

Submission for the Senate Inquiry into the Marriage Equality Amendment Bill 2010 (Greens)

Mark Baumgarten

March 31, 2012

To whom it may concern,

I am writing concerning the current Senate Inquiry into the proposal to change the Marriage Act via the Greens' Marriage Equality Amendment Bill 2010. I believe such a change would be a mistake, though I am aware that many who share this belief argue their position at least partly from religious grounds (which, needless to say, are not shared by all Australians). While such arguments are no less valid, I wish to base my argumentation on non-religious grounds in the hope that it may convince some who are not persuaded by religiously-based arguments.

Firstly I would note that marriage has always been a social contract—not merely a private matter—regulated for the good of society (hence the tradition of asking if there are objections to particular marriages). What common good does marriage exist to serve? The conceiving and raising of children. We often forget this nowadays due to the widespread use of contraception, but the connection of marriage to childbearing and childrearing is historically incontrovertible and universal across cultures. In a sound-bite, marriage may or may not be about love, but it's definitely about children (infertile couples are a sad exception, but their very sadness proves the rule).

Now, whatever else you might say about homosexual unions, it is not natural for them to produce children: they are intrinsically infertile. As such, every culture in every age prior to now has thought it literally "inconceivable" that homosexual unions could be considered marriages. The advent of artificial or third-party means of conceiving children has altered the equation of what is technically possible, but the argument could be made that the inherent infertility of homosexual unions is nature's way of saying that they are not an environment within which children should be raised.

At this point some would argue that, while marriage may once have been considered a union between a man and a woman for the purpose of raising children, its meaning has changed now to signify simply a public declaration of an intent to combine one's life with another's due to a mutually shared love. And indeed, it cannot be denied that there has been an underlying shift in this direction regarding many people's understanding of what marriage is. This is really the heart of the matter, and it has been going on independently of same-

sex questions for some time now. Though it may seem a foregone issue, such a new conception of marriage has certainly not been adopted by all, and to this point it has not been codified within law (something which the proposed legislation would change). I would argue that giving legal confirmation of this new conception of marriage would be a very destabilising move socially.

If a commitment based on mutually shared love is all that marriage means then it is hard to conceive of why the state should regulate it at all. While marriage is no doubt valuable in itself, its orientation to the bearing and rearing of children is what has given it its distinctive character (as distinct from a relationship of committed friends). This link to the welfare of children explains why marriage has been important to the common good and why cultures / states have always recognised and regulated it. This link is also the primary basis for the norms of monogamy and fidelity being central to the distinctive structure of marriage.

Redefining marriage as suggested essentially argues that it is not fundamentally about adults' bodily unions or children—with which marital norms are tightly intertwined—but about adults' emotional unions. I see at least two significant consequences of this. Firstly, since emotions can be inconstant, identifying marriage primarily as an emotional union would seem to promote increased marital instability. Secondly, and more importantly, there is no reason why primarily emotional unions (any more than ordinary friendships in general) should be permanent, exclusive, or limited to two people. It is only within the context of the welfare of children that these norms make sense and serve the common good. And without these norms the very concept of marriage is essentially defined out of existence.

Marriage is more a privilege and a responsibility than a right, and this applies even more so to having children. There is overwhelming evidence that children's emotional, social, academic well-being / success is favoured when they are raised within a traditional family unit, and thus it is in a society's interest to promote such settings as the backbone of their people's childrearing, rather than allowing a misguided and self-centred understanding of marriage trump the actual rights of the child and lead to manifold unforeseen consequences for the society at large.

I conclude with a link to a very thorough Harvard Law article that also argues from non-religious grounds (much better than I have here) the rationale for preserving the traditional understanding of marriage:

<http://ssrn.com/abstract=1722155>

Thank you for considering my submission,
Mark Baumgarten