THE MORAL SUPPORT OF SAME-SEX MARRIAGE

TRANSCENDING POLITICAL LIBERALISM THROUGH
JOSEPH RAZ’S LIBERAL PERFECTIONISM

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Since the turn of the century, the controversy over same-sex marriage in the United States has been propelled into the forefront of policy. In the political arena, the debate between proponents and opponents of same-sex marriage has remained circuitous, with both sides arguing from incompatible planes. While opponents vehemently adhere to conservative, and at times theological, notions of the morality of homosexuality, proponents often disregard morality-based arguments and instead engage in moral bracketing by exclusively relying on traditional liberal principles such as tolerance, privacy, and equality. Directly addressing issues of morality regarding same-sex marriage is “not at the forefront of either our political or legal advocacy for LGBT people.” Perhaps this is because socially conservative opponents of gay rights often attempt to use religious doctrines and the notion of tradition to assert a monopoly on issues of morality. Nevertheless, even if the liberal virtues of tolerance, equality, neutrality, and privacy that have guided the discourse on gay rights thus far are successful in making same-sex marriage legal nationwide, the gay rights movement will have overlooked an opportunity to argue the morality of same-sex marriage. In fact, “[a]s a practical matter, changing the public’s perception of the morality of gay sex...may ultimately be necessary to achieve true equality for LGBT people. As a theoretical matter, our lack of engagement with moral questions represents a serious deficiency in our articulation of the justification for LGBT equality.” In positing effectual political arguments supporting same-sex marriage, it is critical to be clear about what advocates of same sex marriage are asking for; in seeking equal participation in marriage, gays are not only demanding equal tangible benefits, but also societal acceptance in a moral sense.

In this paper, I propose that it is necessary for proponents of same-sex marriage to abandon their adherence to political neutrality and directly address the issue of morality by framing their argument with liberal perfectionist ideals. A liberal perfectionist model can allow the issue of same-sex marriage to transcend the notion of individual rights and restructure the discourse around collective goods and the moral value of same-sex marriage through an elevated status of personal autonomy. I begin by defining and criticizing the practice of moral bracketing and suggest that political neutrality, particularly in regard to the issue of same-sex marriage, is infeasible. In the second part of this paper, I differentiate between liberal perfectionism and antiperfectionism, and proceed by summarizing Joseph Raz’s liberal perfectionist theory. Raz’s political theory offers the most logically consistent and inclusive political groundwork that compels the state to endorse same-sex marriage, and in the fourth part, I apply his theory to the issue of same-sex marriage. The final part of the paper addresses and rejects two noteworthy objections to the application of Raz’s liberal perfectionist model to the support of same-sex marriage and suggests that both criticisms are rooted in unmitigated bigotry.

Problems with Political Liberalism in Advocating for Same-Sex Marriage

Moral Bracketing

Moral bracketing creates a strict dichotomy between religious and moral views and deliberations of justice, and is consistent with the traditional liberal conception of neutrality, in that it presumes that the definition of rights should not be dependent on any distinct conception of the good. To an extent, the use of liberal principles of tolerance, privacy, and equality have succeeded in advancing gay and lesbian rights without addressing the morality of homosexuality. For example, in 2003, the Supreme Court settled the sodomy debate by grounding homosexual acts within the constitutional right to privacy, and prevention of housing and employment discrimination against gays has generally been predicated in terms of equality. However, the practice of moral bracketing has been enervated in its attempt to achieve legality of same-sex marriage. As of this writing, nineteen
states and the District of Columbia issue marriage licenses to same-sex couples, and these figures are increasing rapidly. Proponents of same-sex marriage face a majority, many of which firmly believe that same-sex marriage violates the Judeo-Christian and Muslim tradition. In advocating for same-sex marriage, religiously based moral views can no longer be dismissed. The discourse regarding homos*xuality in American society has shifted from issues of sodomy and housing and employment discrimination to the issue of marriage. Carlos Ball explains that “[t]his shift in focus reflects a fundamental change in what many homosexuals are asking of society. In the past, most gays and lesbians sought, and were satisfied with, tolerance, but now many are asking for acceptance by demanding that their relationships be legally recognized.” A reliance on liberal principles alone is insufficient to legally achieve “acceptance”; proponents must revise their approach by incorporating normative and moral arguments to counter the opposition.

