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# About this issue

An increasingly heated and polarised marriage debate continues to rage both here and abroad. No more clearly was this evident than in New York, where legislators recently enacted laws allowing same-sex marriage for the first time in that state. On the same day that some 800 same-sex couples were reportedly wed around the state, thousands took to the streets to protest the legislation, demanding that same-sex marriage be put to a popular vote.

By way of contrast to the legislative developments in New York – which is only the sixth US state to legalise same-sex marriage, as opposed to the 32 states in which voters have rejected such legislation – developments in an altogether contrary direction have been taking place some 7000 kilometres across the Atlantic. In April this year the parliament of Hungary adopted a new national constitution which explicitly defines marriage as the union of one man and one woman, sending a clear signal to its European neighbours that Hungary intends to preserve its traditional family culture.

Here in Australia, the push to redefine marriage continues unabated, with mounting pressure for the federal Labor Party to endorse same-sex marriage at its national conference in December. Both the Western Australian and Queensland branch conferences recently supported motions in favour of redefining marriage to include same-sex couples, although similar efforts in both

New South Wales and Victoria failed to receive the support of delegates.

In the meantime, Labor's Prime Minister, Julia Gillard, has reaffirmed her personal view that the current definition of marriage in Australian law – the union of a man and a woman to the exclusion of all others, voluntarily entered into for life – should remain unchanged.

Certainly the December Labor conference promises to be an important crossroad for the Australian Labor Party, and for all involved in the marriage debate. What is imperative is that the tone of the debate remain civil in the coming months, and that personal and vindictive attacks not be allowed to stifle open discussion of what is a vitally important public policy issue.

It is with a view to making a substantive and challenging contribution to the marriage debate – and addressing certain issues which are unavoidably connected with the institution of marriage – that we present our mid-year edition of *The Australian Family*.

Calls for the legalisation of same-sex marriage are most often framed in terms of equality and human rights. However, as Canadian-Australian ethicist **Professor Margaret Somerville** argues, although same-sex marriage may be seen to enhance the rights of adults in same-sex relationships, it does so at the expense of children's fundamental human rights. As with the use of certain

reproductive technologies (including donor-conception), same-sex marriage deprives children of the right to know and to be raised by their own biological parents. Mindful of these and other inevitable setbacks to children's rights, the author cautions against barreling down the road of marriage reform, which is bound to have unintended negative repercussions for children, and for society itself.

Suggestions that marriage is designed specifically to cater for the needs and best interests of children are customarily met with howls of indignation by same-sex marriage advocates. After all, isn't marriage just about two people celebrating their love? Not according to the Australian Family Association's Victorian State President, Terri Kelleher, whose analysis of marriage shows how this vital legal institution is far more than a mere celebration of love between two people. In a comprehensive piece, originally commissioned for the Australian Christian Lobby's *Viewpoint* magazine, Kelleher explains precisely how the life-generating nature of the heterosexual union gives shape to the legal institution we know as marriage, binding heterosexual couples in a commitment of lifelong, exclusive fidelity to ensure the stability and health of the biological family unit.

The push to redefine marriage is in many ways the culmination of a decades-long effort to establish homosexual relations as being co-normative with heterosexual unions. In order to subvert the so-called "hetero-normative values" upon which humanity – a biologically het-

erosexual species – and human civilisation have flourished, same-sex activists have recognised the need to expunge such values from childhood education. In a compelling article that will surprise many parents, Rabbi Dr Shimon Cowen, Director of the *Institute for Judaism and Civilisation in Melbourne*, argues that a recently introduced anti-bullying program targeted at Australian school children seeks surreptitiously to introduce children to the idea that heterosexual and homosexual relations are, in fact, co-normative.

Finally, the Washington-based *Family Research Council's* Dr Patrick Fagan offers a rousing call for the rebuilding of a culture of romance, a culture in which true love, based on lifelong, self-giving sacrifice is restored to the centre of human civilisation. As Dr Fagan notes, if we are to have any hope of rekindling a positive, life-giving culture of romance, we must first of all live it, and we must secondly reclaim the arts – music, literature, cinema and television – so that the virtues we seek to live are reflected in the culture around us.

It's up to us make it happen; let the rebuilding begin!

# Children’s Human Rights to Natural Biological Origins and Family Structure

Margaret Somerville<sup>1</sup>

## Abstract

Over the millennia of human history, the idea that children—at least those born into a marriage—had rights with respect to their biological parents was taken for granted and reflected in law and public policy. But with same-sex marriage, which gives same-sex spouses the right to found a family, that is no longer the case.

Likewise, children’s rights with respect to their biological origins were not an issue when there was no technoscience that could be used to manipulate or change those origins: a baby could only be conceived *in vivo* through sexual reproduction. But with assisted human reproductive technologies (ARTs) and genetic technologies, that, too, is no longer the case.

So, in light of these new realities, what are our obligations, as societies, to children with respect to their biological origins and biological families? What protections do children need and deserve?

I propose that the most fundamental human right of all is a child’s right to be born from natural human biological origins and that children also have human rights with respect to knowing who their biological parents and families are, and that these rights must be

recognized. Children also have a right to be reared within their biological families and to have a mother and a father, unless an exception can be justified as being in the ‘best interests’ of a particular child.

The connection among adoption, the use of new reproductive technologies, and same-sex marriage is that they all unlink child-parent biological bonds. Each context raises one or more of three important issues: children’s right to know the identities of their biological parents; children’s right to both a mother and a father, preferably their own biological parents; and children’s right to come into being with genetic origins that have not been tampered with; that is, ‘designing’ our children should be prohibited.

Such ‘designing’ would result in losses with implications far beyond those persons directly affected and far beyond the present time. It would undermine the rights to equality and freedom of future generations. Because the liberty and equality of all citizens is at the heart of democratic societal institutions and of the values that democratic societies promote, to create people who are neither free nor equal undermines those institutions and values. In short, not to prohibit ‘designer children’ would

undermine the very foundations of our Western democratic societies.

## Introduction

Some old and new phenomena—adoption is old, assisted reproductive and genetic technologies and same-sex marriage are new—have recently thrown the issue of children’s rights with respect to their biological origins, biological families, and family structure into the public policy spotlight and public square debate.

Adoption has long given rise to concerns as to children’s rights with respect to their biological families. Early in the twentieth century, societally condoned sperm donation presented a similar challenge. In the last thirty years, assisted reproductive technologies (ARTs) and genetic technologies have brought, and will continue to bring, unprecedented challenges. And, most recently, same-sex marriage has done so.

The connection among these contexts is that they all unlink child-parent biological bonds.<sup>2</sup> Each context raises one or more of three important issues: children’s right to come into being with genetic origins that have not been tampered with; children’s right to know the identities of their biological parents; and children’s right to both a mother and a father, preferably their own biological parents.

Over the millennia of human history, the idea that children—at least those born into a marriage—had rights with respect to their biological parents was taken for granted and reflected in law and public policy. And children’s rights with respect to their biological origins were not an issue when there was no technoscience that could be used to manipulate or change those origins: a baby could only be conceived *in vivo* through sexual reproduction. But with ARTs that is no longer the case.

***I propose that the most fundamental human right of all is a child’s right to be born from natural biological origins...***

What, ethically, do we owe children whose lives result from the use of ARTs? So far, we have largely failed to address this question. Our ethical focus on ARTs has been almost entirely on adults’ right to access

these technologies so as to found a family. But as the first cohort of children born as a result of their use reaches adulthood and connect with one another through the Internet, they are changing our focus. We are now asking, what are their rights with respect to their biological origins and biological families? And what are our obligations as a society to these children? What protections do they need and deserve?

In this article, I propose that the most fundamental human right of all is a child’s right to be born from natural biological origins, that children have human rights with respect to their biological parents and families, and that these rights must be recognized. The

articulation of human rights is an ongoing process. Children must move from being the ‘voiceless citizens’ to becoming the new kids on the human rights block, and nowhere is that more important than with respect to rights regarding their biological origins and biological families.

## I. Children’s Right to Be Born from Natural Biological Origins

In the more than twenty-five years since Louise Brown, the first ‘test-tube baby’, ushered in the brave new world opened up by ARTs, advances in the technologies have made more and more previously impossible interventions possible. Those ‘advances’ make it necessary to formulate new rights for children in relation to their biological origins that would have been unimaginable until very recently.

A child’s right to be conceived with a natural biological heritage is the most fundamental human right and should be recognized in law.<sup>3</sup> Children have a right to be conceived from untampered-with biological origins, a right to be conceived from a natural sperm from one identified, living, adult man and a natural ovum from one identified, living, adult woman. Society should not be complicit in—that is, should not approve or fund—any procedure for the creation of a child, unless the procedure is consistent with the child’s right to a natural biological heritage.

The addition of the words *man* and *woman* in defining the right to a natural biological heritage, rather than simply referring to sperm and ovum, as would

be more common, is not superfluous. It is theoretically possible to create an embryo with the genetic heritage of two women or two men, including by making a sperm or ovum from one of the adult’s stem cells and using a natural gamete from the other person, or perhaps by using two ova or maybe by making an ‘ovum’ from an enucleated egg fused with a sperm and fertilizing it with another sperm. The word *natural* excludes opposite-sex couples from using this technology to make an artificial sperm from an infertile man or artificial ovum from an infertile woman.

The requirement that the gametes come from adults preempts the use of gametes from aborted fetuses; it prevents children being born whose biological parent was never born. And the requirement that the donors be living excludes the use of gametes for postmortem conception. The right to bear children should not include the right to deny children at least the chance, when being conceived, of meeting their biological parents. Conceiving children with gametes from a dead donor, as an Australian court authorized,<sup>4</sup> denies them this opportunity. In that case, as is so often true, the judge considered only the rights and wishes of the adults involved.

## II. ‘Designer Children’ and Societal Values and Institutions

A topic linked to the previous one of a right to come from untampered-with human origins, is the ethical acceptability of the enhancement of one’s children using genetic technologies. The central question raised is whether or not this

offends human dignity, whether of the child as an individual or of humans in general. Some commentators argue it does and others that it does not. I will not explore, here, however, the extensive literature on the ethics of designing our children by genetically altering them, whether for the better or the worse—when they are embryos. Rather, I want just to mention some important philosophically based objections to doing that, which have not been widely discussed.

Because creating ‘designer children’ involves genetic manipulation of human embryos, it destroys the essence of their humanness and, ultimately, the essence of the humanness of all of us.<sup>5</sup> Genetic manipulation interferes with the intrinsic being of a person—with their very ‘self’. As philosopher Søren Kierkegaard put it, designed persons are not free to fully become themselves, which is the essence of freedom.<sup>6</sup>

The power to fully become oneself requires that the person has non-contingent origins. People need to have a sense that they can go back and start again to remake or actualize their very selves, and, in order to have that, they must not be preprogrammed or designed by another. German philosopher Jürgen Habermas<sup>7</sup> agrees that designed persons no longer can own themselves, as they must do in order to make their beings and their lives fully their own. Lack-

ing self-ownership, people are not fully free. They are deprived of the liberty that comes from the fact that no one has interfered with the essence of their being. This lack of interference means their genetic makeup has come into existence through chance, and that it do so in that way is a necessary condition for such liberty. Moreover, because these children are not equal to the designer, they are deprived of equality.

This loss of liberty and equality affects the humanness of all of us because, first, we would all be complicit in such manipulation by not prohibiting it. And second, as Habermas explains, because tampering with some people’s origins destroys a necessary condition for establishing a moral base for a secular society—that all people must be free from others’ interference in their intrinsic being if they are to have the capacity to take part in the human interaction from which a shared morality arises.<sup>8</sup>

***Genetic manipulation interferes with the intrinsic being of a person—with their very ‘self’.***

The injustice of one generation imposing its will over another generation (if the first generation designs its own children) would also result in other losses that have implications far beyond those people directly interfered with and the present time. The use of these technologies by one generation challenges the basic human rights of equality and freedom of future generations. And because the liberty and equality of all citizens is at the heart of democratic societal insti-

tutions and of the values which democratic societies promote, to create people who are neither free nor equal undermines those institutions and values. In short, not prohibiting 'designer children' undermines the very foundations of our Western democratic societies.

### III. Children's Rights and Donor Conception

We must explore two lines of enquiry in relation to children's rights and donor conception: Is donor conception ethically acceptable? And, if so, under what conditions, in particular, do children have a right to know the identities of their gamete donors?

