law which nature has taught to all animals, such as sexual intercourse, the education of offspring and so forth.”¹ And: “Everything created, whether it could have been otherwise or had to be as it is, is subject to the eternal law; only God himself is exempt since he is the law.”² Lastly (for our purposes): “... every movement in nature is subject to God’s eternal law”³; since humans make actions in nature, then their actions are subject to God’s eternal law. If humans have a nature in common with nonhuman animals and similar

¹ Theodore Denise, Nicholas White, Sheldon Peterfreund. *Great Traditions in Ethics*, Eleventh edition; p. 85.

² Thomas Aquinas. *Summa Theologiae: A Concise Translation*, Timothy McDermott, ed. Allen: Christian Classics, 1989; p. 285.

³ Thomas Aquinas. *Summa Theologiae: A Concise Translation*, Timothy McDermott, ed. Allen: Christian Classics, 1989; p. 285.

inclinations such as sexual intercourse, and if natural law reflects eternal law, then Aquinas' theology can be seen as endorsing homosexual sex in humans. Why? Because we have a handful of examples of homosexual activity in animals. Here is a quotation from [NationalGeographic.com](http://www.nationalgeographic.com):

... some same-sex birds *do* do it. So do beetles, sheep, fruit bats, dolphins, and orangutans. Zoologists are discovering that homosexual and bisexual activity is not unknown within the animal kingdom.⁴

Therefore, if we assume that Aquinas is correct about natural law reflecting eternal law, given that homosexuality occurs in nature, human homosexuality is indeed natural. (The next reply is closely related to this one.)

REP2: BIOLOGICAL DIFFERENCES: Brain structures (e.g., hypothalamuses) are found to be different in homosexuals than those in heterosexuals, which implies a natural difference. Moreover, research is heavily leaning in the direction of biological differences between homosexuals and heterosexuals, and if current trends hold, we will only see more and more evidence for that conclusion in the future. Let us engage in a simple thought experiment: Ask yourself: "Did I CHOOSE my sexual orientation?" That is, around puberty, did you carefully and consciously weigh the costs and benefits of being attracted to the same sex, and then do the same for the opposite sex, and come to a rational conclusion about which sex to which it would be better to be attracted? If not, could you right now (assuming that you're not bisexual), simply *consciously decide* to be attracted to the sex that you are not currently attracted to? Speaking purely for myself, the answers are no to all of these questions. But also ask yourself: Would you choose to be oriented to be attracted to your own sex and therefore knowingly choose to be hated at least by *some* people and made to feel outside normal society? It just doesn't seem likely. Therefore, it is intuitive, even if it is not a proven fact, that homosexuality arguably may be biological and not be a choice.

REP3: NON-PROCREATIONAL HETEROSEXUAL SEX ALLOWED: The state does not sanction heterosexual marriages based on fertility (as Jonathon Rauch said in a debate online⁵), nor are heterosexual married couples required by law to procreate. Though one's religion may endorse, promote, and even require procreation, the fact that a gay couple cannot naturally have children does not provide sufficient justification for not allowing them to marry.

REP4: NON-PROCREATIONAL, FULFILLING MARRIAGE(?): It is not even clear that Christian theology, even the typically rather strict Catholic theology, demands or requires children from a fulfilling marriage: Joseph Martos, in his *Doors to the Sacred*,⁶ states that Catholic personalists such as Herbert Doms and others thought that "marriage and sex had meaning in themselves, and so they did not have to get their meaning or justification from the children that resulted from intercourse. The meaning of marriage was the unity of two persons in a common life of sharing and commitment, and the meaning of intercourse was the physical and spiritual self-giving that occurred in the intimate union of two persons in love. Thus the primary purpose of marriage was the personal fulfillment and mutual growth of the spouses which occurred not only through their sexual relations but through all the interpersonal relations of their married life. Children were thus secondary to the meaning and purpose of marriage, and even though they were to be loved and nurtured for their own sake, neither children nor the absence of children affected the primary meaning of marital and sexual union" (pp. 443-444).

⁴ http://news.nationalgeographic.com/news/2004/07/0722_040722_gayanimal.html, accessed 11/11/05.

⁵ Jonathan Rauch, Senior Writer and Columnist, *National Journal*, argued in favor of gay marriage, in an online debate, originally held at the University of Washington, "Will Same-Sex Marriage Hurt America?" From:

<http://www.isi.org/lectures/lectures.aspx?SBY=search&SSub=speaker&SFor=Gallagher>

⁶ Joseph Martos, *Doors to the Sacred: A Historical Introduction to Sacraments in the Catholic Church*, Garden City: Image Books, 1982.

THEREFORE, the Unnatural/Procreational Argument is not a sound argument against gay marriage.

OBJ2: RELIGIOUS OBJECTION: Homosexuality (and/or practicing homosexuality) is against my religion (i.e., my religion does not recognize gay marriage); Therefore, gay marriage should not be legalized.