**Liberal Conception Of Neutrality**

As previously mentioned, political liberalism (“defined in this article as the prioritizing of the right over the good within a paradigm of public reasoning that separates moral values from political discourse”) is well suited to embrace toleration of homosexuality through constitutionally established principles of equality and privacy. However, accepting gay relationships by legalizing same-sex marriage entails the support of a particular conception of the good, which contradicts the political liberal conception of neutrality, which maintains that the state will refrain from defining the good life. Adherence to legal neutrality in the debate concerning same-sex marriage is impossible because the law has an expressive force: “The state, regardless of what position it may take on the nature of marriage, will place in its laws as a result of taking a position, a particular understanding of human nature, gender, and the good life that implies or asserts that there is a correct way to think on these matters.”

**Perfectionist versus Antiperfectionist Liberalism**

Traditional political liberalism is antiperfectionist. Robert P. George defines antiperfectionism as a view that the government is either
required to remain neutral on controversial questions of what makes for, or detracts from, a morally good life, or (2) forbidden to act on the basis of controversial ideals of moral goodness.\textsuperscript{14} Joseph Raz distinguishes himself from mainstream antiperfectionist political liberal theory by infusing liberalism with “perfectionism,” that is, the conviction that it is the primary goal of the government to help people to lead valuable and fulfilling lives by using “political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones.”\textsuperscript{15}

In regard to legal neutrality, perfectionist liberals argue that governments need not ignore conceptions of the good life, nor evade judgment of what is to be considered normatively valuable. Instead, perfectionist liberals maintain that it is possible to act partial towards certain issues and make normative assessments regarding differing conceptions of the good life without engaging in state-sponsored coercion.\textsuperscript{16} Furthermore, according to perfectionist liberals, personal autonomy is deemed to be an intrinsic good, and thus, “the state has a duty to adopt policies that promote and encourage personal autonomy, not because autonomy is an individual right, but because it is a moral good.”\textsuperscript{17} Because personal autonomy, as perfectionist liberals conceive it, is elevated to a high normative level, it should “guide society in determining what constitutes the right”\textsuperscript{18} on the moral ground that autonomy best protects and advances human well-being.\textsuperscript{19}

**The Perfectionist Liberalism of Joseph Raz**

**On Neutrality**

In *The Morality of Freedom*, Raz evaluates the antiperfectionist model of political moral neutrality, and concludes that it is not only unjustifiable, but infeasible. Raz finds the orthodox political liberal appeal to neutrality chimerical because it too often fails to distinguish between not helping and hindering. In certain cases, Raz considers not helping to be equivalent to hindering, and further posits that “within the range of duties which the State owes its citizens, failure to help is hindrance.”\textsuperscript{20} Furthermore, the traditional conception of neutrality contests with what Raz presumes to be the essential role of the state. For Raz, the state, rather than maintaining neutral between
contending conceptions of what constitutes a morally worthy conception of the good life, should encourage individuals to pursue valid conceptions of the good and to discourage evil or empty ones. Thus, based on Raz’s theory of the goal of political action he is able to invert the traditional view of neutrality. Paradoxically, Raz suggests that the state is required to act in nonneutral ways if it is to ensure, to all citizens, an equal ability to realize their own conception of the good life. Hence, according to Raz, “the state can be neutral only if it creates conditions of equal opportunities for people to choose any conception of the good, with an equal prospect of realizing it.”

**On Rights**

“For it is the goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty one.” This previously addressed quote from *The Morality of Freedom* expresses Raz’s unconventional view of the role of the state; but it must be noted that Raz does not believe that the state should do so because citizens have a “right” to such pursuit. Rather, Raz insists that the state should encourage individuals to pursue valid conceptions of the good because it is a collective good that is intrinsically valuable. Raz takes the position that the existence of collective goods promotes liberty, which he calls personal autonomy. In explicating Raz’s position on rights in relation to the collective good, Ball explains that “what traditional liberals view as fundament rights are so designated because they are intimately connected with the collective goods that promote and enhance personal autonomy.” To elucidate this point, Raz uses the example of the right to worship, which he conceives originated because it served communal peace, which only then allowed for the freedom of individual conscience. Thus, according to Raz, freedom of religion was not propounded in the United States because it was initially considered an inherent right, but rather because it produced certain communal benefits that simultaneously enhanced individual well-being.