#### Is Donor Conception Ethically Acceptable?

Many people have come to see gamete donation and donor conception as acceptable for opposite-sex couples who do not regard it as immoral. But, as I discuss below, some donor-conceived people adamantly disagree. Whether it should be available to same-sex couples or single women is a much more contentious issue. It merits noting in this regard that some sperm banks report that more than half of the women who use their services are single.<sup>9</sup> It's also worth noting that the use of artificial insemination can be reduced by prohibiting the sale of sperm or preventing the donors from remaining anonymous. Many men would refuse to donate if they would not be compensated or if their paternity might become known.

The emphasis in the ethical and legal analysis of the use of ARTs, including

donor conception, has been on the rights and wishes of the adults involved - for instance, the gamete donors or prospective "parents". Some donor-conceived people strongly object to this approach. They argue that the rights and well-being of children born through the use of these technologies must be central to decision-making, which could mean that some of these technologies should not be used at all. .

The impact of ARTs, including donor conception, on children born through their use, other than that on their physical health, has been largely ignored; it has been readily assumed that no major ethical or other problems arise in creating children from donated gametes, and that opposition to the creation of these children is almost entirely based on religious beliefs. Such assumptions have been dramatically challenged in the last few years as the people in the first cohort born through the use of these technologies reach adulthood, become activists, and call for change. They describe powerful feelings of loss of identity through not knowing one or both biological parents and their wider biological families, and describe themselves as 'genetic orphans'.<sup>10</sup> They ask, 'How could anyone think they had the right to do this to me?'

It merits keeping in mind in this discussion that we are speaking of a very large number of people who could believe they have been harmed in these ways. Although precise numbers do not exist, it's estimated that in the United States, alone, 30,000 to 60,000 children are born each year through sperm dona-



tion<sup>11</sup> and, in 2005, about 6,000 babies were born from ova donation.<sup>12</sup> It is also not irrelevant to this discussion that in America the fertility industry brings in \$3.3 billion annually.<sup>13</sup>

A common strategy used to dismiss the arguments against donor conception is that there is no ‘proof’ that donor-conceived persons, either as children or later, as adults, are harmed in any important way. Studies carried out on young donor-conceived children, who declare themselves perfectly happy with their parents and families, are often put forward as evidence that no harm is caused. In contrast, donor-conceived adults’ claims of identity confusion, loss of connection to half their genetic kin, psychological distress, and so on, tend to be dismissed as anecdotal and irrelevant, and they are challenged to prove empirically the harm done to them.

But that is to ask the impossible. Sociology is not hard science, and qualitative research can indeed be a valid way to proceed. In addition, it’s very difficult to find a large random sample of donor-conceived people: most parents never tell their children about their origins. Moreover, this secrecy is itself likely to cause harm to many donor-conceived people, but it is impossible to study that either.

Studies on young donor-conceived children, which purport to show there is no harm, do not capture harms experienced only later. For instance, in early adulthood, when we are forming a mature self-identity, knowing our origins

and biological family helps us to find that identity.<sup>14</sup>

The ethical doctrine of anticipated consent is relevant in deciding what we owe ethically to children brought into being through ARTs, including donor conception. Anticipated consent requires that when a person seriously affected by a decision cannot give consent, we must ask whether we can reasonably anticipate they would consent if able to do so. If not, it’s unethical to proceed. So, ethically, we must listen to what donor-conceived adults are saying about gamete donation to decide whether we can anticipate consent to it.

They—like adopted children—tell us of their profound sense of loss of genetic identity and connection. They wonder: Do I have siblings or cousins? Who are they? What are they like? Are they ‘like me’? What could I learn about myself from them? These questions raise the issue of how our blood relatives help each of us to establish our human identity.<sup>15</sup> Humans identify closely with their close genetic families, and it seems that we also identify with traits in our family members that we like (we try to develop the same traits in ourselves), and that we dislike (we vow not to be like that—the positive power of negative identification).<sup>16</sup> In short, from what many donor-conceived adults tell us we cannot anticipate consent to anonymous gamete donation—or, indeed, to gamete donation itself.

Two stories concerning the donation of gametes that raise additional questions have appeared recently in the media.

One related that a ‘virtual’ sperm and egg bank is being established that will only accept offers to donate from ‘beautiful’ people. Internet polling will determine who is sufficiently beautiful. The goal—informed by the principle that ‘everyone deserves a beautiful child’—is to enable ‘ugly’ people to have beautiful children.<sup>17</sup> If we tack on surrogate motherhood to this ‘service’, a person could order a custom-made child and collect it nine months later.

The other story reported that New Zealand will possibly allow ‘double donation’; that is, would-be parents would be able to use both donated ova and sperm to create embryos (a practice that is not legally prohibited, although still fairly uncommon, in Canada). As Diane Allen of the Infertility Network argues, this ‘cannot be construed as any form of infertility “treatment”, but, rather, the deliberate manufacture of babies to meet consumer demand’.<sup>18</sup>

Donor conception may be a completely avoidable human tragedy in the making, one for which we might be holding a truth and reconciliation commission at some future date, when offspring ask, as some are already doing, ‘How could you have done this to us? How could you have allowed this to happen?’

Is donor conception the twenty-first century version of the wrongs we now recognize we did to some children in the twentieth century? Are we repeating

in a new context and in new ways the terrible errors and grave injustices that occurred with Australia’s ‘stolen generation’ of aboriginal children, the United Kingdom’s ‘home children’ sent to Canada and other British Commonwealth countries, and the ‘scoop’ of native children from reserves into Canadian residential schools and white adoptive homes, all of which deliberately separated children from their biological families?

In all these instances, our intentions were, just as our intentions are at present in regards to donor conception, to ‘do good’. In donor conception, however, we primarily intend to ‘do good’ to the adults who want a child, rather than to the child; whereas in the instances of the other historical wrongs I have mentioned, the perpetrators sometimes acted out of the belief —although a grossly mistaken belief—that their policies were good for the children. As an old human-rights axiom warns, an unalloyed intention to ‘do good’ has its dangers: ‘Nowhere are human rights more threatened than when we act purporting to do only good’. Our desire to do good can blind us to the risks and harms that are involved. Is that true of gamete donation?

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An argument that is used to support donor conception is that the child would not exist otherwise and, therefore, should not complain. One young donor-conceived woman, confronted with this argument, responded, ‘If I were the

result of rape, I would still be glad to be alive, but that doesn't mean I or anyone else should approve of rape'.

### **Children's Right to Know the Identities of their Biological Parents**

If, however, the practice of donor conception continues, what are our obligations to people conceived in this way with respect to giving them access to information about their biological origins?

It is one matter for children not to know their genetic identities as a result of unintended circumstances. It is quite another matter to deliberately destroy children's links to their biological parents, and especially for society to be complicit in this destruction. It is now being widely recognized that adopted children have the right to know who their biological parents are whenever possible, and legislation establishing that right has become the norm. The same right is increasingly being accorded to children born through gamete donation. For instance, the United Kingdom has passed laws giving children conceived after April 1, 2005, this right at 18 years of age.<sup>19</sup>

Ethics, human rights, and international law<sup>20</sup>—as well as considerations such as the health and well-being of adopted and donor-conceived children—all require that children have access to information regarding their biological parents. And it is not just these children who have this right, but their descendants as well. Children deprived of knowledge of their genetic identities—and their de-

scendants—are harmed physically and psychologically.

If donor conception continues, respect for children's rights in these regards requires that the law prohibit anonymous sperm and ova donation, establish a donor registry, and recognize children's rights to know the identities of their biological parents and, thereby, their own biological identities.

Adoption is our longest-standing experience of dealing with a situation where children have been intentionally disconnected from their biological parents and, often, did not know and could not find out who their biological parents and relatives were. In the past, adoption records were permanently sealed. We now recognize that as being harmful to the adopted person and potentially to the birth family, and unethical. Yet donor-conceived Canadians do not know who at least one of their biological parents is, because donors in Canada are allowed to remain anonymous, which is no longer the case in a growing list of countries (including Britain, Australia, and New Zealand, among many others<sup>21</sup>). That also is unethical and, if we continue with gamete donation, it must be changed.

Adoptive parents were once advised by 'professionals'—as the parents of donor-conceived children have been and still often are—not to tell their children of their origins; they were told that secrecy was best. This, too, should be changed, not least because people excluded from a secret that relates to them in some major way often sense that they are be-

ing excluded. Their not knowing what the secret is creates a situation of doubt, which can be very difficult for them to cope with psychologically. Moreover, such secrets can damage—sometimes even destroy—family relationships once they come to light, as most inevitably do, often in traumatic situations (for example, divorce or death).

Adoptive parents were also told that children were a blank slate, that they would be just fine and would not experience loss because of their adoptive family loving them, really ‘wanting them’, ‘going through so much to get them’, and so on. For many adopted children, even those who deeply love their adoptive parents, this has not proven to be true, as is also the case for some donor-conceived children. Now, prospective adoptive parents are counselled during the home-study process to expect and accept this sense of loss as normal.

Birth parents were told—as gamete donors are today—that it was in their own best interests to ‘put it behind them and get on with their lives’, that their relinquished children would be just fine, that they were doing a ‘wonderful, selfless’ thing in helping people become parents who couldn’t otherwise do so. But this ‘moving on’ was not always possible for the birth parents, as is also true for some gamete donors.

### **The Ethical Way Forward**

I suggest that the first step in dealing, ethically, with the issues I have identified in this section, and with other related issues, is to place the future child, and the child’s human rights and our

obligations as a society to him or her, at the centre of the decision-making as to what should be required, allowed, or prohibited—that is, what we must, may, or must not do, respectively—in the use of assisted human reproduction technologies, including gamete donation.

The child cannot tell us what he or she would consent to, but other people conceived in these ways can. As I’ve explained already, we must listen to them in order to apply the ethical doctrine of ‘anticipated consent’; that is, if we cannot reasonably assume that someone affected by our decision, who is not present, would consent if present, it is not ethical to proceed.

The ‘precautionary principle’, currently most commonly used in environmental ethics, might also help: we should exercise wise ethical restraint—prudence—until we are reasonably certain that it is safe and ethical to act. And that safety goes beyond assessing only physical harm to the future child. It also includes taking into account existential harm to him or her, and risk and harm to our societal values and ethics.

What impact, especially on important values on which we found our shared societal ethics, would wanting only beautiful children have on our concept of unconditional parental love? Hitherto, we have believed we love our children simply because they are our children. Does the selection and purchase of gametes to conceive a child make the child into an object or thing, rather than a person? How will the child feel

knowing that a genetic parent sold what is (as one donor-conceived woman put it) ‘the essence of my life for \$25 to a total stranger, and then walked away without a second look back? What kind of a man sells himself and his child so cheaply and so easily?’ Is there something gravely ethically wrong with the commercialization of the miracle of the passing on of human life? Canadians decided there was, and that leads to yet another recent donor-conception news story.

In 2005, the Canadian Parliament enacted the Assisted Human Reproduction Act that made it a criminal offence to buy or sell gametes or embryos.<sup>22</sup> Assisted Human Reproduction Canada—the agency that was established to oversee the implementation of this statute—has just been challenged with allegations it is failing to fulfill its obligations by not seeking prosecution of those who take part in the continuing sale of sperm and ova in Canada.<sup>23</sup>

#### **IV. Children’s Right to Be Reared with in Their Own Biological Families**

The general norm or default position in Western societies has long been that parents have obligations to care for their biological children, at least those born into a marriage. In more recent times those obligations have extended to all their biological children. That means that children have correlative rights with respect to their biological parents and family structure. As adoption law impliedly recognizes, a child has a right to be in contact with his or her biological parents within a family structure—

that is, to be reared by their biological mother and father within their genetic family—unless an exception is unavoidable in the ‘best interests’ of a particular child. In short, adoption can be viewed as a default position where neither the biological mother nor father is capable of adequately parenting the child.

It might be objected that there is no magic in biological matching. It might also be supposed that genetically controlled development and environmentally determined development run on entirely different tracks, so that the suitability of a couple to parent a particular child can be determined with little reference (except perhaps in exceptional cases such as those presented by special-needs children) to the genetic structure of the child, and still less reference to some sort of matching between the genetic structure of the couple and that of the child. This conclusion might have been unchallenged orthodoxy until recently. However, scientific research is giving us possible clues to the contrary. This research indicates that when we mess around with Nature in the context of human reproduction, we may have no idea of all the implications of what we are doing. Let me briefly refer to just two examples.