I have three replies to this argument:

REP1: NON-RELIGIOUS INSTITUTION(?): Marriage has not always been a religious institution. For instance, in Jewish tradition a few thousand years ago, if a couple slept together, they were married. There was no religious wedding ceremony initially; for example, there is no textual evidence in the Bible that Adam and Eve were married by any ceremony, nor is there any evidence that anyone got married in a religious ceremony versus a civil ceremony. The fact that it could have happened is not enough evidence to show that marriage is a religious institution with a strong religious history. Turning to the Catholic tradition later, I will discuss how late in its history the Catholic Church had a wedding ceremony. Furthermore, even in America today, whether or not you are married in a religious ceremony, the government does not recognize a marriage until the Clerk of Courts records that marriage and a fee is paid (and note that the wedding must be performed by a state licensed person), at which time you are afforded many legal rights (upon which I will elaborate later). Lastly, in many states there are common law marriages that require no registration, fees, or official approval. Admittedly, this reply does not by itself negate the objection; however, it does raise questions about how seriously we should take religious objections given that religions have not always consistently been involved in marriages and given our States' role in marriage in the United State.

REP2: NO STATE RELIGION/FIRST AMENDMENT, PART I: Since the First Amendment is part of our Constitution and prohibits the establishment of a state religion, any argument based on one's religion that concludes that no gay US citizens should be able to marry, would appear to be unconstitutional.⁷ If, on the other hand, America was a theocracy, with one religion informing our laws, then we might find it easier to conclude that gay marriages are wrong. As it is, however, both sides should strive to present rational arguments in favor of their view that are intended to convince everyone in America: atheists, agnostics, Satanists, Christians, Jews, Muslims, Buddhists, Hindi, New Ageists, etc. This reply segues nicely with the next reply:

REP3: MISSING THE ISSUE(?): The issue is not whether your religion recognizes or does not recognize a relationship as a marriage: Let each religion recognize or not recognize whatever marriages it wishes – many, if not most, religions already do not recognize any marriage except those performed in their worship sites through their rituals.

THEREFORE, since American marriage is not necessarily a religious institution, since we have no state religion, and since recognition of marriage by religions is not the issue, religion is irrelevant to law.

⁷ Here are Kerry Liebowitz's (who has a Master of Art degree in social science from the University of Chicago and a B.A. in political science from the University of Michigan) comments on the establishment clause of the First Amendment: "The establishment clause of the First Amendment was largely a function, I think, of the religious pluralism that underlined the colonial period. A clear majority of the colonists were members of a variety of "unpopular" sects. Almost all of these were Protestant, but they were (to coin a phrase) "minority Protestant sects" in the homeland--Presbyterians, Quakers, Congregationalists, Mennonites, Lutherans, etc. There was no "majority sect" in the new United States as a whole, and the history of religious oppression that caused many of these folks to emigrate to the colonies in the first place, coupled with the lack of a true majority sect, led (I believe) to the adoption of the establishment clause" (e-mail message sent to Yount).

OBJ3: VIOLATES U.S.’S JUDEO-CHRISTIAN VALUES OBJECTION: Gay marriage violates the Judeo-Christian values and tradition that our country was founded upon; Tradition is important and anything that violates that tradition is wrong; Therefore, gay marriage should not be legalized.

I have seven replies to this argument (note that I will not deny that there has been ANY Judeo-Christian influence in any of these replies; however, I do question exactly what that influence has been or implies, given our other influences, history, and laws):

REP1: INSUFFICIENT TRADITION: This objection is a simple appeal to tradition, which by itself is a poor argument (in fact, appeal to tradition has been labeled a fallacy, [here](#)), and one which we should not accept. Given that we know that our “tradition” has been wrong in the past, if the only support one can give is to uphold tradition, this appeal is insufficient. For instance, our culture used to accept slavery, racism (no civil rights for African Americans), and sexism (no voting rights for women). Without another argument to justify the tradition’s morality, this is not a sound argument.

REP2: CONTRARY CIVIL MARRIAGE TRADITIONS: If this argument assumes that our traditional civil laws should be upheld and maintained, there would be some serious backlash by many. For: “The roles of the people in a civil union have changed dramatically over history, including the recent history of the United States. It begins in the 1700s and 1800s, when married women actually lost many of their legal rights when they agreed to get married. After marriage, they were not allowed to own property, pay taxes or sign a contract. Any money women earned outside the home was to be turned over to their husbands. ‘You go back to the early years of this country,’ says Joan Hollinger, a professor at Boalt Hall School of Law at UC Berkeley specializing in child welfare and family law, ‘and you find that the wife became a kind of possession of the husband.’ It was not until the latter half of the 19th century, she said, that married women reacquired the rights they had when they were single.”⁸ Is there anyone here who agrees that married women should be viewed as property and not have any property or contractual rights while married? Also, “until 1967, in many states, a couple of mixed race could not get a marriage license, and if they went to another state and were married, when they returned home they could be arrested.”⁹ Therefore, to endorse tradition, one must explain why we should endorse *some* traditions and ignore others; in other words, we need some other argument that favors the particular tradition one wishes to defend, and not merely an argument that favors all traditions.