**On Autonomy**

Raz presumes that some collective goods are intrinsically desirable if personal autonomy is intrinsically desirable. For Raz, autonomy is intrinsically valuable because it is essential for human well-being,
and one can lead a fulfilled life only if one is aware that one’s life is the result of a series of individual choices. Raz argues that it is the role of the government to create favorable conditions by which individuals can reasonably lead autonomous lives:

A perfectionist government, i.e., a government aware of its duty to promote the well-being of people is bound, in today’s conditions, to be sensitive to the need for people to be free in the sense of being capable of leading successful autonomous lives. Thus, based on the principle of autonomy, the government, on one hand, cannot interfere with individual attainment of autonomy, and, on the other hand, has a duty to take active steps to ensure that people are presented with an adequate range of options that are necessary to achieve autonomy.

**Moral Pluralism**

Traditional political liberals fear that if the state is justified in using political action to make normative claims on certain conceptions of the good life, then the state will also be free to infringe on civil liberties. However, this fear is invalid because, according to Raz, the promotions of a conception of the good based on the ideal of personal autonomy must, by definition, recognize the existence of, and the need for, moral pluralism. Moral pluralism affirms the presence of a variety of morally valuable, yet incompatible, conceptions of the good life.

Because the principle of autonomy stipulates the state’s promotion of an adequate range of options, a perfectionist state must dedicate itself to the provision of such incompatible options so that the individual can pursue their own autonomy. Although Raz recognizes that coercion invades autonomy, he distinguishes between coercion from an ideal liberal state and coercion from other sources, and assumes that coercive measures taken by the former are acceptable in certain situations:

A moral theory which values autonomy highly can justify restricting the autonomy of one person for the sake of the greater autonomy of other or even of
that person himself in the future. That is why it can justify coercion to prevent harm, for harm interferes with autonomy. But it will not tolerate coercion for other reasons. The availability of repugnant options, and even their free pursuit by individuals, does not detract from their autonomy. 36

Thus, coercive measures taken by the perfectionist state, which Raz refers to as paternalistic coercion, 37 do not affront the autonomy of individuals if such coercion is taken in order to assure a political morality that is fundamentally interested in promoting the well-being of individuals by promoting individual autonomy. 38

**Same-Sex Marriage Through Raz’s Conception of Perfectionist Liberalism**

As previously discussed, it is possible to conceive of society governed by traditional liberal principles in which the right to privacy tolerates homosexual acts, and in which equality deters housing and employment discrimination. However, Raz explains that gays cannot achieve personal autonomy if excluded from participation in marriage; and further, that the political resistance to same-sex marriage, which rests on normative arguments, cannot be abated without the application of perfectionist principles. In regard to same-sex marriage, Raz explains,

> It is true that one need not live in a society at all… to cohabit with another person. But doing so is not the same as being married…. [T]o be married is to partake of a socially and legally recognized and regulated type of relationship. Homosexuals cannot do that if their society does not recognize and regulate a pattern of relationship which could apply to them. They can imitate some other recognized relationship. But essentially they have to develop their relations as they go along, and do not have the option of benefiting from existing social frameworks. 39