Research is showing that smell can indicate whether an opposite-sex partner is more or less genetically compatible in relation to reproduction: women who are not pregnant find the smell of men who are ‘immunologically dissimilar’ from them—that is, men who are likely to have genomes different from their own—more attractive than the smell

of men with similar genomes. Genetic difference between the parents increases the likelihood of more immunologically robust offspring.<sup>24</sup> Such studies raise interesting questions about the desirability of having parents who have selected one another the old-fashioned way, rather than through the impersonal mechanisms of artificial insemination by donor or ovum donation. They also raise questions about the advisability of women who are taking oral contraceptives, which affect pheromones and the sense of smell, selecting partners for marriage or with whom to reproduce.

And a breakthrough in a new field of scientific research called ‘epigenetics’,<sup>25</sup> which investigates the interaction of genes and environment, breaches the barrier between environment and genetics by revealing that some genes are imprinted—‘activated’—by parenting practices<sup>26</sup> and other environmental factors (and that epigenetic changes can be passed on to future generations, including through the behaviour of the parents).

It may emerge, therefore, that the optimal parenting practices for a child depend in part on that child’s genetic inheritance—the child’s genome or DNA/RNA—and its amenability to activation by one or another set of parenting practices. Good parenting for one child might be mediocre parenting or worse for another depending on their genomes. A further insight that might emerge is that parenting practices themselves are in part a product of genetics and epigenetics, and that biological parents may be more likely to be matched

by nature in such a way as to lead their parenting behavior to be optimal for their own biological offspring. Confirmation of these possible outcomes must await further research.<sup>27</sup> I hasten to add that in articulating these possibilities I am not endorsing ‘genetic reductionism’, the claim that we humans are nothing more than the functioning of our genes or ‘gene machines’.

This new knowledge also gives rise to questions about criteria for adoption. It raises the question whether there should be a presumption, subject to an exception, where an exception would be in the ‘best interests’ of a particular child, that children should be adopted by couples comprised of a man and a woman.

## **V. Children’s Right to Both a Mother and a Father**

And that enquiry brings us to the issue of same-sex marriage, which has been legalized in Canada<sup>28</sup> and some other countries. Under both article 16 of the U.N.’s Universal Declaration of Human Rights<sup>29</sup> and domestic law, marriage is a compound right: the right to marry and to found a family.

Giving same-sex couples the right to found a family unlinks parenthood from biology. In doing so, it unavoidably takes away all children’s right—not just those brought into same-sex marriages—to both a mother and a father and their right to know and be reared within their own biological family. It does so because marriage can no longer establish as the norm the natural, inherently procreative relationship between

a man and a woman and the rights of children that flow from that norm: in particular, the right of children to both a mother and a father who are their own biological parents, unless an exception is justified as in the ‘best interests’ of a particular child, as in adoption.

The primary rule becomes that a child’s parents are who the law says they are, and they may or may not be the child’s biological parents.<sup>30</sup> That is, the exception to biological parenthood, which used to be allowed through adoption law, becomes the norm.

In other words, same-sex marriage radically changes the primary basis of parenthood from natural or biological parenthood to legal (and social) parenthood as the Canadian Civil Marriage Act expressly legislates.<sup>31</sup> That change has major impact on the societal norms, symbols, and values associated with parenthood.

The same issue of children’s right to both a mother and a father is raised by society’s involvement in intentionally creating single-parent households, for example, by funding single women’s access to artificial insemination, which has been discussed above.

Same-sex marriage advocates argue that children don’t need both a mother and a father, and ‘genderless parenting’ is just as good as, or even better than, opposite-sex parenting, because in the case of same-sex couples, all children are want-

ed children. Research is showing, however, that men and women parent differently<sup>32</sup> and, as I’ve already explained, other research in epigenetics shows that certain genes in young mammals are activated by parental behaviour. Science may well show us that complementarity in parenting (having both a mother and a father) does matter for children’s well-being in ways we have not previously understood. In short, mothers and fathers parent differently and, therefore, it would seem, confer different benefits on the child.

***same-sex marriage radically changes the primary basis of parenthood from natural or biological parenthood to legal (and social) parenthood...***

Two further considerations also need to be taken into account. They both rest on one prominent school of child-development thought which emphasizes that children develop through a process of ‘modelling’.<sup>33</sup>

The first consideration is that a boy needs an adult male parent on whom to model himself and a girl an adult female parent; a same-sex couple will, therefore, fall short with either the male or the female children. The second consideration looks to the relationship between the parents: children benefit when they can model their own relationships with the opposite sex, in later life, on the relationship conducted by their parents.<sup>34</sup>

One argument against same-sex marriage raised in the Canadian court cases was that same-sex couples could not found a family naturally and, therefore,

marriage was not an appropriate way to publicly recognize their committed relationship. The Court of Appeal of Ontario<sup>35</sup> responded, however, that these couples could use reproductive technologies to found a family. The common thread between same-sex marriage and reproductive technologies is that both disconnect procreation from sexual intimacy between two humans: same-sex marriage involves sexual intimacy with no possibility of procreation; reproductive technologies involve procreation with no sexual intimacy.

The debate on legalizing same-sex marriage in Canada focused almost entirely on adults and their right not to be discriminated against on the basis of their sexual orientation. The conflicting claims, rights, and needs of children were barely mentioned. It's worth noting that legally recognizing civil unions, unlike the recognition of same-sex marriage, does not negate children's right to both a mother and a father, because it does not include the right to found a family. For that reason, I believe it represents the most ethical compromise between respect for the rights of homosexual people not to be discriminated against and the rights of children with respect to their biological families.

## VI. Conclusion

All these rights of children are of the same basic ethical nature—obligations of non-maleficence, that is, obligations to *first do no harm*. Consequently, as a society, we have obligations to ensure respect for these rights of children. It is one matter, ethically, not to interfere

with people's rights of privacy and self-determination, especially in an area as intimate and personal as reproduction. It is quite another matter for society to become complicit in intentionally depriving children of their right to know and have contact with their biological parents and wider family, or their right to be born from natural biological origins. When society approves or funds procedures that breach these rights of children and, arguably, when it fails to protect such rights of children—for instance, by failing to enact protective legislation—society becomes complicit in the breaches of rights that ensue.

Those obligations extend also to future generations. We should clearly recognize that any genetic procedure that will turn out to be harmful to the future child or to a future generation, or contrary to their interests, is morally unacceptable and should be prohibited.

Knowing who our close biological relatives are and relating to them is central to how we form our human identities, relate to others and the world, and find meaning in life.

Children—and their descendants—who don't know their genetic origins cannot sense themselves as embedded in a web of people, past, present, and future, through whom they can trace the thread of life's passage down the generations to them. As far as we know, humans are the only animals who experience genetic relationships as integral to their sense of themselves. We are learning now that eliminating that experience is harmful to children, biological parents, families,



and society. We can only imagine how much more damage might be done to a child born not from the union of a man's natural sperm and a woman's natural ovum, but from 'gametes' constructed through biotechnology.

To summarize, at the very least, children's human rights with respect to their biological origins are:

- (1) for the child's origins to be natural and untampered-with;
- (2) for the child to know the identity of the progenitors of those origins; and
- (3) unless the contrary is unavoidable in the 'best interests' of a particular child, for the child to be in contact with those progenitors within a family structure—that is, to be reared by their biological mother and father within their genetic family.

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## Endnotes

1 AM, FRSC, A.u.A. (pharm.) (Adel.), LL.B. (hons.) (Syd.), D.C.L. (McGill). Samuel Gale Professor of Law, Professor in the Faculty of Medicine and the Founding Director of the Centre for Medicine, Ethics and Law at McGill University. The author is indebted to Professor Scott FitzGibbon of Boston College Law School

for many insightful suggestions for improvement of this text and for careful editing. I also thank my McGill University colleague, Professor Michael Meaney, Ph.D., for reviewing the discussion of epigenetics in the section on children's right to be reared within their own biological families. As a biologist and a leader in the area of environmental epigenetics, his review focused on the biological sciences basis of those passages, and did not extend to an endorsement of any social or legal conclusions drawn on that basis.

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10 See Chad Skelton, *Searching for Their Genes: Family Ties*, VANCOUVER SUN, April 22, 2006.

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12 *Id.*, at 17.

13 *Id.*, at 5.

14 See David J. Vellaman, Family History, 34 PHIL. PAPERS 357 (2005).

15 See generally T. Freeman, V. Jadva, W. Kramer & S. Golombok, *Gamete Donation: Parents' Experiences of Searching for their Child's Donor Siblings and Donor*, 1 HUMAN REPRODUCTION 1 (2009), especially at pages 7–9, where it is reported that children were usually positively affected by meeting siblings and that close bonding often resulted. Available at <http://www.oxfordjournals.org/eshre/press-release/freepdf/den469.pdf> (accessed September 10, 2010).

16 David J. Vellaman, *supra*, note 14; ELIZABETH MARQUARDT ET AL., *supra*, note 11.

17 *Dating Site Creates Online Sperm and Egg Bank*, NEWSWEEK, available at <http://www.newsweek.com/blogs/techtonic-shifts/2010/06/21/dating-site-creates-online-sperm-and-egg-bank.html> (accessed September 30, 2010). The dating site is [BeautifulPeople.com](http://BeautifulPeople.com)

18 Personal email communication from Diane Allen, Infertility Network, to Margaret Somerville, June 28, 2010.

19 Human Fertilisation and Embryology Act, ch. 22, § 24 (2008), amending § 31 of the 1990 Act, by adding section 31ZA. The act provides that donor-conceived people conceived after April 1, 2005, when they reach 16 years old, are able to apply to the HFEA to receive the *non-identifying* information that their donor provided (all information given by the donor except for his or her name and last-known address). Donor-conceived people conceived after April 1, 2005, when they reach 18 years old, are able to apply to find the information their donor provided, including *identifying* information. Note that it is only non-identifying donor information that can be provided at age 16. In order to get identifying information, donor-conceived people have to wait until they are 18.

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21 MARQUARDT ET AL., *supra*, note 11, at 77.

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23 Tom Blackwell, *Third Board Member Quits Fertility Industry Watchdog*, NATIONAL POST, May 31, 2010, available at <http://www.nationalpost.com/news/story.html?id=3094251#ixzz117FaV0xL> (accessed October 1, 2010).

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25 'Epigenetics refers to functionally relevant modifications to the genome that do not involve a change in nucleotide sequence. Such modifications include chemical marks that regulate the transcription of the genome. There is now evidence that environmental events can directly modify the epigenetic state of the genome. Thus studies with rodent models suggest that during both early development and in adult life, environmental signals can activate intracellular pathways that directly remodel the 'epigenome', leading to changes in gene expression and neural function. These studies define a biological basis for the interplay between environmental signals and the genome in the regulation of individual differences in behavior, cognition, and physiology'. Tie-Yuan Zhang & Michael J. Meaney, *Epigenetics and the Environmental Regulation of the Genome and Its Function*, 61 ANN. REV. PSYCH. 439 (2010), available at [http://www.annualreviews.org/doi/abs/10.1146/annurev.psych.60.110707.163625?url\\_ver=Z39.88-2003&rft\\_dat=cr\\_pub%3Dncbi.nlm.nih.gov&rft\\_id=ori%3Arid%3Aacrossref.org&journalCode=psych](http://www.annualreviews.org/doi/abs/10.1146/annurev.psych.60.110707.163625?url_ver=Z39.88-2003&rft_dat=cr_pub%3Dncbi.nlm.nih.gov&rft_id=ori%3Arid%3Aacrossref.org&journalCode=psych) (accessed September 12, 2010).

26 Ian C. G. Weaver, Nadia Cervoni, Fances A. Champagne, Ana C. D'Alessio, Shakti Sharma, Jonathan R. Secki, Sergiy Dymov, Moshe Szyf, & Michael J. Meaney, *Epigenetic Programming by Maternal Behavior*. 7 NATURE NEUROSCIENCE 847 (2004), available at <http://www.nature.com/neuro/journal/v7/n8/full/nn1276.html> (accessed September 11, 2010). The extensive debate which has ensued from this well-known study is reviewed in Lizzie Buchen, *Neuroscience: In their nurture*, 467 NATURE 146 (2010), available at [http://www.nature.com/news/2010/100908/full/467146a.html?s=news\\_rss&utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+ne](http://www.nature.com/news/2010/100908/full/467146a.html?s=news_rss&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+ne)

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27 I am indebted to Professor Scott FitzGibbon for suggesting the arguments related to epigenetics presented here.