REP3: EARLY CATHOLIC NON-INVOLVEMENT IN MARRIAGE: In the Catholic tradition, marriage was not a sacrament and churches did not marry anyone *until* around 1200. In fact, I believe that you will be as surprised as I was at my findings on the history of marriage in the Catholic Church. Joseph Martos, in his book, *Doors to the Sacred: A Historical Introduction to Sacraments in the Catholic Church*,¹⁰ made these interesting points about marriage in Catholic Church history:

- First, let me give an overview and the upshot: “[B]efore the eleventh century there was no such thing as a Christian wedding ceremony, and throughout the Middle Ages there was no single church ritual for solemnizing marriages between Christians. It was only after the

⁸ <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/02/25/MNGNG57QMP1.DTL>

⁹ <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/02/25/MNGNG57QMP1.DTL> For examples outside the U.S., in 14th century England, English-Irish marriage (as well as intercourse) was illegal; in 17th century England, Christian-Heathen intercourse was illegal; and King Louis XV was so concerned with interracial marriage in France, that he expelled all Negroes from France (Randall Kennedy, *Interracial Intimacies*, New York: Pantheon Books, 2003, p. 241).

¹⁰ Joseph Martos, *Doors to the Sacred: A Historical Introduction to Sacraments in the Catholic Church*, Garden City: Image Books, 1982.

Council of Trent, because of the need to eliminate abuses in the practice of private marriages, that a standard Catholic wedding rite came into existence. As long as the Roman empire [sic] lasted ... church leaders relied primarily on the civil government to regulate marriage and divorce between Christians and non-Christians alike. It was only when the imperial government was no longer able to enforce its own statutes that Christian bishops began to take legal control over marriage and make it an official church function. In the west [sic], church leaders eventually adopted the position that marriages between Christians could not be dissolved by anything but death; in the east [sic] they followed the civil practice of allowing the dissolution of marriage in certain cases” (p. 399). Note three things about this interesting information: (1) there wasn’t even a wedding ceremony until roughly the year 1000; (2) the church relied on Roman civil law to regulate marriage and it would presumably remained that way if the empire lasted; and (3) even when the Western church started taking control of divorce, the Eastern church was more liberal, which implies that there is no clear position on divorce.

- Going back to the beginning, “During the first three centuries of Christianity, ... [w]hen Christians married, they did so according to the civil laws of the time in a traditional family ceremony and often without any special church blessing on their union” (p. 409; my underlining).
- “... churchmen during ...[the late fourth century A.D.] had no legal say in the matter of marriages, divorces, and remarriages, and so they had to deal with these happenings as pastoral rather than legal matters” (pp. 411-412).
- “... through the seventh century Christians could still get married in a purely secular ceremony” (p. 414).
- St. Augustine thought marriage should be a sacrament (though it was not accepted Christian doctrine by the Pope or Church at that time) (pp. 417-418).
- “... just as the bishops had earlier accepted Roman wedding customs, so they now also accepted the marriage practices of the Germanic peoples who settled within the old Roman provinces” (p. 420).
- “One reason why churchmen became involved in marriage and divorce cases, especially after the popes started sending missionaries into northern Europe, was the difference between Roman and Germanic marriage customs” (p. 422). “The legal question that had to be decided in each case was: Which marriage was the real marriage? ... Are marriages ratified by consent or by intercourse?” (p. 423).
- “In 866 Pope Nicholas I [said]: ‘If anyone’s marriage is in question, all that is needed is that they gave their consent, as the law demands. If this consent is lacking in a marriage then all the other celebrations count for nothing, even if intercourse has occurred’ (*Letters* 97)” (p. 424). Note that in 866, Pope Nicholas was only concerned about whether the civil law was followed, not whether there were ceremonies or intercourse.
- “... it was precisely around this time – the late twelfth century and the early thirteenth century – that marriage came to be viewed as one of the church’s seven official sacraments” (p. 428).
- “John Calvin, like Luther, agreed that marriage was not a sacrament” (p. 436). So it is not even clear if marriage is a sacrament, according to Christianity.
- Lastly, “... the Napoleonic Code of 1792 made civil weddings mandatory for all French citizens. During the next century almost all the other countries in Europe began to allow people to marry before a civil magistrate rather than a priest or minister, even though most of them did not require it as the French did. And of course governments also continued to regulate the other secular aspects of marriage and divorce (legal registration, inheritance rights, and so forth) as they had done even before the French revolution” (p. 439).¹¹

¹¹ There were these interesting points as well: (1) “... the marriage bond as a sacramental reality *could* not be dissolved. Thus the absolute Catholic prohibition against divorce arose in the twelfth century both as a canonical regulation supported by

Therefore, at least with respect to Christianity, because (1) marriage was not always recognized as a vital part of one's religion, (2) Christianity steered clear of marriage for twelve centuries, (3) even Catholic and Protestant Christians have debated about whether marriage is and should be a sacrament, and (4) Christian theology concerning marriage has changed over the centuries, it is far from clear that we should look to Christianity, for instance, as a stable guide to address the issue of gay marriage.