Thus, for Raz, marriage is a collective good, which is intrinsically valuable because its existence promotes individual well-being by promoting autonomy. 40 Because well-being significantly depends on the projects and relationships one chooses to develop, prohibiting gays from marriage undermines their well-being. 41 Same-sex marriage
has faced extensive political resistance because many Americans believe homosexuality to be immoral. Consequently, many presume that sanctioning same-sex marriage would undeniably cause harm to those that hold moral values that oppose same-sex marriage. For example, Jeffrey Jordan argues that if same-sex marriage is legally permitted, there would be, what he calls “no exit right”42 for those that oppose same-sex marriage. He uses the example of an employer who provides health care benefits to argue that if same-sex marriage is legally sanctioned, then that employer “would be coerced, by force of law, into subsidizing a practice one finds morally or religiously objectionable.”43 Although many Americans find same-sex marriage morally repugnant, it is necessary in order for the state to fulfill its duty to provide an adequate range of options.44 According to Raz, coercion by the ideal liberal state is not only acceptable, but necessary in certain contexts.45 Thus, the state can be justified in restricting the autonomy of those who contest same-sex marriage for the sake of the greater autonomy of society. Prohibiting same-sex marriage harms gays who wish to marry by diminishing their autonomy: “That is why it can justify coercion to prevent harm, for harm interferes with autonomy.”46 Hence, because under Raz’s perfectionist liberalism the collective good of marriage is intrinsically valuable, it must be attainable to all individuals who wish to exercise their autonomy by incorporating marriage into their conception of the good life.

Moreover, the notion that legalizing same-sex marriage would cause harm to at least some members of society who oppose same-sex marriage is predicated on a traditional liberal conception of the harm principle. However, Raz’s understanding of the harm principle, which differs from the traditional liberals’, maintains that the state must endorse same-sex marriage. The conventional interpretations of Mill’s harm principle claims that the state can justifiably coerce individuals only to prevent harm to others.47 However, for Raz, the harm principle must also incorporate positive freedoms in addition to negative freedoms. Thus, state inaction can also hinder personal autonomy “through a failure to provide individuals with the range of options necessary to attain autonomy.”48 In other words,

It is a mistake to think that the harm principle recognizes only the duty of government to prevent loss of autonomy. Sometimes failing to improve the situation of another is harming him…. One harms another
by failing in one’s duty to him, even though this is a duty to improve his situation and the failure does not leave him worse off than he was before.\footnote{49}

For Raz, gays are harmed if they lack an adequate range of choices that would make personal autonomy possible. Consequently, because it is the role of the state to provide a sufficient range of morally valuable options, the harm principle derives from the intrinsic good of autonomy: “The harm principle is derivable from a morality which regards personal autonomy as an essential ingredient of the good life, and regards the principle of autonomy, which imposes duties on people to secure for all the conditions of autonomy, as one of the most important moral principles.”\footnote{50} The harm done to gays resulting from state inaction justifies governmental action to legalize same-sex marriage if marriage is included within an acceptable range of options necessary for autonomy. “The preceding sentence must be substantiated; the conditional if needs to be replaced with because.”\footnote{51} I will attempt to make that transition in the following section,\footnote{52} for now, my purpose is to show how Raz’s liberal perfectionism infuses “the good and valuable into a discussion of what is right.” This can be done, as Raz proposes, “through an adherence to, and a respect for, the liberal principle of personal autonomy.”\footnote{53}

Two Objections Considered

\textit{Objection 1}

The argument that marriage does not necessarily need to be included in an adequate range of options presents itself as the first objection. In certain states, homosexual couples are offered access to civil unions or domestic partnerships as a substitute to marriage; and it is often the claim that such alternatives provide for an adequate range of options. In order to repudiate the objection, Raz explores the concept and role of citizenship. Raz argues that a society in which a group of members lack full citizenship is detrimental to the health of the government and society because full citizenship is a precondition of trust in the government, which is a requirement for the government’s authority to use coercive paternalism.\footnote{54} By citizenship, Raz does not mean legal citizenship, but rather the
status of citizenship which makes it rationally possible for people to regard themselves as fully belonging to the political community, and similarly to regard its law as their law, and its government as their government....Those enjoy full citizenship who feel, where their feeling is not unreasonable, or who would be unreasonable to deny, that the state or the government recognizes them as a people who matter in their own right, that their fate is a matter of intrinsic value in the eyes of the state and its government.$^{55}$

Raz assumes that it is a good for all residents to be considered full citizens in the political and social community to which they belong. Full citizenship contributes to the health of the society by promoting individual well-being, which advances the attainment of an autonomous life. Alternatively, the existence of groups who lack full citizenship, and are thereby estranged to some degree, is potentially destabilizing to the government and society.$^{56}$ Raz concludes that degrading certain groups to the status of second-class citizens is morally apprehensible:

Those who are second class citizens are marked by this experience which forces a flawed life on them.... Because in such cases identification with one’s state is purchased at a cost of low self-esteem, and often also by absence of self-respect that kind of trust is morally unacceptable. One should identify with one’s state only if it recognizes one’s value.$^{57}$

As previously mentioned, Raz’s interpretation of the harm principle makes the difference between hindering and not helping unambiguous. A fundamental point for Raz’s perfectionist theory rests on the belief that “one causes harm if one fails in one’s duty to a person or a class of persons and that person or a member of that class suffers as a result.”$^{58}$ In regard to marriage, it is apparent that failing to provide the equal status of marriage for same-sex couples, even if civil unions or domestic partnerships are available, harms gays by diminishing their opportunity for autonomy and degrading them to a second-class status. Gays are systematically discriminated against by not being allowed to participate in the collective good of marriage.
Their inability to participate in marriage represents harm because they are unable to fulfill their own conception of the good life and their autonomy is consequently devalued.

While traditional marriage may be regarded as a union between a man and a woman, such traditional conceptions of marriage cannot act as constraints to citizenship. Raz expressively states,

The existence of a common culture, and of its common symbols are of vital importance, but of equal importance is mutual respect between groups within society who have diverse cultures and ways of life. To feel part of a society, to be a full citizen of it one must be able to profess one’s basic beliefs, and conduct one’s life in accordance with them and with one’s deepest feelings without fear of criminal sanction, legal or social discrimination, or social ridicule or persecution.\(^{59}\)

Being that the promotion and protection of personal autonomy is the central liberal concern for liberty,\(^{60}\) the government, in recognizing its duty to promote the well-being and autonomy of its subjects should ensure that all enjoy full citizenship.\(^{61}\)

**Objection 2**

Same-sex marriage has faced extensive political resistance because many Americans believe homosexuality to be immoral. Consequently, given that in a perfectionist state it is the “goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones,”\(^{62}\) the second objection to the application of Raz’s liberal perfectionist theory in defense of same-sex marriage would contend that same-sex marriage constitutes an “evil” conception of the good. The assessment that homosexual marriage would constitute an “evil” or immoral conception of the good, is, to a degree, irrefutable because such normative statements are rooted in religious belief. However, the reasons that such opponents use to justify the belief that same-sex marriage is immoral can be objectively evaluated. The following list encompasses the paramount objections to same-sex marriage, critical examination of which reveals their reasoning to be inadequate.
Reason 1

*Same-sex marriage would weaken the institution of marriage.* William Bennett, a leading opponent of same-sex marriage, maintains that “the legal union of same-sex couples would shatter the conventional definition of marriage, change rules which govern behavior, [and] endorse practices which are completely antithetical to the tenets of all of the world’s major regions.”

I answer that the claim that same-sex marriage would weaken the institution of marriage relies on the fallacious assumption that homosexuals’ conception of marriage is severely different than that of heterosexuals, and as a result, allowing gays to marry would negatively alter the institution of marriage. In contemporary society marriage is fundamentally an expression of monogamous commitment and love, which would be essential to all marriages regardless of whether they are heterosexual or homosexual. Although same-sex marriages would be, in some respects, different from heterosexual marriages, they would strengthen, not weaken the institution of marriage. The fact that gays seek the right to marry illustrates that they view marriage as an honored symbolic expression of monogamy, commitment, and love. In a watershed ruling that allowed same-sex marriage in the state of Michigan, Michigan’s Supreme Judicial Court refutes the argument that same-sex marriage would compromise the institution of marriage:

> Recognizing the right of an individual to marry a person of the same sex will not diminish the validity or dignity of opposite-sex marriage, any more than recognizing the right of an individual to marry a person of a different race devalues the marriage of a person who marries someone of her own race. If anything, extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities.

States should not make “nitpicking” assessments that proscribe who is allowed to marry and who is not. For example, it can be said that there are many heterosexual couples that enter into the institution of marriage for reasons other than love and a desire for a deep monogamous commitment. Sullivan affirms that “marriage acts both as an incentive for virtuous behavior—and as a social blessing for the
effort….We have provided it to anyone prepared to embrace it and hoped for the best.”