28 Civil Marriage Act, R.S.C. 2005, ch.33.

29 Universal Declaration of Human Rights, GAOR 217A (III), U.N. Doc. A/810 (1948), adopted December 10, 1948, available in the University of Minnesota Human Rights Library: <http://www1.umn.edu/humanrts/in-stree/bludhr.htm> (accessed September 11, 2010). Article 16(1) provides: 'Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family'.

30 See the very recent British Columbia White Paper on Family Act Reform, available at <http://www.ag.gov.bc.ca/legislation/pdf/Family-Law-White-Paper.pdf> See also Todd Coyne, New BC family law could legalize having three parents, VANCOUVER SUN, July 19, 2010, available at <http://www.vancouversun.com/life/family+co+uld+legalize+having+three+parents/3297731/story.html>

31 Civil Marriage Act, *supra*, n. 38, Consequential Amendments §§ 5–15. For example, the amendment to the Income Tax Act states: 'The amendments to sections 56.1 and 60.1 of the *Act* replace the existing term 'natural parent' with the term 'legal parent' to ensure that support amounts paid under a court order or written agreement involving both opposite-sex and same-sex couples and their children will be recognized equally in federal law' (emphasis added).

32 See, for example, Gordon et al., Oxytocin and the Development of Parenting in Humans,

68 BIOLOGICAL PSYCHIATRY 377 (2010), in which the author identifies disparate parenting conduct, which is a function of oxytocins.

33 Gareth B. Matthews, *Concept Formation and Moral Development*. In PHILOSOPHICAL PERSPECTIVES ON DEVELOPMENTAL PSYCHOLOGY 175, at 185 (James Russell ed., 1987) (‘A young child is able to latch onto the moral kind, bravery, or lying, by grasping central paradigms of that kind . . . Moral development is . . . something much more complicated than simple concept displacement. It is: enlarging the stock of paradigms . . . developing better and better definitions of whatever it is that these paradigms exemplify; appreciating better the relation between straightforward instances of the kind and close relatives; and learning to adjudicate competing claims from different moral kinds . . .’). See also Lawrence J. Walker, Karl H. Hennig & Tobias Krettenauer,

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35 Halpern v. Canada (Attorney General), 225 D.L.R. (4th) 529 (2003). ◆

# It takes a man and a woman to make a marriage

Terri M. Kelleher

Western democracies face an unprecedented push to redefine marriage to include same-sex couples. Internationally this push has been successful in a small number of jurisdictions,<sup>1</sup> but has been rejected (usually by popular vote) in many more.<sup>2</sup> In Australia, both major political parties have committed to preserving the legal definition of marriage as “the union of a man and a woman to the exclusion of all others, voluntarily entered into for life”.<sup>3</sup>

Proponents of same-sex marriage typically frame the issue as a matter of civil rights, discrimination, and equality before the law. The flagship advocacy group for same-sex marriage is Australian Marriage Equality. Its tagline reads, “Working for equal rights for all Australians.” Could anyone reasonably oppose such a self-professedly egalitarian cause?

We say: yes. Defending marriage is both reasonable, and entirely compatible with equality and justice. Unfortunately, however, the debate is often framed as a simplistic division of enlightened progressives versus prejudiced bigots. But name-calling neatly avoids the one essential element of the debate: thoughtful consideration of the institution of marriage itself.

## Marriage defined

Most of those arguing either for or against redefining marriage accept, implicitly or explicitly, that marriage has a nature independent of its legal definition. Any such definition must necessarily restrict the kinds of relationships that will legally constitute marriage, based on certain fundamental criteria. If there were no criteria against which we could determine whether a given relationship can be regarded as “marriage”, then it would be impossible to justify a definition of marriage which is exclusive to *any* extent.

Our goal is to examine this thing called “marriage”, and to identify its essential properties; to determine what principles underpin its current definition; and ultimately to see whether marriage, of its very nature, precludes same-sex relationships. In doing so, we draw broadly on the work of Girgis, George and Anderson, whose comprehensive article ‘What Is Marriage’<sup>4</sup> is compulsory reading for anyone with a serious interest in the present debate.

Marriage is broadly understood to be an intimate, personal relationship between two people. But how does marriage differ from other intimate, personal relationships, such as between parents and children, or between friends? The

commonly accepted elements of marriage could be summarised as follows: a comprehensive union of the (usually two) spouses; a special link to children; and attributes of permanence and exclusivity.<sup>5</sup> As we shall see, these interdependent elements make good sense in relation to heterosexual marriage. By contrast, they would become entirely arbitrary if marriage were redefined to include same-sex couples.

### **Comprehensive union**

As a *comprehensive* union,<sup>6</sup> marriage involves the complete sharing of every aspect of the lives of the two persons involved, including bodily union. A union that did not include bodily union would not be comprehensive, as it would exclude an obvious and important part of the identities of the persons involved.<sup>7</sup> But what kind of bodily intimacy warrants our setting apart some relationships as marital, but not others?

It is an undeniable fact of biology that bodily union to the greatest extent possible can only occur between two persons of the opposite sex. Only in heterosexual intercourse can two persons become one flesh. This is not a matter of *feeling* close to each other, or sharing intense pleasure. It is the biological fact of two bodies joined in one common biological purpose, a purpose fulfilled by the joining of male and female sexual organs. The “whole” is the two bodies united, with man and woman each bringing a different but essential element.<sup>8</sup> The utterly unique complementarity of the male and female sex organs results in an equally unique union of

two bodies as one, from which union a third person may come into being, whether the spouses desire or intend to conceive or not.

This point is worth emphasising: sex is increasingly viewed as a recreational pastime, and different forms of sexual activity are portrayed as being of equal and indifferent import. But this is simply not the case. Heterosexual intercourse is the only sexual act by which a human person can be brought into existence. It is the profound starting point of a new and unique human life; a moment whose profundity is infinitely compounded for anyone who believes that conception gives rise to a human soul, as well as a body. To state the obvious: heterosexual intercourse is uniquely sacred on account of its life-giving power.

Two persons of the same-sex cannot be sexually united in a biological whole to the same degree as a heterosexual couple, no matter how loving any shared sexual experience might be. Though homosexual activity may signify deep intimacy, it is not the same as the comprehensive union that has come to be known as the “marriage act”. Heterosexual intercourse comprises the only biological function that humans cannot complete for themselves: the fulfilment of the reproductive function of their sexual organs.<sup>9</sup> This requires the sexual union of one man and one woman, and it is on this fact that the very existence of the species rests. This is not the case for any other form of sexual activity.

The uniquely comprehensive bodily union of a man and a woman is *the* essential element of marriage, without which none of its other characteristics make sense. Only the unique comprehensiveness of the heterosexual union can explain our species' historically uniform inclination to set heterosexual unions apart as being of special significance. Calling same-sex unions "marriage" would suggest that such unions should also be set apart, falsely implying that they are capable of achieving comprehensive union in the same manner as heterosexual unions. Changing the legal definition of marriage to include same-sex couples would be to legislate a falsehood.

### Marriage best for kids<sup>10</sup>

As we have said, it is because of its natural orientation to conception that the comprehensive heterosexual union merits special recognition. Conception is the natural result of heterosexual intercourse. Certainly it does not result from every act of intercourse; the woman must be in her fertile period and there must not be any fertility problems in either spouse. But conception can occur only in heterosexual intercourse. Viewed as a social and legal signifier of the heterosexual union's unique, life-generating character, it is unsurprising that marriage should be understood by most people as being uniquely linked to children.

A definition of marriage which included same-sex couples would destroy this link. Marital relationships could no longer rightly be considered to be rela-

tionships which are inherently oriented towards children. For although some same-sex couples seek to have children using donated gametes and artificial reproductive technologies (ARTs, including surrogacy), such efforts do not negate the inescapable biological distinction between same-sex unions, which are inherently sterile, and heterosexual unions, which are inherently fertile.

Importantly, the association between marriage and children is not diminished by specific instances of infertility in heterosexual couples. These are properly regarded as exceptions to the rule, and do not detract from the inherent life-generating capacity which distinguishes heterosexual unions from all other kinds of sexual union. Infertile heterosexual marriages are real marriages, since the comprehensive sexual union of the spouses is still one in which each spouse's body completes the other and the two bodies become one in unity of purpose.<sup>11</sup>

This is why it is incorrect to suggest that marriage is only about *having* children. Ascertaining which relationships might appropriately be called "marriage" is not a matter of determining whether two particular spouses can or will have children. Rather, as a broad public institution, marriage has regard to the general character of the union in question, and it is only by virtue of its inherently life-giving character that the heterosexual union warrants special signification. Our propensity to link marriage with children can only be explained if marriage is seen as a legal and social signpost by which society draws attention

to the unique and incomparably significant life-giving character of the heterosexual union.

The inherently procreative nature of heterosexual intercourse lends significance also to the *quality* of the relationship within which it occurs, and in this, too, the heterosexual union is entirely unique. In a secular, pluralistic society, non-procreative forms of sexual activity are of interest to no one but the parties involved.<sup>12</sup> But the heterosexual union is different. Any such union is of deep significance not just to the sexual partners, but also to any children conceived. Participation in heterosexual intercourse properly demands a degree of respect for its inherently life-giving nature, and a pre-emptory sense of responsibility for the human life which it may create. No other form of sexual activity is burdened with such responsibilities, because no other form of sexual activity is capable of creating life.

Once new life *has* been formed, the child naturally has a profound, lifelong interest in the quality of the relationship between his or her mum and dad, and in that relationship being characterised by the qualities of lifelong, exclusive fidelity. The harm caused to children by family breakdown and the growing epidemic of fatherlessness are well documented.<sup>13</sup> What's more, research strongly indicates that children reared by their biological parents in intact marriages do better on every measured score – including educational achievement, emotional health, psychological and sexual development, and positive personal and social behaviour.<sup>14</sup>

The research merely confirms the obvious, and it is only in this context that we can see why marriage requires the spouses to make a solemn and binding promise of lifelong, exclusive fidelity. The permanent marital commitment provides the requisite stability and longevity for the rearing of children to maturity. When this permanence is coupled with a commitment of exclusive fidelity, the natural result is for the family – mum, dad and their children – to remain a united whole.

An important distinction must be made here: for although children have an interest in their parents maintaining a permanent relationship, the mere fact of childrearing does not give cause for recognising a relationship as marriage. As has been suggested elsewhere, such a conclusion would require that any two (or more) persons committed to the raising of children be included in any redefined notion of marriage – for example, where two cohabiting brothers are jointly engaged in the rearing of a deceased sibling's orphaned children.<sup>15</sup> Clearly marriage – with its attendant commitment of lifelong, exclusive fidelity – makes no sense in such cases, and therefore cannot be justified by the fact of childrearing alone. It is only in the context of the heterosexual union that the marital virtues of lifelong, exclusive fidelity are able to deliver the ideal result of children being raised in a stable family environment by their own (that is, biological) mother and father.

Although the family takes many forms in contemporary Australian society, it is uncontroversial to insist that the ideal



family environment is that in which children are raised by their own mother and father. According to a 2004 study,<sup>16</sup> 73.6% of children under 18 in Australia live with their biological parents in intact families. It is a statistic we expect most Australians would applaud: the more children growing up in such circumstances, the better. The institution of marriage is instrumental in realising this ideal, by binding a man, a woman, and their biological children in a stable family unit.

This ideal may be contrasted with the reality of childrearing within same-sex relationships, where any children are, by necessity, *not* being raised by at least one of their biological parents. The proliferation of ARTs has already gone some way to undermining the importance of a child's connection with his or her biological parents, with often-traumatic repercussions for donor-conceived persons.<sup>17</sup> Redefining marriage to include same-sex couples would accelerate the process, by nullifying the institution's function of preserving the unity of the biological family.