REP4: ALREADY NOT STAYING TRUE TO ROOTS: If one argues that we should just keep marriage the way it used to be, there are some serious questions as to what that would mean. For example, in the Bible,

‘It is really much more complex in religious perspective than you might think,’ says Tolbert, the George Atkinson Professor for Biblical Studies at the Pacific School of Religion. ‘What the Hebrew Bible (or Old Testament) suggests as a general model for marriage is polygamy. You look at someone like Solomon who had 200 wives and 600-and-some concubines. Or Abraham, who had his first child by his wife's slave. It sounds as if it was quite normal.’¹²

In the New Testament, Paul says that “Marriage is not a sin, but it is better to be unmarried.” (1 Corinthians 7:1, 8-9). Paul also declares that men should not divorce their wives (1 Corinthians 7:11),¹³ which remains Catholic doctrine. So the Bible seems to endorse polygamy and celibacy and prohibits divorce (and the Catholic Church still does). I am just guessing here, but I think that at least two of these are not live options for most of us. As we'll see in one of my replies below, there are also serious challenges to the argument that we should maintain our traditional civil laws regarding marriage (*if you cannot wait, see the Third reply to OBJ4*).

REP5: SOME SECTS OF CHRISTIANITY AND JUDAISM ENDORSE GAY MARRIAGE!

There are several denominations of Christianity and Judaism that bless same-sex relationships ([The Universal Fellowship of Metropolitan Community Churches](#), [Ecumenical Catholic Church](#), [Church of God Anonymous](#), [Reconstructionist Judaism](#), [Reform Judaism](#), and the [Unitarian Universalist Association](#))¹⁴ A conservative sect of Judaism is considering blessing same-sex relationships as well¹⁵). This reply directly refutes the objection that all religions are anti-gay marriage.

sacramental theory, and as a theological doctrine buttressed by ecclesiastical law” (p. 431). (2) “According to Martin Luther, since marriage existed since the beginning of the world, ‘there is no reason why it should be called a sacrament of the new law and the sole property of the church’ (*Babylonian Captivity of the Church* 5)” (p. 435). “Marriage was certainly instituted by God, said Luther, but not as a sacrament in the Roman sense. Rather, it was natural and social institution which, accordingly fell under natural and civil law, not church law. [Luther claimed that] ‘No one can deny that marriage is an external and secular matter, like food and clothing, houses and land, subject to civil supervision’ (*On Matrimonial Matters*). Thus the church should ‘leave each city and state to its own customs and practices in this regard’ (*Short Catechism*, Preface)” (pp. 435-436).

¹² <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/02/25/MNGNG57QMP1.DTL>

¹³ Now, Joseph Martos, author of *Doors to the Sacred: A Historical Introduction to Sacraments in the Catholic Church*, puts Paul's First Corinthians comments in context, as follows: “Much of what Paul had to say about marriage is found in I Corinthians 7, but it has to be read in the light of his belief that ‘the world as we know it is passing away’ (7:31) and that the second coming of Christ would happen soon. Thus Paul advised the Christians in Corinth not to make any great changes in their lives and to devote their full attention to the things of the Lord. Those who were married should stay married; and if they abstained from intercourse it should be only for a time, to devote themselves to prayer, and only by mutual consent. Those who were single should stay single; it was no sin to get married, but it was better to remain celibate. The same advice applied to widows: it was better for them to remain free, but if they could not get along without a man they should marry again” (p. 406). However, with all due respect, if Paul was wrong about the imminent coming of Christ, then he arguably was wrong about what he said here about marriage, and this only weakens his other writings as well, since he was wrong about a major point of his religion.

¹⁴ http://www.marriageequality.org/main_facts.php?page=religious_vs_civil accessed 1/18/06.

¹⁵ Laurie Goodstein, “Jewish Panel Delays a Vote on Gay Issues,” *New York Times*, March 9, 2006. The sect is actually considering allowing gay Rabbis as well as gay marriage – these are the “gay issues” mentioned in the title.

Therefore, the claim that marriage is solely a religious institution is false. The fact that marriage has recently been a religious institution is arguably an arbitrary cultural event that should not decide this issue by itself. Also, since Americans have not mandated polygamy or celibacy or prohibited divorce, we are already not following what the Bible seems to state about marriage, unfortunate as that may be. Moreover, even if we look to the Judeo-Christian community to determine whether gay marriage is morally permissible, we find different answers.

REP6: FOUNDING FATHER COUNTEREXAMPLES: There are some quotations from our Founding Fathers (e.g., George Washington, Thomas Jefferson, John Adams, James Madison, and Benjamin Franklin) and Founding documents (e.g., besides our Constitution, the Treaty of Tripoli) that question and perhaps refute the view that our country was founded on Christianity or was founded as a Christian nation.¹⁶ Let me give you some examples:

- (1) The Treaty of Tripoli was initially created around the time of Washington's last term as president, in 1796, and was ratified in 1797. Article 11 of the Treaty states: "As the Government of the United States of America is not in any sense founded on the Christian religion; as it has in itself no character of enmity against the laws, religion, or tranquility, of Musselmen; and as the said States never have entered into any war or act of hostility against any Mehomitan nation, it is declared by the parties that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries."¹⁷ Note that this treaty was made publicly known in the Philadelphia Gazette, with no objections.
- (2) Even most Christians do not consider [Thomas] Jefferson a Christian. In many of his letters, he denounced the superstitions of Christianity. He did not believe in spiritual souls, angels or godly miracles. Although Jefferson did admire the morality of Jesus, he did not think him divine, nor did he believe in the Trinity or the miracles of Jesus. In a letter to Peter Carr, August 10, 1787, he wrote, "Question with boldness even the existence of a god."¹⁸
- (3) John Adams said, "The United States of America have exhibited, perhaps, the first example of governments erected on the simple principles of nature; and if men are now sufficiently enlightened to disabuse themselves of artifice, imposture, hypocrisy, and superstition, they will consider this event as an era in their history. Although the detail of the formation of the American governments is at present little known or regarded either in Europe or in America, it may hereafter become an object of curiosity. It will never be pretended that any persons employed in that service had interviews with the gods, or were in any degree under the influence of Heaven, more than those at work upon ships or houses, or laboring in merchandise or agriculture; it will forever be acknowledged that these governments were contrived merely by the use of reason and the senses." And: "Thirteen governments [of the original states] thus founded on the natural authority of the people alone, without a pretence of miracle or mystery, and which are destined to spread over the northern part of that whole quarter of the globe, are a great point gained in favor of the rights of mankind."¹⁹
- (4) James Madison, a framer of the Constitution said, "During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity; in both, superstition, bigotry and persecution." And: "What influence, in fact, have ecclesiastical establishments had on society? In some instances they have been seen to erect a spiritual

¹⁶ This information came from Jim Walker's webpage at: <http://earlyamerica.com/review/summer97/secular.html>.

¹⁷ See Jim Walker's webpage at: <http://earlyamerica.com/review/summer97/secular.html>.

¹⁸ See Jim Walker's webpage at: <http://earlyamerica.com/review/summer97/secular.html>.

¹⁹ See Jim Walker's webpage at: <http://earlyamerica.com/review/summer97/secular.html>.

tyranny on the ruins of the civil authority; on many instances they have been seen upholding the thrones of political tyranny; in no instance have they been the guardians of the liberties of the people. Rulers who wish to subvert the public liberty may have found an established clergy convenient auxiliaries. A just government, instituted to secure and perpetuate it, needs them not.”²⁰

- (5) Dr. Priestley, an intimate friend of [Benjamin] Franklin, wrote of him: “It is much to be lamented that a man of Franklin's general good character and great influence should have been an unbeliever in Christianity, and also have done as much as he did to make others unbelievers” (Priestley's Autobiography)²¹
- (6) Thomas Paine said, “Of all the systems of religion that ever were invented, there is no more derogatory to the Almighty, more unedifying to man, more repugnant to reason, and more contradictory to itself than this thing called Christianity.”²²

These quotations do not imply that all the Founding Fathers had Judaism or Christianity on their minds as they constituted the United States of America.

Also, related to this point, where are our Judaic values? How many of the Founding Fathers were Jewish? I hear very often that our country is Judeo-Christian, but I don't hear much reference to the 613 commandments of the Hebrew Bible and the importance of adhering to those commandments.

REP7: NO STATE RELIGION/FIRST AMENDMENT, PART II: If our country was founded on Judeo-Christian principles, why did the Founders include the First Amendment? Let's suppose just for the sake of argument, that ALL of the Founding Fathers belonged to a single sect of Christianity (and this is far from being true – Jefferson, Franklin and Washington were Deists who did not believe that God even interacted with the world). This is a significant premise to grant to my opponents. However, even if the Founding Fathers all endorsed a single religious view, why would they put a statement in the Constitution that says that the government shall make no law establishing a religion? Why wouldn't we just have a state religion or two state religions – either Judaism and/or Christianity?²³ Of course, given that we do not have a state religion, arguments based on religion would indeed appear to be irrelevant to the issue of whether or not to legalize gay marriage. Now, I realize that I have just brought up a sort of paradox or conflict of civil versus religious values, so, at the end of my talk, I will raise a very interesting question about the role of religion in government; stay tuned.

THEREFORE, to conclude my seven replies to the Judeo-Christian Values Objection, since it is far from clear that there is a consensus on just what those values are (even though individual sects of these religions might be very clear on their views), and since it is not clear that our country was founded on these values, it is not clear that these values can and do imply that gay marriage should be illegal.

OBJ4: THE YUCK OBJECTION: I am disgusted about gay sex; Therefore, gay marriage should not be legalized.

I have two replies to this argument:

²⁰ See Jim Walker's webpage at: <http://earlyamerica.com/review/summer97/secular.html>.

²¹ See Jim Walker's webpage at: <http://earlyamerica.com/review/summer97/secular.html>.

²² See Jim Walker's webpage at: <http://earlyamerica.com/review/summer97/secular.html>.

²³ Due to the amount of sects in Judaism and Christianity, there would be more than just one or two state religions: There are roughly four main sects of Judaism and over 200 sects of Christianity (note that some of the sects of Christianity argue that other sects are not even Christian).

