

## Three Bad—And Unconservative—Arguments for Same-sex Marriage

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Abstract: The central argument put forth by defenders of same-sex marriage is a frank non-discrimination claim: because there is no worthwhile difference between the aptness of same-sex couples and opposite-sex couples for, and when it comes to, marriage, present laws amount to an arbitrary denial of valuable legal benefits. Present laws therefore lack a “rational basis.”

Defenders of same-sex marriage recognize -- as do their opponents -- that the meaning and success of this argument depends upon why the civil law recognizes and attaches benefits to anyone’s marriage. No one can say that any couple is more or less apt for “marriage” apart from an account of what the law is up to – with regard to marriage -- in the first place.

In this paper I take up three such accounts. One is that the law does and should “recognize” and “affirm” all “committed” and “stable” relationships -- including those between persons of the same sex. Another is that the law of marriage does and should depend upon what is “best” for children according to various social and psychological indicators. The third is a defensive argument for same-sex marriage. It is that the law of marriage is not and cannot be about encouraging “procreativity,” because (according to the argument) the law has already severed, in some decisive way, this link.

I hasten to add that opponents of same-sex marriage often take over these arguments, and try to turn them against defenders by showing how, on these terms, there is indeed a worthwhile difference between same-sex and opposite-sex couples.

In my paper I shall argue that all three forms of argument are unsound, and even unconservative.