It is important to note that although same-sex parenting deprives children of the right to be raised by their biological parents, this does not mean that women in a lesbian relationship, or men in a homosexual relationship, cannot be good parents. But it is also true that a woman can only be mother, and not a father; and that a man can only be a father, not a mother; and it has been convincingly argued that to voluntarily and unnecessarily deprive a child of either a mother

or a father is contrary to the child's fundamental rights<sup>18</sup> and best interests.<sup>19</sup>

### **State interest in marriage**

The state too has an interest in fostering the marital qualities of permanence and exclusivity specifically in heterosexual unions. Because of their inherently procreative nature, heterosexual unions are the source of the productive, law abiding (and eventual tax-paying) citizens upon which the state's future livelihood depends. However in the absence of strong, stable marriages, the fractured family unit struggles to provide the optimum environment for children to mature. For example, children raised in single-parent households, children whose parents are divorced, and even those raised in blended families show a greater propensity for substance abuse<sup>20</sup> and crime,<sup>21</sup> and are at greater risk of suffering abuse.<sup>22</sup> Ultimately the state shoulders the substantial direct and indirect costs<sup>23</sup> of these and other consequences of family breakdown, single parenthood and fatherlessness.

We further suggest that the state bears a positive *obligation* to safeguard the rights of children by encouraging exclusivity and permanence among those relationships which are inherently predisposed to creating new life. It has been suggested that this extends beyond a mere obligation to safeguard the child's developmental wellbeing, but also includes an obligation to protect the child's right not to be separated from his or her biological parents.<sup>24</sup> Marriage is the chief instrument by which the state fulfils this obligation, fostering permanence

and exclusivity within the only kind of relationship which is inherently predisposed to creating children: the comprehensive heterosexual union.

It is important to note that marriage comprises an entirely exceptional instance of state intervention in personal relationships. It is not normal for the state to regulate intimate relationships, and given the inherently fraught nature of the marital commitment, one might expect the state to remain impartial. And yet the state *does* become involved, even impressing upon the marrying couple the grave responsibility of honouring their commitment of lifelong, exclusive fidelity. Section 46 of the *Marriage Act* requires a marriage celebrant to warn the marrying couple “...of the solemn and binding nature of the relationship into which you are now about to enter.”<sup>25</sup>

For the state to place such expectations on a marrying couple seems wildly out of step with contemporary notions of individual liberty. Such an extraordinary intervention demands justification. However the unique link between the elements of permanence and exclusivity in marriage, and the social stability and economic benefits of children being reared in the optimum environment for healthy development, each provide strong grounds for the state becoming involved in the regulation of relationships which are of a life-gen-

erating nature. In the absence of this unique interest, any insistence by the state upon permanence and exclusive fidelity in private relationships seems unwarranted.

## Justice and equality

Having considered how the legal institution of marriage draws its legitimacy from the life-generating nature of the heterosexual union, it is necessary to

address the other major consideration in this debate: that of equality, justice and discrimination.

Discrimination is alleged in two ways. Firstly, it is said that the law unfairly discriminates by preventing same-sex couples from marrying on the

basis of their sexual orientation. However, this assertion blithely assumes that the sex of the spouses is not relevant in determining what does or does not constitute “marriage”. That is, the assertion begs the very question in issue.

If the sex of the spouses *is* determinative of whether a relationship can be marital – much as the sex of a man is determinative of whether or not he can be a mother – then allegations that the legal definition of marriage is discriminatory are as nonsensical as alleging that a definition of motherhood, which excludes men, is discriminatory. If, as we have argued, marriage relates specifically to heterosexual unions, it follows that any

**...the legal institution of marriage draws its legitimacy from the life-generating nature of the heterosexual union...**

relationship which does not meet this criterion simply is not marriage.

Secondly, marriage is said to be discriminatory because couples who cannot marry are precluded from certain marital benefits, relating to such matters as inheritance, taxation, superannuation, medical decision making powers, and being nominated as next of kin. However these benefits are relevant to other types of co-dependent relationships and arrangements (for example, the relationship between a disabled or infirm person and his or her carer), and can be – and for the most part have been – dealt with by specific legislation.<sup>26</sup> Since they do not arise only in relation to couple relationships, they cannot be said to be of the essence of marriage.

Obviously instances of unjust exclusion from certain services or benefits must be remedied. The point here is not to argue whether it is good public policy to extend marital benefits to other forms of co-dependent relationships, but rather to point out that justice in relation to these matters can and should be achieved through means other than radically redefining marriage, which is an important social and legal institution in its own right.

### **What about polygamy?**

Although present efforts seek only to redefine marriage in respect of same-sex couples, it is not only same-sex couples who are precluded from marrying; marriage between close relatives (incestuous marriage),<sup>27</sup> and marriage to more than one person (polyamorous marriage) are also precluded.<sup>28</sup> If marriage were re-

defined to include same-sex relationships, should it include incestuous and polyamorous relationships too?

Supporters of same-sex marriage dismiss this question as far-fetched – patently it is not. The right to have polygamous marriages recognised in Canada is currently being argued before the Supreme Court of British Columbia.<sup>29</sup> Meanwhile polyamory was recently touted in Australia as recently as 2010 by an academic at Victoria's La Trobe University.<sup>30</sup> And although voluntary incestuous relationships are an extremely rare phenomenon, widely publicised cases have led to demands that an incestuous couple's right to love whomever they choose should also be respected.<sup>31</sup>

### **Is love all you need?**

So the question stands: does the claim to equal rights for “equal love”<sup>32</sup> extend to the rights of polyamorous or incestuous lovers to marry?

One of the fundamental reasons for outlawing incestuous marriage is that such unions increase the likelihood of genetic defects in children.<sup>33</sup> But this reasoning holds firm only if we assume that marriage is grounded in the life-generating heterosexual union. And since this is the very assumption which proponents of same-sex marriage reject, we are left to ask what reason might remain for prohibiting incestuous marriage? If marriage is only about love and commitment, who is to say that the consensual love and commitment between two adult siblings is less worthy of recognition than same-sex unions? The prohibition on incestuous marriage

points directly to the fact that marriage is fundamentally grounded in the life-giving character of the heterosexual union.

Similarly, it is only in the context of heterosexual unions that restricting marriage to couples makes sense: for the human species, two is the precise number of persons required to consummate the comprehensive, life-giving heterosexual union. By contrast, a redefined notion of marriage would have no principled basis for limiting marriage to couples. But are we to conclude that the current prohibition on polyamorous marriage means that persons who choose to engage in committed polyamorous relationships are, by virtue of their exclusion from marriage, socially or legally inferior to persons in couple relationships?

Clearly not, and we similarly reject any suggestion that restricting marriage to heterosexual unions diminishes the standing of same-sex-attracted persons before the law. In Australia, marriage law has no bearing upon a person's general standing before the law, since no man or woman is precluded from entering into marriage. It is the nature of the institution itself, centred upon the life-generating heterosexual union, which demands that in any marriage, one party must be male and the other female.

## Conclusion

Hopefully it is clear by now that resisting the push for same-sex marriage does not rely on religious grounds, fundamentalism, bigotry or hatred. The argument rests on the proposition that, regardless

of what we may wish it to mean, marriage is a reality with certain indispensable elements; that the legal institution of marriage only makes sense in relation to that unique human relationship which is characterised by the comprehensive joining of two bodies as one in a common biological purpose; that this common purpose requires both a male and female element in order to be complete, and therefore must be heterosexual in nature; and that, as distinct from any other kind of interpersonal human relationship, the comprehensive heterosexual union alone is oriented to child bearing and rearing children, and is consequently oriented to permanence and exclusivity.

Redefining marriage would remove it from the only context in which its essential features make sense. However, popular such a move might be, this would be contrary to the common good, and the antithesis of good public policy. For although public policy should not disregard the desires or needs of individuals, it must primarily serve the common good. Marriage law currently does so by fortifying that unique relationship which is naturally oriented towards bringing forth children.

Redefining marriage would undermine the very significance of the indelible biological bond between man, woman and child. At a time when family dislocation weighs with increasing severity on families, we need public policy which reinforces, rather than undermines, the importance of mums and dads sticking together in a spirit of service to one another.

other, to their children, and to the communities in which they live.

Marriage, as it stands, makes a lot of sense. Let's keep it that way.

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## (Endnotes)

1 As at March 2011, only 10 nations endorse marriage between two persons of the same sex at a federal level: Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland and Argentina; see <<http://www.washingtonpost.com/wp-dyn/content/article/2011/03/14/AR2011031402821.html>>.

2 In the United States, for example, popular referenda in 31 states have resulted in constitutional amendments defining marriage as between a man and a woman.

3 *Marriage Act 1961* (Cth), s 5.

4 Sheriff Girgis, Robert P. George, & Ryan T. Anderson (2010) 'What Is Marriage' *Harvard Journal of Law and Public Policy*, 34 (1) at pages 245-287.

5 *Ibid*, at page 252.

6 For a detailed analysis of the comprehensive nature of the heterosexual union, see Girgis, George & Anderson, above n 4, at pages 254-5.

7 Girgis, George & Anderson, above n 4, at page 254.

8 *Ibid*, at pages 253-4.

9 *Ibid*, at page 254.

10 For a detailed analysis of the special link between marriage and children, see Girgis, George & Anderson, above n 4, at pages 255-9.

11 For a more detailed treatment of this question see Girgis, George & Anderson, above n 4, at page 265-8. We note here, however, that an intentionally 'contracepted' act of heterosexual intercourse cannot be said to be of a marital nature, since it lacks the comprehensiveness of the free and loving bodily union of spouses, whose openness to conception (and therefore the raising of children) connotes both exclusivity and permanence in the union.

12 With the obvious exception of sexual activity which is unlawfully violent or abusive.

13 For a concise summary of the research, see House of Representatives Legal and Constitutional Affairs Committee (1998) *To have and to hold – Strategies to strengthen marriage and relationships* (Parliament of the Commonwealth of Australia, Canberra), at pages 35-40.

14 See generally, The Witherspoon Institute (2008) "Marriage and the Public Good: Ten Principles", available at <[www.winst.org/family\\_marriage\\_and\\_democracy/WI\\_Marriage.pdf](http://www.winst.org/family_marriage_and_democracy/WI_Marriage.pdf)>.

15 Girgis, George & Anderson, above n 4, at pages 255-6.

16 P. D. Brandon (2004) "Identifying the diversity of children's living arrangements: A research note", *Journal of Sociology* 40 (2) at pages 179-192; cited in David de Vaus (2004) "Diversity and change in Australian families: Statistical Profiles", *Australian Institute of Family Studies*, at page 31.

17 See generally, Elizabeth Marquardt, Norval D. Glenn and Karen Clark (2010) *My Daddy's Name is Donor: A New Study of Young Adults*

*Conceived Through Sperm Donation* (Institute for American Values, New York).

18 See generally, Margaret Somerville (2007) “Children’s Human Rights and Unlinking Child-Parent Bonds With Adoption, Same-Sex Marriage, and New Reproductive Technologies”, *Journal of Family Studies*, 13 (2).

19 W.B. Wilcox (2007) “The complementarity of motherhood and fatherhood: A tour de force of the relevant social science”, in *The family in the new millennium*, A.S. Loveless and T.B. Holman eds (Praeger, Westport CT).

20 W.B. Wilcox et al. (2005) *Why Marriage Matters, Second Edition: Twenty-Six Conclusions from the Social Sciences* (Institute for American Values, New York) at pages 24-5.

21 Ibid, at page 29.

22 House of Representatives Legal and Constitutional Affairs Committee, above n 13, at pages 51-2.

23 Ibid.

24 See, for example, Somerville, above n 17; and Elizabeth Marquardt (2006) *The Revolution In Parenthood*, Institute For American Values, New York.

25 *Marriage Act 1961* (Cth), s 46.

26 See, for example, the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008*, which ensures that persons in a same-sex relationship have the same rights as heterosexual couples in relation to a whole range of entitlements, including social security and veterans’ entitlements, employment entitlements, workers’ compensation, and inheritance rights. In Tasmania, the *Relationships Act 2003* ensures equitable access to certain entitle-

ments for persons in *all* companionate, familial and carer relationships, not just intimate couple relationships.

27 *Marriage Act 1961* (Cth), ss 23(1)(b), 23(2).

28 *Marriage Act 1961* (Cth), s 23(1)(a).

29 Supreme Court of British Columbia, Reference Case No S-097769, Vancouver Registry. For full details see <[www.slaw.ca/2010/04/21/polygamous-reference-one-to-watch](http://www.slaw.ca/2010/04/21/polygamous-reference-one-to-watch)>. This follows the enshrining of same-sex marriage in Canadian law in 2005.