Reason 2

Same-sex marriage would obscure marriage’s enormously consequential function—procreation and child rearing. The argument expressed by Bennett is comprised of two chief tenets: (1) same-sex marriage would obfuscate the purpose of marriage because same-sex couples cannot naturally procreate, and (2) same-sex marriage is not an optimum environment for child rearing.

I answer that although marriage often does encourage couples to procreate it is not the consequential function of marriage; no states require applicants of marriage to prove their “ability or intention to conceive children.” Moreover, the argument regarding procreation is no longer applicable in the United States because privacy rights, to an extent, protect individuals from government interference in regard to procreation. Through the notion of fundamental right to privacy, Griswold v. Connecticut (1965) and Eisenstadt v. Baird (1972) protect marital and nonmarital use of contraceptive devices respectively, and Roe v. Wade (1973) has established a right to abortion.

The permanent and exclusive commitment between two individuals, not the procreation of offspring, is the consequential function of marriage. Being that the welfare of children is a compelling state interest, the second premise suggests that states have an obligation to prohibit same-sex marriage because it creates an environment that is not in the best interest of children. However, an environment for optimal child rearing is not dependent on the parent’s sexual orientation.

Furthermore, prohibiting same-sex marriage based on the claims presented by Reason 2 in actuality harms children of homosexual couples by depriving them—based on their parents’ sexual orientation—of the substantial advantages that stem from the legal status of marriage. The opinion of the court in Goodridge v. Massachusetts Department of Public Health (2003) explains that

[ex]cluding same-sex couples from civil marriage will not make children of opposite-sex marriages more secure, but it does prevent children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of “a stable family structure in which children will be reared, educated, and socialized.”
Reason 3

Legalizing same-sex marriage would lead to legalized polygamy and incest. Some opponents of same-sex marriage believe that if same-sex marriage were allowed, it would hinder states’ ability to prohibit consensual polygamous and incestual relationships. Bennett expounds upon this fear by stating,

On what principled ground can Andrew Sullivan exclude others who most desperately want what he wants, legal recognition and social acceptance? Why on earth would Sullivan exclude from marriage a bisexual who want to marry two other people? After all, exclusion would be a denial of that person’s sexuality. The same holds true of a father and daughter who want to marry. Or two sisters. Or men who want consensual polygamous arrangements.73

I answer that the issues of polygamy and incest are unmistakably separate moral and legal questions. Allowing same-sex marriage will not obscure the ability of citizens and state governments to make such moral distinctions. Moreover, it is not my intention to conclusively determine the immorality of polygamy; being a separate issue, polygamy deserves its own discourse. The erroneous connection between same-sex marriage and polygamy and incest represents a concern regarding the change that the institution of marriage has experienced over time. Opponents of same-sex marriage tend to refer back to a traditional conception of marriage, as if there is a primordial and fixed notion of what marriage is. However, marriage is a social institution that has been developing and changing for centuries. Overturning the law of coverture, the decline in the practice of arranged marriages, the rise in the rate of divorce, and the increase and legal permissibly of interracial couples are all changes within the past century that have reshaped what marriage is in American society. The point is that each change in marriage should be judged independently and not as some ongoing desecration of “traditional” marriage.

Reason 4

Homosexual relations are unnatural. Bennett maintains that “marriage is based on a natural teleology, on the different, complementary
nature of men and women—and how they refine, support encourage, and complete one another.” In regard to homosexuality, the theory of natural teleology argues that biologically the male and female genitals are designed to be used in a specific way, which is validated by the fact that species are unable to survive if they do not procreate. The “unnatural” claim is inherently a moral claim that suggests that same-sex marriage should be denied because homosexual relations conflict with the laws of nature.