REP1: INSUFFICIENT EMOTIONS: Emotions by themselves are not a great way to decide ethical issues and questions. In fact, appeal to emotion is a fallacious argument as well (usually pity is given, but disgust is an emotion as well. Excellent counterexamples against the view that actions should be judged based on emotions, include murder due to rage and Tim McVeigh: If it's true that our emotional state determines right and wrong, then these murderers are morally justified because their emotions indicated that their actions were right. Now, of course I am not calling my opponents raging murderers or McVeigh, because that would be an ad hominem (fallacious) argument that we'd only see on political commentary shows. The point is that raging murderers and McVeigh mainly used emotion and not reasoned (non-fallacious!) argument to decide right and wrong. Therefore, emotional reactions should not determine the correctness of actions.

REP2: INTERRACIAL OBJECTIONS SIMILARITY: These kinds of “emotional reaction” arguments were used against interracial marriage as well (e.g., some justices who ruled in favor of interracial marriage did so despite claiming in their ruling that they personally viewed interracial marriage as ‘immoral’ and ‘revolting’²⁴). Representative John Bigelow viewed interracial marriage as “the gratification of a depraved taste”; others declared interracial marriage as unnatural and repugnant. I am not currently aware of any sound arguments against interracial marriage. Therefore, since arguments against interracial marriage didn't stand the test of reason and time, if the main reason the anti-gay marriage view can give is based on emotion and disgust, this is not a good reason to ban gay marriage.

THEREFORE, unless appeals to emotion can be proved to not be fallacious arguments and unless the analogy to interracial marriage objections can be shown to be faulty, the Yuck Objection is not a sound argument against legalizing gay marriage.

OBJ5: THE NON-OPTIMAL OBJECTION: Many studies show that gay marriage is not the optimal way to raise children; Children who have a mother and father provide the best environment in which to raise them; Gay marriage will not provide that optimal environment; Therefore, gay marriage should not be legalized. (E.g., it will mean a “breakdown of the family, children born out of wedlock and communities and cultures in decay,” as Senator Rick Santorum said on the Senate floor.)

I have four replies to this argument:

REP1: CHILDREN REQUIRED FOR MARRIAGE(?): This argument assumes without proving that the only function of marriage is to procreate. As we've seen,²⁵ there are religious leaders who have stated that a couple can have a fulfilling marriage even without children (and I can personally attest that I enjoyed being married to my wife *even before* the kids came along!).

REP2: ALREADY NOT LEGISLATING OPTIMALITY: Americans do not do many things optimally, and our laws are not written for the optimal in every case. For example, if it is optimal to have a mom and dad raise a child, then either (1) it is optimal not to allow divorce, or (2) if we allow divorce, we should require mother or father surrogates to be appointed by the government to step in

²⁴ Randall Kennedy, *Interracial Intimacies*, New York: Pantheon Books, 2003, p. 232. Here's another argument made by a Virginia court, against interracial marriage: “The purity of public morals, the moral and physical development of both races, and the highest advancement of our cherished southern civilization ... all require that [blacks and whites] should be kept distinct and separate and that connections and alliances so unnatural that God and nature seem to forbid them should be prohibited by positive law, and subject to no evasion” (p. 234).

²⁵ See REP3 and REP4 to OBJ1, above.

and help raise children in the case of death or separation, but I am not hearing too much clamor in favor of either of these programs. (Another example of legislating optimality that I do not hope to see in a state near me soon: 24/7 monitoring of pregnant women, so we can ensure that they DO take fetal vitamins, get plenty of exercise and rest, etc., and DO NOT drink, smoke, and agitate the fetus! This policy would certainly be optimal for the fetus, but having a law to this effect would, I hope you agree, be pretty invasive and unacceptable.)

REP3: WHAT STUDIES(?): We would have to look at each study, and look carefully at the research methods, etc., in order to know if it is really true that children cannot be raised in a healthy manner by gay couples. And even if it is *granted* that studies do in fact show that gay marriage is not optimal, the other replies would have to be successfully refuted.

REP4: SANTORUM'S FALLACY(?): I believe that Senator Rick Santorum's conclusions he draws from the legalization of gay marriage are Non Sequiturs; that is, they do not follow logically from the premise of legalization; as follows: (1) How Adam and Steve's marriage next door will break my family down is far from obvious; (2) Children would presumably *not* be born out of wedlock if gay marriage were legal ([A], why would these couples have kids first and *then* get married? And [B], gay couples could use artificial insemination, surrogate motherhood, adoption, etc., in order to have children); and (3) it *could* be that communities and cultures would be in decay, but that would have to be proven by additional premises. Thus, much support is needed to prove all three of Senator Santorum's claims. Moreover, one might argue that the claim that communities and cultures will decay from breakdowns in families and children out of wedlock has already occurred, given the statistics of single parent households and divorce rates. It does not follow that by allowing gay marriage, there would be any connection between heterosexual divorce rates and gay marriage divorce rates, or more children being raised out of wedlock. In short, whatever problems that heterosexual marriage has, are not currently the result of the possibility of gay marriage; after all, we already have those problems and gay marriage is not legal almost anywhere in America.