30 Linda Kirkman, “Poly is the new gay”, available at <<http://www.latrobe.edu.au/news/articles/2010/opinion/poly-is-the-new-gay>>.

31 See, for example, the revelation in 2008 of a consensual incestuous relationship between father and daughter reported on Australian current affairs program *60 Minutes* (and broadly covered by other media outlets) – transcript at <<http://sixtyminutes.ninemsn.com.au/stories/peteroverton/441583/forbidden-love>>.

32 This assertion is commonly employed by supporters of same-sex marriage, not least by the Australian same-sex marriage advocacy group ‘Equal Love’ – see <<http://www.equallove.info>>.

33 For example, *West’s Encyclopaedia of American Law* (West Publishing, 1998) states concisely, “The prohibition of intermarriage is also based upon genetic considerations, since when excessive inbreeding takes place, undesirable recessive genes become expressed and genetic defects and disease are more readily perpetuated” (at page 119). ◆

# The homosexual “anti-bullying” program for schools: an unconscionable stratagem.

**Rabbi Dr Shimon Cowen**

Our society and societies around the world are in the grip of a major social struggle over whether society will accept and teach homosexual behaviour as normative – that is, to establish homosexual behaviour as culturally normative, like heterosexual sexual activity between married persons. The prohibition of homosexual behaviour goes back to the dawn of civilization and was reiterated at Sinai and is upheld by the great world religious traditions. The struggle is not only a struggle of ideas and values. It is a struggle for the practical legitimization of homosexual behaviour by legislation, judicial precedent and institutional regulation. The goal of its proponents is to make it not only normative, but an expression of the inherent dignity of the human being, to be reinforced by the punitive sanctions of the state, and taught in public and private institutions.

There is a great deal of sleight of hand in one of the more recent stratagems to bring this about. This is a movement which, in the name or pretext of preventing the bullying of school children with homosexual behaviours, is seeking to legitimate homosexual behaviour in the earliest stages of child education in public and private schools. The movement has found its way past Government ministries, press and public with-

out being clearly noticed for what it is, as I shall argue in this paper: (1) unethical (2) unconstitutional (3) professionally fraudulent and (4) scientifically spurious. Its protagonists, however, have been willing to sacrifice integrity on all these counts in order to achieve a tactical goal: the teaching and validation of homosexual behaviour at the early stages of child education.

## **The ethics of the program**

Whilst to all good and reasonable persons, it is totally and unmistakably clear that the bullying of a child on any grounds is reprehensible and must be stopped, this must be radically separated from the moral agenda of the homosexual “anti-bullying” program for schools. This program, which goes under many names, has the primary goal to teach, as mentioned above, that homosexual activity is normative alongside heterosexual activity.

As the result of a doctrinal *putsch* in the American Psychiatric Association in 1973, followed by the American Psychological Association in 1975, the human being was redrawn, and what was formerly understood to be an abnormal behaviour – homosexuality – became normal and co-normative with heterosexual behaviour. Since then defence

of homosexual behaviour has become a pillar of political correctness. In terms reminiscent of the Stalinist placement of political dissidents into psychiatric hospitals, *opposition* to homosexual behaviour, not – as held by civilization for thousands of years – homosexual behaviour *itself*, has become an illness. It is called *homophobia*.

The American Heritage Dictionary defines a “phobia” as a “persistent, abnormal, and irrational fear of a specific thing or situation...” In truth, popular parlance has mutated this use of the word “phobia” – which means “fear” – so that it now also connotes “hatred”. This is evident in the current stratagem, which focuses on *bullying* homosexually inclined children. The twin stratagem of the homosexual movement in the adult sphere was to protect what it regards as the inherent and unalienable dignity of homosexual behaviour, by defining a physical attack on a homosexual victim as a “*hate*” crime, requiring an extra penalty in addition to the penalty for the offense of assault itself. The implication is that bullies and louts are not afraid of their victims, they hate them. So opponents of homosexual behaviour are purported to be parties to bullying and hatred: their irrational “fear” has become an irrational “hatred”.

This paper speaks from the standpoint of the world faiths which acknowledge and accept both the Abrahamic precepts and the revelation at Sinai, at which the Ten Commandments – the core of the Bible – were given. That teaching understands every human being to be made in the image of G-d. What this

means is that the human being has a soul, which is alive to the Divine and has a spark of the Divine. It is the mirror of G-d in the human being. It possesses in microcosm, the Divine attributes, and resonates with the basic values and norms which those attributes translate into proper conduct. These norms find their concrete expression in the shared basic laws of ethical human conduct, namely “Noahide” laws (after the name of Noah, the father of all humanity). They were practised by Abraham, father of the great world religions, and reiterated at Sinai.

The Abrahamic religious tradition respects the Divine image, the soul, in every human being and deplors violence against the physical body of the person, the bearer of that soul, unless there are specific grounds for it (such as in self-defence or in proper punishments of the State). The religious tradition knows the human soul is encased in a body, which is driven by many and diverse impulses and instincts. The soul – called by some the “conscience” of the human being – is the highest and the sovereign power within the person. It is not driven. Its task is rather to inform intellect how to discern amongst the many physical and emotional impulses in the human being; to say which are unacceptable and to check them; to say which are acceptable, and which need refinement and transformation. The person is a body, mind and soul (or conscience). The essential, spiritual person must muster and marshal body and mind to its directives.



A fundamental department of human ethical conduct has to do with sexual behaviour. Since Noah, Abraham and the revelation at Sinai (which took place over 3000 years ago), four categories of sexual behaviour have been prohibited: adultery, homosexuality, bestiality and incest. This paper is not here to present “reasons” for which each of these should be prohibited. The Creator, who fashioned the human being, excluded each of these as antithetical to the Divine image in the human being. He made the human being and he made laws for the actualisation of the human being in the Divine image. Accordingly man, in the Biblical verse, was enjoined “to leave his mother and father and cleave to his wife and become one flesh” (Gen 2.24; Mt 19.5; Eph 5.31). That one flesh is the child which expresses the union of husband and wife, and only the unions which can (theoretically at least) produce a child in a committed relationship are the Divinely sanctioned ones: not the union with another man’s wife, not the union of two men or two women, not the union of a human and an animal, and not the union of a human with (specifically defined) close relatives.

A human being is capable of impulses which run contrary to moral imperatives. Education and personal development have to do with checking, arbitrating and, where relevant, transforming impulse. However, it is a profoundly materialistic philosophy which says that the impulse *is* the person. Rather in the words of Viktor Frankl, the human being exists primarily in the heights of the human being, in the human spirit.

This spirit is not ruled by impulse; it is the authentic “I” of the human being. A person can have homosexual impulses, adulterous impulses, incestuous impulses and bestial impulses. None of these make him or her a homosexual, an adulterer, incestuous or bestial, unless he or she chooses to act on that impulse. A thief is a person who steals, not a person who is merely tempted or who has a “drive” to steal. The human soul is not homosexual, adulterous, incestuous or bestial. It is free of all of these and knows all of these to be abnormalities by its own Divine template. The commonness or the intensity of drives which are contrary to a Divinely mandated morality do not sanitize or “sanctify” them. However common the “Oedipus complex” might be in childhood development, it cannot warrant incest as a moral permission. However common bestiality might be – the 1960s editions of the Encyclopaedia Britannica tell us that between 40 and 50 per cent of boys growing up on farms in some parts of America have had sexual relations with animals – that will not constitute a moral permission for bestiality. However common the phenomenon of adultery – touted especially by the “celebrity” magazines – might be, that will not produce grounds for legitimating adultery. And however common or strong homosexual impulses may be in certain individuals, that will not make homosexual practice permissible.

The “audit” put out by the Safe Schools Coalition Victoria, which seeks to determine whether a school is safe against homosexual bullying, asks whether “diverse sexualities” are “celebrated” by the

school, in its library collection, teaching curriculum and so on. Here, as part of its program, it requires schools to teach (“celebrate”) the acceptability of homosexual behaviour as a norm. By so doing, it flies in the face of over 3000 years of religious and cultural tradition since Sinai. In terms of the world religions and world civilization, it is teaching something which is a moral wrong and fundamentally unethical.

To bring in acceptance of a norm of homosexual behaviour under the rubric of “tolerance” is also false. Tolerance, as Viktor Frankl said, has to do with love and respect for *people*, not for their views or behaviours. It does not extend to a moral relativism which makes the unethical ethical.

### **The unconstitutional-ity of the homosexual school program**

The doctrine of the separation of religion and state in the Australian and American constitutions provides that the State shall not establish a religion. It does not mean that religious values are prohibited expression in the public sphere. The State and public institutions may not *of themselves* prescribe (require) specific religious values and beliefs or proscribe (exclude) them. That is a restriction of religious liberty. Private institutions may wholly reflect the values of their constituencies. The “battle” of ideas and values is in the public square. Where generally the public square has a

religious character, this may be reflected in its institutions, as evident in the prayers with which Parliament begins. This is not strange in a society in which 70 per cent of the population, according to the last census, identify with a traditional religion. Nevertheless, the State may neither prescribe nor proscribe religious expression, and individuals are therefore not compelled to participate in the prayers.

For the agents of the state and its institutions to prescribe values which negate religious belief, and for them to do so coercively, would be a contradiction to the constitutional doctrine of this country. Yet this is what the homosexual anti-bullying school program seeks to do. The explanation of this proceeds in two steps: (1) the teaching of this movement is essentially anti-*traditional*-religion and (2) it seeks to commandeer institutions of the state and impose this anti-*traditional*-religion upon the will and values of the citizens of this country.

Whilst there are those who have sought to validate homosexual practice, whilst professing a religious viewpoint, their religion is not traditional religion. Traditional religion carries forward an ancient tradition, which generally in the case of the Abrahamic religions, has its authoritative beginnings at Sinai, at which the Ten Commandments were given. Traditional religion goes back to revelation, it receives and spiritually

***The materialism of many proponents of the modern movement which drives to legitimate homosexual behaviour is a hedonistic materialism.***

ratifies, generation after generation, a morality given by G-d, not shifting values originated by humans amidst the currents of history. The template of traditional religion is that of universal ethics, common denominator values, which are objective and eternal, which resonate in the soul of the human being, because the soul of the human being was made in the image of the one eternal G-d. To employ an adage, “Fundamental values *make* society, it is not society which makes fundamental values”. Amongst the fundamental values, received through religious tradition, is the heterosexual norm within the bond of marriage.

The materialism of many proponents of the modern movement which drives to legitimate homosexual behaviour is a hedonistic materialism. Not the dialectical materialism of Communism, but the hedonistic materialism, which melds the instinct-based psychologism of Freud with its materialism. This is a view of the human being as a higher animal in the sentient commonwealth of nature with a program of instinctual gratification for all. It has driven out G-d from nature (including the small G-d – the soul – in the human being), and made animal nature, both in humanity and in the rest of nature, its absolute. Without the soul fixed on G-d to monitor human conduct according to an objective and universal morality, hedonistic materialism provides for the gratification of polymorphous and polymorphing instinct. The gratification of homosexual impulse is thus part of its ethic.

Acceptance of homosexual practice as an ethical norm of hedonistic materialism, according to the doctrine of the separation of religion and state, could not be a required teaching and code of state institutions. It would negate and proscribe religious beliefs. Nevertheless, the homosexual anti-bullying program requires a school to teach *every* child in the school acceptance of homosexual practice as co-normative with heterosexual practice. The approach is identical to the stratagem of “hate crime legislation”. Legislation and the courts must, according to proposed “hate crime legislation”, enshrine the principle that a crime committed with the extra factor of animosity towards homosexuality must incur an *additional* penalty, to teach society that homosexual behaviour is an element of the dignity and integrity of the human being. The right to homosexual practice thereby becomes encoded as a universal principle on a par with equality of all peoples, regardless of race. The problem here is that civilization endorses the equality of all humans in that they are all made in the image of G-d, with the same spiritual potentiality. It does not endorse homosexual behaviour, but a sleight of hand – a cultural manoeuvre – has tried to sanctify it.