I answer that the “unnatural” argument is invalid because human beings have been engaging in acts that are at variance with what is “natural” for centuries. If such an argument is to be considered valid, all unnatural aspects of society such as medicines, surgical procedures, certain foods, synthetic clothing material, etc. must too be prohibited. Furthermore, creating moral authoritative orders based on basic biological facts is unjustifiable. Being that human sexual relations are conducted for reasons beyond procreation, diminishing human sexuality to the attributes of natural biology would perpetuate mistaken views regarding humanity and sexuality. Daniel Maguire affirms that

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\text{[t]he male-female coital fit and its relationship to reproduction are basic biological facts. The biological error would leap from those facts to the moral imperative that all sexual exchange must be male-female coital in kind. The leap could only be likely if you reduce human sexuality to the biological simplicities of the stud farm. Given the infinity of meaning beyond baby making involved in human eroticism and sexuality, such a leap is misdirected and, literally, unreal.} \]

Reason 5

Same-sex marriage would violate the sanctity of marriage. The primary objection to same-sex marriage stems from the pervasive belief that predominant theology condemns homosexuality. Jeffrey Jordan posits that the religious texts of Christianity, Judaism, and Islam prohibit homosexual acts.

I answer that in exploring the text of the United States’ most widely held religion, Christianity, it is evident that Biblical statements
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countering homosexuality are ambiguous. The term *homosexuality*, meaning same-sex attraction, was coined by German psychologist Karoly Maria Benkert, in the late nineteenth century.\(^78\) There is no term in the original Hebrew, Aramaic, or Greek text of the Bible that specifically refer to homosexuality as the term is used today.\(^79\) The following passage from Deuteronomy 23:17 is often cited as confirmation of the Bible’s prohibition of homosexuality: “There shall be no whores of the daughters of Israel, also there shall be no sodomites of the sons of Israel.”\(^80\) However the words *whore* and *sodomite* have been used as translations from the original Aramaic texts, which use the words *zanitha* and *damzani*, meaning female and male prostitutes, respectively. Additionally, in the original Hebrew text, the word *qedeisha*, meaning female prostitute, is in the place of *whore* and *qadesh*, meaning male prostitute, is in the place of sodomite.\(^81\) Thus, the original text of Deuteronomy 23:17, might condemn prostitution, but it makes no comment regarding consensual same-sex relationships. Another commonly cited biblical verse used to oppose homosexuality is Leviticus 18:22: “Thou shalt not lie with mankind, as with womankind: it is an abomination.”\(^82\) Again, if the original text is analyzed, it becomes clear that the passage does not necessarily refer to homosexuality. The original Hebrew text literally translated states, “You shall not lie with a male [on] the beds of a woman (or wife), it is despising.” Furthermore, the original Aramaic texts uses the word *tama*, which means “unclean,” in replace of the word abomination used in the King James Bible.\(^83\) Rather than explicitly condemning homosexuality, Leviticus 18:22 limits where it can occur; a women’s bed was a respected area, only husbands were permitted there under certain conditions.\(^84\) The following passage from Romans 1:24–28 is viewed as the most blatant Biblical objection to homosexuality:

Therefore God also gave them up to uncleanness, in the lusts of their hearts, to dishonor their bodies among themselves, who exchanged the truth of God for the lie, and worshiped and served the creature rather than the Creator, who is blessed forever. Amen. For this reason God gave them up to vile passions. For even their women exchanged the natural use for what is against nature. Likewise also the men, leaving the natural use of the woman, burned in their lust for one another, men with men committing what
is shameful, and receiving in themselves the penalty of their error which was due.\textsuperscript{85}

However, the Reverend Doctor Tom Hanks explains that this passage does not refer to loving, consensual relationships between couples of the same sex, but rather refers to idolaters:

Paul makes no reference to the modern scientific concept of individual sexual orientation. What he condemns is the greed and the lust of the idolatrous Gentile world expressed in sexual acts of oppression and exploitation, acts that included: (1) lustful procreative sex between men and women (1:24); (2) women offering themselves to men for anal sex, thus avoiding procreation (1:26), and (3) acts of male-male anal sex commonly used to exploit youths, slaves and prostitutes (1:27).\textsuperscript{86}

Furthermore, even if homosexuality was explicitly forbidden in religious texts, it does not necessitate that the state should adhere to religious morality. There are many biblical prohibitions that federal and state governments unrepentantly violate. For example, lending money with interest, women teaching men, and wearing clothes made from more than one fabric are all actions that the Bible explicitly forbids.\textsuperscript{87} Moreover, marriage is recognized both religiously and legally. Permitting same-sex marriage in the secular sphere would not affect religious institutions’ ability to deny marriage to same-sex couples. In addition, because marriage in the United States is considered a civil right,\textsuperscript{88} such objections do not constitute valid reasons that the state can use to prohibit same-sex marriage.