THEREFORE, for the reasons just given, the Non-Optimal Objection is not a sound argument against legalizing gay marriage.

OBJ6: THE POLYGAMY OBJECTION: If gay marriage is legalized, then you'll have to legalize polygamy; Therefore, gay marriage should not be legalized.

I have two replies to this argument:

REP1: NON SEQUITUR FALLACY COMMITTED: This argument commits the fallacy of non sequitur – namely, the conclusion does not follow from the premise. There is no necessary connection between legalizing marriage for a class of people who have never been able to marry and legalizing multiple partners for a class of people who have already been able to marry. (Also, the premise assumes that polygamy is immoral; a separate argument would be needed to support that assumption. This is actually another reply.)

REP2: RAUCH'S REPLY: THE INSTABILITY/IMPRACTIBILITY OF POLYGAMY: I don't think I can do better than Jonathan Rauch's reply to this objection, which is as follows:

Societies are stabler when you maximize the opportunity to marry. Polygamy radically undermines that notion because it means one man, many wives. If you allow that situation, you will have many men who won't be able to have wives; a very serious problem for society. Polygamy is asking for more of what is already available – heterosexual marriage to a woman.

This is not what gay marriage is asking; nor is the issue about marrying *absolutely anyone* (mom, daughter, etc.), toaster, dog. If heteros have the opportunity to marry multiple partners and toasters and dogs, then gays should too; but until then, gays are asking for the opportunity as well.²⁶

THEREFORE, since the Polygamy Objection commits a fallacy and there is an argument that polygamy is not beneficial to society, it is not a good argument against legalizing gay marriage.

OBJ7: THE HETEROSEXUAL MARRIAGE/SANCTITY DAMAGE OBJECTION: Gay marriage will damage heterosexual marriage: To redefine marriage is going to redefine it out of existence; Legalizing gay marriage destroys the sanctity of marriage; Therefore, gay marriage should not be legalized.

I have three replies to this argument:

REP1: FALSE PREMISES(?): In general, I confess that this argument has never made sense to me because the premises seem obviously false. Why? I believe that my marriage can only be damaged by what I or my wife does to it, and not by anyone else (unless someone is directly intruding and constructing lies about us to each other to try to get us to split, perhaps). Allowing another group of people to marry just does not seem to have any effect on my marriage. On the contrary, I think it's more realistic to argue that taking away the civil rights of heterosexual married couples would damage heterosexual marriage much more than allowing gay marriage would. I leave you with a point from a marriage equality website; namely that "The marriage of two adults of the same sex who seek to make a lifetime commitment to one another takes nothing away from the marriages of anyone else."²⁷ I'd add: "... nor indeed, from the definition of marriage."

REP2: TOO LATE: SANCTITY OF MARRIAGE ALREADY DESTROYED(?): I would argue that heterosexual marriage has already been unsanctified, as it were; the sanctity of marriage has already been destroyed. Why would I say this? In the United States (and I haven't been able to find the exact date, but it may in fact go all the way back to the founding of our country), as soon as Justices of the Peace started legally marrying heterosexuals, that precise day is when America started handing out marriage licenses (along with 1000+ civil rights), not "civil union" licenses or some other variant, thereby non-religiously sanctioning marriages. That is also when, I want to urge in response to my opponents, the sanctity or religiosity of marriage was destroyed (if they every were there in American law). So NOW saying, "Hey, that union (gay marriage) doesn't fit my religion's conception of marriage," is simply irrelevant. It is too late, the cows are out of the barn and have been for quite some time - the so-called sanctity of marriage has already been ruined (if it has indeed been ruined at all). In short, if I as an American may (and I may) legally marry a woman while jumping out of a plane with an Elvis imitator presiding as Justice of the Peace, religion is literally out of the picture, if not metaphorically. Seriously, though, note that for this to be a good argument, one must first assume that marriage is exclusively a religious institution, which itself is in need of argument; as we've seen,²⁸ this claim has objections of its own, given religious and American cultural history.

REP3: RAUCH'S ANALOGY TO WOMEN'S SUFFRAGE: Third, I will leave this objection by quoting Jonathan Rauch, who responds to this criticism as follows: "Seeing gay marriage as an attack on heterosexual marriage is like seeing women's suffrage as an attack on voting."²⁹

²⁶ Jonathan Rauch, see above.

²⁷ http://www.marriageequality.org/downloads/Educational%20Presentation_EXTERNAL.pdf

²⁸ See REPS 1, 2, and 3 to OBJ2,

²⁹ Jonathan Rauch, see above.

THEREFORE, since the premises are either false or need much more support than they have been given thus far, since the sanctity of marriage has arguably already been destroyed, and since a good analogy to women's suffrage can be made, the Heterosexual Marriage/Sanctity Damage Objection is not a sound argument against legalizing gay marriage.

OBJ8: THE CIVIL UNION ALTERNATIVE OBJECTION: The term 'marriage' should be reserved for heterosexual unions; the term 'civil union' is fine, allowing gays to have all the same civil rights as heterosexual couples; Therefore, gay marriage should not be legalized (though civil unions are fine).