The homosexual school program seeks coercively to impose its proscription (negation) of religious beliefs on an entire school population. The notion that *every* child in a school, of which a great many come from religious backgrounds which prohibit homosexual behaviour, must be taught in the school from infancy that homosexual behaviour is equally

normative is coercive. State institutions – state schools – are being required by it to teach values, which override and negate the teachings of the traditional world religions and so infringe religious liberty, the liberty of the adherents of the traditional world religions. As such a hedonistic materialism is operating by fiat of the state and its public institutions – to indoctrinate all students with its own values. Proposed American congressional legislation of exactly the same kind – “The Safe Schools Improvement Act” – threatens to withhold state funding from schools in which bullying of homosexually disposed children occurs with the implicit requirement that school must teach the acceptability of homosexual behaviour to meet the grade and receive continued funding.

Not only does this practice of inculcating a specific norm into all students, contrary to the religious principles of very many Australians, violate religious liberty under the separation of religion and state. It is also a violation of international rights as set up in instruments of the United Nations. Specifically it is in violation of the UN Convention on the Rights of the Child which in article 14 states:

#### Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his

or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

The homosexual school program, with its indoctrination of acceptability of homosexual practice from early child education violates every one of these articles, each of which entitles a child coming from a home in which religious belief prohibits homosexual behaviour, to preserve that belief. This includes the adherents of the great world religions for whom homosexual practice has also been prohibited.

#### **The professional and psychological impropriety of the program**

Setting aside the unethical and unconstitutional aspects of the program, there are several grounds on which the actual methodology of the project to stop bullying of children manifesting homosexual inclinations is either misguided or generative of fresh harm. These have to do with (1) the question of psychological validity of the program to combat bullying (2) the appeal to children to identify and confirm their sexual orientation and (3) the very focus of the program on sexuality and sexual behaviour of children itself.

Evelyn Field is one of the primary experts on dealing with bullying in schools (and other contexts), both here in Australia, and possibly also interna-

tionally. She has written books on the subject and also has a website (bullying.com.au). On a radio program which I hosted, she stated that the method of dealing with bullying of any kind is not to engage the issue which is the pretext for the bullying. If a child is being bullied because he or she is obese, there is no need to engage the bully or the school environment with a discussion of obesity, let alone to extol it. There is a methodology for “blocking” the bully. The methodology is not to engage in the issue for which the bully is bullying; not to get involved in the pretext or the subject of the bullying. If one teaches a child how to “block” a bully it doesn’t matter what the bully is saying or attacking, and the same bully-blocking strategy applies.

In a nutshell, if a child is being bullied because he or she is fat, the way to block the bully is to take the “wind out of his or her sails”, it is not necessarily to take up the pretext upon which the child is being bullied. By extrapolation from Ms Field’s words, if a child were being bullied because he or she had stolen items, the remedy would not necessarily be to take up the issue of theft. Bullying is something which is independent of the “cause” in which it is pursued. It is reprehensible in and of *itself*. It might be added that children can bully out of cruel and vindictive grounds. They could also bully out of morally defensive grounds – such as taunting a child who had a pattern of theft. The taunting and the bullying would be wrong. The grounds might have a moral content. Our civilization of thousands of years does not regard homosexual practice as

normative, but as a moral wrong. The opposition to homosexual behaviour and the revulsion experienced against it has a moral basis. Violence, taunting and bullying does not. This further brings out the point, that the issue over which the bullying occurs is not relevant to the very act of bullying, and the attempt to connect the two can backfire on the blocking of bullying. It could wrongly be used to “justify” the bullying of a child who (and *because* he or she) steals.

However, the homosexual anti-bullying program, having violated this methodological principle, goes on to create circumstances of actual harm. By calling on children to identify themselves sexually at young age (to lock themselves into a sexual identity in early or pre-adolescence), they seize upon an as yet fluid and unformed sexual identity. There are cases where peer groups have labelled a child as homosexual, and the child has taken on the identity, only later to cast it off later amidst much suffering and much bad experience, when the child finally socializes into a normative heterosexual role. However, here it is not peers but social workers and academics who are working to freeze a child into a sexual identity – an explicitly homosexual identity at a young age. The *New York Times*, with its program of adolescents “coming out”, publicizes the manifestos of young children about their supposed homosexuality. The active acculturation of children – in an extremely fluid stage of their personal identity – into homosexuality is a profoundly disreputable professional practice.

The effect of this program is to *cultivate* homosexuality within a wide range of children who in the course of time and with the support of traditional values, could readily emerge from identity-uncertainty into traditional heterosexual roles. The American Pediatric Association (quoted below) notes that while up to 26 per cent of young children experience sexual identity uncertainty, only 2 to 3 per cent of the adult population settle into homosexual practices. This means that the homosexual school program potentially works to encourage the remaining 23 to 24 per cent to the position that homosexual lifestyles are an acceptable option. The present program, working upon the fluid sexual identity of children, can only be to cultivate and extend homosexual conduct amongst many children who would otherwise be socialized into normal heterosexual conduct.

There is finally the question of why there should be so much talk about sexuality in a curriculum, whether hetero- or homosexuality. Is this not itself an incitement or encouragement to sexual activity at an age at which it is wholly inappropriate? This is a highly sexualised society. No kind of sexual activity should be suggested or encouraged at the onset of puberty and adolescence. The present program is a contribution to the hypersexualization of society, starting with children. This is morally wrong; it is ostensibly bad for children's own development and it can lead to pregnancies and feeds into a culture of abortion. It detaches moral responsibility and commitment from sexuality, since children at this age are clearly incapable and are

not legally permitted to form committed relationships. It essentially pressures children into sexuality at an age where they are not psychologically or legally ready for it. It teaches sexual activity outside maturity and commitment. In short it is a driver to promiscuity, which has in certain countries taken the form of "educating" children in explicit homosexual devices and practices.

No legitimacy can be extended to this program "professionally" by the fact that university departments are involved with the program. University faculties and individual academics have ideological commitments like anyone else. It appears that the decision to continue the homosexual anti-bullying program of the "Safe School Coalition Victoria", as well as the program's continued funding, rests on an evaluation by Latrobe University's Department of Education and Early Childhood Development. How can a body which is in partnership with the Safe School Coalition Victoria, and which itself ostensibly benefits from the same funding, be expected to provide an objective analysis? The "evaluation" must come also from bodies which do not have the university's value pre-commitments.

### **The "science" and statistics of the program**

In Victoria, it would appear that the Minister was moved to continue funding for the Safe Schools Coalition Victoria, through the persuasion of an MP who is reported in the Parliamentary record, Hansard, to have said:

I implore the minister to look at the figures on youth suicide and self-harm and to recognise that these kids struggling with sexual identity are overrepresented in these statistics. A staggering 25 per cent of 15-to-24-year-old gay and lesbian kids have suicidal thoughts, and 80 per cent of bullying behaviour of gay and lesbian kids occurs in schools.

The prompts to introduce the homosexual anti-bullying program are (a) the incidence (though this is unspecified) of bullying of homosexually inclined children (b) the presence of suicidal thoughts in children with homosexual tendencies and (c) the imputed association of bullying with the suicidal thoughts.

Whilst fully condemning the bullying of any child whether on grounds of obesity or homosexual behaviours or any other reason, let us look at the statement made in Parliament. First *no* absolute figures of bullying of homosexually inclined children are given. Undoubtedly there are some, but no absolute numbers are given, on the basis of which a universal program is mooted to teach the normality of homosexual practice in schools. The same question arises in the comparable stratagem to introduce extra penalties for assaults on homosexuals under proposed “hate-crime” augmented penalties. What are the absolute figures of the instance? Again this will not be to exonerate or deny actual instances of violence, but we need to know the extent of the phenomenon for which such global “remedies” are proposed.

Secondly, the 25 per cent of homosexual persons with suicidal thoughts quoted refers to “kids between the ages of 15 to 24”. Within this bracket the only years relevant to a school population are the ages 15 to 18, and we are not told what percentage of this bracket have suicidal thoughts. Moreover the school program is also geared to children who are well beneath the age of 15. They may not have suicidal thoughts but they are, under the program, subjected to intensive homosexual acculturation programs.

The third question on the statistics: *why* do these children or young adults, with sexual identity confusion or homosexual leanings, have suicidal thoughts? Is it because of bullying or because of the essential malaise of confused identity? The president of the American College of Paediatricians has written:

Bullying has been linked to various negative outcomes among students; however, a direct link to suicide is less clear. Suicide most often occurs as a culmination of long term internal struggle and unrest. It is an irrational act of desperation that is often associated with the presence of long standing mental illness, depression, substance abuse, and isolation in its victims. More than 90 per cent of adolescent suicide victims met criteria for a psychiatric disorder before their death. Even suicide victim advocates caution the media against portraying bullying as the “cause” of suicide, stating that it ignores “the underlying mental illness issues that are present in 90 per cent of the people who die by suicide.”

Some advocates for those expressing alternate sexual identities also caution against the claim “that bullying caused someone to die by suicide.” Their concern is that by oversimplifying an association, individuals sympathetic to a cause or group may commit copycat acts of suicide.<sup>2</sup>

Again to point out that 80 per cent of bullying of homosexuals goes on at schools does not contribute to the argument. Presumably 80 per cent or something of that order of bullying on all accounts and for all sorts of pretexts goes on at school. But if bullying is not essentially relevant to suicidal thoughts, then the “80 per cent” cannot be grounds to propel a global program of affirmation of homosexual practice in schools.

A fundamental tenet of the “science” of the homosexual movement is that homosexuality is “hardwired” into a segment of the population. From a religious standpoint, if a person felt an overwhelming homosexual impulse of the deepest nature, that would be viewed with compassion but it would not constitute permission to indulge homosexual activity in practice. It is an abnormality, which as far as possible should be treated. However, there is a wide spectrum of children and persons who experience sexual identity confusion and can yet prevail upon themselves to accept what for the world religious cultures is the normative model of heterosexual behaviour. The homosexual lobby has a stake in rejecting therapy and the idea that humans can change and take control of their impulses. Paradoxically, it can be argued,

their attempt to block this change and drive children deeper into malaise is the potential cause of great suffering. Those who insist that a child *is* homosexual and *should* embrace a homosexual lifestyle can compound the psychological malaise. They compound an illness. The following is a letter from the President of the American College of Pediatricians, Tom Benton, to American School Superintendents on March 31, 2010

Dear School Superintendent,

The American College of Pediatricians shares with you, your staff, parents, and other professional organizations the common goal of providing a healthful environment for your students. We are increasingly concerned, however, that in many cases efforts to help students who exhibit same-sex attractions and/or gender confusion are based on incomplete or inaccurate information...

Adolescence is a time of upheaval and impermanence. Adolescents experience confusion about many things, including sexual orientation and gender identity, and they are particularly vulnerable to environmental influences.

Rigorous studies demonstrate that most adolescents who initially experience same-sex attraction, or are sexually confused, no longer experience such attractions by age 25... the majority of sexually-questioning youth ultimately adopt a heterosexual identity.

Even children with Gender Identity Disorder (when a child desires to be the opposite sex) will typically lose this desire by puberty, if the behavior is not



reinforced. Researchers, Zucker and Bradley, also maintain that when parents or others allow or encourage a child to behave and be treated as the opposite sex, the confusion is reinforced and the child is conditioned for a life of unnecessary pain and suffering. Even when motivated by noble intentions, schools can ironically play a detrimental role if they reinforce this disorder.

In dealing with adolescents experiencing same-sex attraction, it is essential to understand there is no scientific evidence that an individual is born “gay” or “transgender.” Instead, the best available research points to multiple factors – primarily social and familial – that predispose children and adolescents to homosexual attraction and/or gender confusion. It is also critical to understand that these conditions can respond well to therapy. Dr. Francis Collins, former Director of the Genome Project, has stated that while homosexuality may be genetically influenced, it is “... not hardwired by DNA, and that whatever genes are involved represent predispositions, not predeterminations.” He also states [that] “...the prominent role[s] of individual free will choices [has] a profound effect on us.”

The National Association for Research and Therapy of Homosexuality (NARTH) recently released a landmark survey and analysis of 125 years of scientific studies and clinical experience dealing with homosexuality. This report, *What Research Shows*, draws three major conclusions: (1) individuals with unwanted same sex attraction often can be successfully treated; (2) there is no

undue risk to patients from embarking on such therapy and (3), as a group, homosexuals experience significantly higher levels of mental and physical health problems compared to heterosexuals.