The opposing arguments presented, particularly those that rest on biblical assertions, unmistakably violate the concept of political neutrality and, thus, should have no place in political discourse set forth by traditional political liberalism. However, such normative and moral assessments regarding the good life not only pervasively exist, but also have substantial political clout. This paper has attempted to show that exclusively focusing on principles of equality and neutrality while sidestepping the morality of same-sex marriage leaves the political discourse on same-sex marriage incomplete. Even if the gay rights movement succeeds in attaining the right of marriage nationwide, “the gay rights movement may have missed a
critical opportunity—a chance to make a positive moral case for gay sex and gay couples. In other words, it will have missed the opportunity to argue that ‘gay is good.’ Moreover, this paper has posited that moral bracketing, the idea that definition of rights should not be dependent on any distinct conception of the good, is an impractical obstruction that is prohibiting advocates of same-sex marriage using morality to counter the normative claims presented by opponents. As explained by Ball,

[t]here is no way of truly engaging in a public discourse in favor of same-sex marriage without ultimately relying in some way on the following illiberal form of argumentation: Homosexual relationships that are based on commitment, love, and fidelity, are not immoral or amoral, but are in fact moral, and as such should be recognized, supported, and accepted by society.

Raz’s liberal perfectionist theory, with its moral and intrinsically worthy conception of autonomy, is the way to make such an argument that is politically applicable. Given the unremitting force of normative arguments, the traditional political liberal appeal to the strict dichotomy between the political and moral must be abandoned, at least in the context of same-sex marriage. Supporters of same-sex marriage should espouse the principles set forth by Joseph Raz’s perfectionist liberalism, a liberalism that nonetheless allows for the evaluation of different conceptions of the good life while still maintaining a dedication to moral pluralism through the paradigm of personal autonomy.

NOTES


3. Ibid., 139.

4. Ibid., 141.
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6. Ibid., 23.

7. Ibid., 2.


16. Ball, 23.

17. Ibid.

18. Ibid.

19. Ibid.

20. Raz, 124.

21. Ibid., 133.

22. Ibid., 116.

23. Ibid., 124.

24. Ibid., 133.


26. Ibid.

27. Ibid.
28. Ibid.

29. Raz, 203.

30. In defining autonomy in *The Morality of Freedom*, Raz states, “An autonomous person is part author of his own life. The autonomous person’s life if marked not only by what it is but also by what it might have been and by the way it became what it is. A person is autonomous only if he has a variety of acceptable options to him to choose from, and his life became as it is through his choice of some of these options” (204).


32. Ibid., 113.

33. Ibid.


35. George, 164.


39. Ibid., 205–206.

40. Ibid., 206.

41. Ibid., 376.


43. Ibid., 227.

44. Raz, *The Morality of Freedom*, 418. “The government has an obligation to create an environment providing individuals with an adequate range of options and the opportunities to choose them.”

45. Ibid., 419.

46. Ibid.
47. Ibid., 412.
48. Ball, 27.
50. Ibid., 415.
51. Ball, 28.
52. Ibid.
53. Ibid.
55. Ibid., 124.
56. Ibid., 125.
57. Ibid.
65. Ibid.
67. Sullivan, 331.
68. Bennett, 229.
69. Goodridge v. Massachusetts Department of Public Health.


71. Goodridge v. Massachusetts Department of Public Health.

72. Ibid.

73. Bennett, 329.

74. Ibid.


77. Jordan, 223.


82. Leviticus 18:22.

83. Mattai, “Is the Bible Against Homosexuality

84. Robinson, “Judeo-Christianity.”


88. Loving v. Commonwealth of Virginia. 388 U.S (1967). In overruling Virginia’s miscegenation code the Supreme Court established that marriage is a “basic civil right of man, fundamental to our existence and survival.”


90. Ball, 35.

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