I have one reply to this argument:

REP1: INCONSISTENT WITH CIVIL LAW(?): Since the U.S. has been granting MARRIAGE Licenses to heterosexual couples for a very long time, if not from the founding of our country, and since we have already been handing out 1100+ civil rights, benefits, and privileges (as we'll see below), it seems inconsistent not to permit the use of the term 'marriage' for gay unions. The only objections that hold people back from the term 'marriage' seem to be religious, from what I can tell, and we've reviewed plenty of objections that make those objections seem at least questionable and at most, irrelevant (unfortunately, for my opponents). Also, imagine someone arguing back in the 1960s that we might allow different races to form a union, but let's call them something other than marriage, since marriage has always been between same-raced people, and our country or religion has always prohibited intermarriage. Is this argument coherent? I humbly submit that it is not.

THEREFORE, the civil union alternative is not any more plausible than just legalizing gay marriage.

MY ARGUMENT IN FAVOR OF GAY MARRIAGE:

Thus far, I have given at least one reply (and as many as seven replies) to eight objections against gay marriage, based on these reasons, that it is unnatural, does not involve procreation, it is against one's religion, violates Judeo-Christian values, is repulsive, not optimal for raising a family, implies the acceptability of polygamy, destroys the sanctity of heterosexual marriage, and civil unions are a better way to refer to gay unions than gay marriage is.

Finally, at long last, then, let us set aside the fact that at least from my point of view, none of the arguments/objections against gay marriage mentioned above are sound arguments/objections thereto. How might one argue that America should legalize gay marriage? My argument in favor of gay marriage is pretty straightforward and runs as follows:

PREMISE 1: The U.S. Constitution and civil practices, past as well as present (leaving aside current anti-gay marriage laws) are not necessarily consistent with banning gay marriage on religious grounds (i.e., religion is irrelevant to the debate given we're in America and that marriage is not exclusively a religious institution).

My support for the claim that the U.S. Constitution and practice are not necessarily consistent with banning gay marriage on religious grounds is based on these claims: In the United States, given that the First Amendment states that "Congress shall make no law respecting an establishment of religion," then we should not be concerned whether every one of our laws coincide with or are consistent with any one religion. Moreover, for many years, our government has already been granting many hundreds of civil rights to heterosexual married couples in non-religious ceremonies.

Look at it this way: The fact that we still have philosophy classes and questions proves that we humans have not solved the question of God's existence, the "correct" religion, and ethical questions – if we already proved, e.g., that the death penalty was immoral (or moral), then there would presumably be a sound argument against it (or in favor of it), with no unanswerable objections to that argument. This is not to say that God does not exist, there is no correct religion, and there is no such thing as right or wrong; we quite obviously have *not* come to one answer for each of these questions that everyone accepts. Therefore, citing one's religion as the sole proof that gay marriage is wrong will not convince any non-believers of that religion.

PREMISE 2: Gay persons cannot obtain the civil rights, privileges, and benefits that heterosexual married couples have, and there is no consistent, reasonable way of arguing that they should not have these rights, privileges, and benefits.

The nonpartisan Government Accountability Office (GAO) has determined that, as of December 31, 2003, there are 1138 Federal benefits, rights, and privileges that are contingent upon heterosexual marriage.³⁰ My defense of the claim that there is no consistent, reasonable way of arguing that they should not have these rights, privileges, and benefits is that I have above, as far as I can tell, given excellent and serious replies to the objections against gay marriage.

THEREFORE, gay marriage should be legalized.

CONCLUSION:

Now, there is a great and relevant question concerning just how much a President, Senator, or Congressperson's religion should inform his or her decisions for the government. As a philosopher, I will argue that one should be able to use one's reason to give us a good reason for or against a public policy issue without *merely* or *only* appealing to one's religion or one's favorite holy writing; therefore, one should only vote on an issue when one has a good, consistent reason for or against a policy, and good reasons do not include a *simple* appeal to a religion or a holy writing, but an argument that anyone, religious or not, would accept. Perhaps this is the intent of the Founding Fathers – I don't know. But if we allow decisions **ONLY** based on one holy writing, for example, then it becomes difficult to understand the difference between that country's decision on one hand, and the decision of a theocracy or a country that has a state religion, on the other. Do we really want to trade our democracy for a theocracy?

³⁰ Note that these are merely Federal, and not State or local, rights, benefits, and privileges. A summary of the report appears here: http://www.gao.gov/docdb/te/te_details.php?rptno=GAO-04-353R%20 (accessed 1/17/06 by me) and the complete report in pdf form is accessible from that website as well. "The list includes thirteen categories of rights and benefits, including: Social Security and Related Programs, Housing, and Food Stamps; Veterans' Benefits; Taxation; Federal Civilian and Military Service Benefits; Employment Benefits and Related Laws; Immigration, Naturalization, and Aliens; Trade, Commerce, and Intellectual Property; and Financial Disclosure and Conflict of Interest. (from: http://www.marriageequality.org/main_facts.php?page=1049_federal accessed on 1/17/06).