Among adolescents who claim a “gay” identity, the health risks include higher rates of sexually transmitted infections, alcoholism, substance abuse, anxiety, depression and suicide. Encouragingly, the longer students delay self-labeling as “gay,” the less likely they are to experience these health risks. In fact, for each year an adolescent delays, the risk of suicide alone decreases by 20 per cent.

In light of these facts, it is clear that when well-intentioned but misinformed school personnel encourage students to “come out as gay” and be “affirmed,” there is a serious risk of erroneously labeling students (who may merely be experiencing transient sexual confusion and/or engaging in sexual experimentation). Premature labeling may then lead some adolescents into harmful homosexual behaviors that they otherwise would not pursue.

Optimal health and respect for all students will only be achieved by first respecting the rights of students and parents to accurate information and to self-determination. It is the school’s legitimate role to provide a safe environment for respectful self-expression for all students. It is not the school’s role to diagnose and attempt to treat any student’s medical condition, and certainly not a school’s role to “affirm” a student’s perceived personal sexual orientation.

From the natural fluidity of sexual identity, which arouses doubts in the minds of 26 per cent of 12 year old children, but yet settles statistically to 2-3 per cent of adults, we see the profound danger in the attempt to persuade children of homosexual identity. Not only this – it is the persuasion to identify as homosexual which potentially *increases* suicidal thoughts. This is evident from the figures; the child is being driven by this program against its most natural identity.

The suggestion here is that the freezing of young children into homosexual identity may be a much greater contributing factor into depression and suicidal thoughts than bullying. The bullying must be stopped, but to use the bullying as a pretext to intensify the illness or confusion disorder is unconscionable. Secondly, and conversely, this movement closes the door on therapy. The difference between 26 per cent and 2-to-3 per cent indicates that therapy could help-out of identity confusion 23 or 24 per cent of those 26 per cent. In some parts of the world there are currently educational systems, running with the homosexual program, which encourage transgender identity in children of kindergarten age. How will this *enlarge* the

present 26 per cent of gender confusion in 12 year-olds before the next step is taken to confirm them into homosexual practice.

The “science” behind the homosexual program for children in schools has gone beyond the putsch in the American Psychiatric Association in 1973, which declassified homosexuality as an abnormality. It seeks now to “grow” homosexuality from early childhood. The new “doctrine” of the human being which got its scientific imprimatur in 1973 has embarked upon a program of qualitative expansion.

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### **(Endnotes)**

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2 “Bullying at School: Never Acceptable”, American College of Pediatricians, available at <<http://www.acped.org/Bullying-at-School-Never-Acceptable.html>>. ◆

# Rebuilding the culture... with romance

**Patrick F. Fagan**

*This article is an edited transcript of Dr Patrick F. Fagan's address to the National Conference of the Australian Family Association on 21 May 2011, Brisbane, Australia.*

The West is dying, because of gender dysfunction; the inability of men and women to work together in raising the children they have brought into existence. Instead they grow tired of each other and cast each other aside. Only 45 percent of American 17 year olds, on the cusp of adulthood, belong in an intact family. 55 percent have experienced their parents' rejection of each other. What is Australia's Belonging Index, its Rejection Index? Is it going up or down? Are you coming alive or dying as a civilization?

This has great relevance to your legislative work. When the most basic form of democratic government, government of the family by the father and mother together, fails at such growing rates as we have in the United States, then a bottom-up republican government is unsustainable and over time a top-down socialist regime is gradually being constructed. Ultimately a government is dedicated to making its families independent and self-sufficient or making its families dependent on it. In which direction have you moved? Greater independence of households or more dependence of households?

At the core of America's collapse is a wild faux sexuality: a sexuality which seems to blossom in youth but is incapable of sustaining attraction between the sexes over a life time and ultimately fails to deliver, not only solid family life, but even what it promises: the deepest enjoyment of sexuality itself.

## **Rebuilding**

The need to rebuild Western civilization is obvious and those who will do the rebuilding, if it is to be begun in your lifetime, are the young. It is your youth who will give you a strong Australia twenty years from now. And your work today is to create and ensure the inspiration, the creativity, and the enthusiasm for this form of love, so that your youth become experts of love, rather than practitioners of rejection.

Do you already inspire teenage Australians with a compelling vision of the Culture of Belonging that they can build for Australia during the next 10 years.

All young people who fall in love want that love to last forever. It is that love which will rebuild Western Civilization and a strong Australia. Every young man who falls for a girl seeks only her, not another. Every girl who falls in love with a man wants him for life and not another. We are made to be monoga-

mous, to belong to one and only one, for life.

However, this desire implanted in every young human heart, can be withered early with a just a bit of “fooling around”, and our culture is soaked with inducements to fool around.

### Pure Love

Let us digress into history for a bit: The West (founded on Rome, Athens and Jerusalem) was built by those who followed Christ when it was very difficult and often against the law, much like it is in China today. Early Christians were known for their radical love (“See how they love one another”), a love that especially encompassed their spouses, a love which really meant “till death us do part”. As Christianity gradually spread over centuries it gradually gave the world a vibrant Europe, a civilization that by the fourteenth century had surpassed what had been the greatest civilization till that time, the Chinese civilization.

Essential to that civilization, monogamy brought massive societal strengths that have remained hidden and unrecognised until our own day: unknown because it was so universal nobody noticed it. Now in its frequent absence we can see the difference it makes, especially when joined with worship of God. For instance five of the most used US government surveys illustrate repeatedly that the intact married family that worships weekly is the core strength of the United States: it surpasses all others in every outcome that the US government measures. I suspect the same

holds true for Australia, you just have to measure it.

### Romance

This culture gradually discovered the wonderful natural good called romance, and because of the universal culture of monogamy, was able to nurture it through literature, poetry, song and music, initially amongst the elite but soon, through the troubadours, amongst the whole population.

And what is romance but the desire to reach that heaven on earth: the love of the other who fills our young hearts, frequently blended with the anxiety that I may not be worthy or may not win her “yes” forever, and in that helplessness turning to God in prayer with an intensity few other situations in life evoke. How quickly and easily does the trinity of “her”, “me” and God, form in the heart of the young anxious lover so that it is almost impossible to separate them.

This great human phenomenon was captured by Christians in a way no other culture or civilization ever has, though all quickly gravitate towards it and incorporate it. It blossomed and gave us our greatest music, poetry, literature, art, song and opera. Take away romance and you have gutted the heart of Western arts. But the culture of romance is dying.

Popular music today no longer rivals that of the fifties and forties for romantic songs? The sexual taken too quickly has killed it. Innocence, the essential ingredient is absent. Oh we get musi-

cal talent but we don't get songs we love to sing. Young mothers no longer sing songs to their children, not because they cannot sing but because the songs are gone, gone with real romance. The sexual taken before its time kills it.

Romance has vanished in the arts, as the romantic tension of chaste love has faded changing courtship love into premature marriage love, sexualised love. And like premature babies this premature love has to fight for its life rather than gestate naturally in chastity. Many, if not most, such relationships die and innocence is banished forever. And God help the man who marries a woman whose sexual memories of her first lover are greater than the experience he gives her. And he will never know. And the probability is she can never be monogamous even in her heart, never be two in one flesh, but rather a divided three, or four or more. Even her immune system is changed by the first lover. That we can measure. What has happened to her heart, which we cannot. And what happens to a man's?

The man, or the woman, who does not have the capacity for virginity till marriage, does not have the capacity for lasting love once married. And the data show this.

Thus chaste romance is tightly linked to republican democratic government to the loyal patience that fosters order and due season rather than be carried by emotional needs to seek immediate gratification. It is not a stretch to see the connection between the romantic tension of chastity in courtship with

the mundane prudence of managing the family budget in marriage, in turn linked to the expectation that government live within its own budget. Behavioural economists are beginning to explore this phenomenon and even get Noble Laureates for it. It is amazing that the press has made so little of George Akerlof's studies. There is a strong, though indirect, connection between chastity in courtship and budget talks in Canberra and Washington.

### **Your Challenge**

The single most strategic work you can undertake, long term, for Australia, is the restoration of true romance, teaching young Australians, what young love really is.

In real romance the price of the sexual is the highest on earth and every girl knows she is worth it: the giving of life until death. That is how different chaste girls are: they know their worth and it is far higher than any radical feminist ever thought it could be. It insists on its worth and instantly recognizes debased currency and or outright counterfeit: and thus is born the chase of romance.

This romantic sense of worth is not achieved overnight in adolescence but is fostered very early through an elegant modesty in the home. There is a whole new fashion industry to be reawakened though an alliance between young parents, chaste youth, good fashion designers and good magazine editors who see a niche in which to be very creative and influential.

In cinema romance beckons because it is always wonderful to see a couple in love, no matter they be total strangers, anywhere in the universe. Endless creative challenges await great storytellers, scriptwriters and great young actors. What director out there can capture the connection between chaste adolescent love with all its fun and sparkle and the mature strength of middle age marriage? Song writers can likely capture it quickest and first.

Because of the inroads of the opposing polyamorous culture, thirteen-year-olds need to know that if in the years ahead they have sexual intercourse with one boy before marriage that they have gambled 50 -50 that they will be divorced by their mid-thirties, and if with two such boyfriends before marriage there is a 60 percent chance that their children will not grow up with their father. Such is the data for the United States. What is it for Australia?

Thus, the strategic training ground for the future of AFA, for the future of Australia. Australians love friendship and its men are famous for their loyalty to best mates. Such ground is ready for romance with the other form of best mate. Can you pull this off: can you lead the way to true romance? It is dead all across the West. Is it dead in Australia? Is your knowledge of this truth do deep your confidence in it overflows into dynamic action and leadership?

Your opposition is hard and successfully at work, leading the youth of Australia along the primrose path that leads to broken hearts, to children who have no

fathers, to mothers with no marriage bed, to men angry with the hand life has dealt them as they live severed from their children or corrupted in forgetting them.

Your opposition gains ground by selling what seems like love but is only sexual temptation, sex that ultimately (and rather quickly) rejects the other, leaving a more broken and hardened heart. You on the other hand are the real experts of real sex, sex with a great price, sex we don't call sex but love, the real thing that lasts till the end of time, till the end of your time on earth.

Yet your opposition brazenly pimps away and brazenly protects its project for they know where lies the strategic heart of the battle. We think it lies in the life issue. They know it lies in the sexual. Whoever wins that has all the rest. Destroy the heart and you can destroy whatever you like. To have a culture of life you have to have a culture of love. What a happy task: to restore a culture of romance as the way to end abortion and all that comes with it.

But not all of us are movie directors or song writers. What do we do? That is even more challenging.

First, and we all know this, each of us has to become a little furnace of love right in his own inner circle: in his family, in his marriage, a furnace of love in dealing with her children, even, and especially those who may have grown distant. To be a furnace of love with twelve year olds, 16 year olds, 26 year olds, 46 year olds. The ground for romantic love is the dirty diaper changed, the dollar

given to a beggar when you only have 50 cents, a chore done for a neighbour when you do not have the time, a kind word and a joke when you want to criticize and complain, of organizing a party for your friends when you feel just like chilling out, of overtime worked so that your child can have braces, of quitting work at five (when the boss expects you to stay longer) so that you can get home to kick ball with your five year old. That one can sometimes take more courage than being a Marine.

Romance is the flowering of young love, but those blossoms grow on trees with stout trunks. Those blossoms are not trees – yet. That comes later. Without blossoms we get no trees, but without trees we get no blossoms and the forest dies.

That ultimately is how we win legislative battles, the school rooms, the courts, the universities. Ultimately, at bottom, it is all about love, real love that lasts forever and that gives life abundantly, and grows old hand in hand so that even the young romantic couple envies the old.

Ghandi knew that and defeated the greatest Empire of his day. He built his life's work on the great law of nature: *Nemo dat quod non habet*: no one can give what he does not have.

Who among you is your Australian Ghandi of true love; who are your Ghandi's of true love? Who is your Australian John Paul II who can inspire your youth to Day's of Youth and Love? Who are your John Paul II's? You all are and if you really become that, live that, the leaders chosen by God will emerge. And then the poor of Australia will discover love again, for they are those most deprived. Your Mother Therasas will appear, probably in the guise of beautiful or handsome young adults but with the same smile and eyes as hers.

Your poor await you; your youth await you. Australia awaits you. The world awaits you. God awaits you. Romance is one of His greatest gifts to us.

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