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Redefining marriage: Where to draw the line?

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SOME students in my legal philosophy classes suggest it is regretful that a person who is in love with another person of the same gender may not marry the latter. Homosexuals, my passionate students argue, should have equal rights, including the fundamental right to enter into a legally recognised exclusive lifelong relationship.

To these students, the argument that the law does not deny the homosexual a right to marry, he just has to marry someone of a different gender, will understandably seem facetious.

But does the legal inability of homosexuals to enter into a matrimonial relationship with their Significant Other suggest the law discriminates against them, contrary to Article 12 of the Constitution which guarantees that every person is equal before the law and entitled to equal treatment of the law?

Advocates of change in matrimonial laws may argue along several lines.

First, the argument of neutrality - that the state ought not impose its moral judgment and limit marriage to persons of different gender; second, the positive moral argument that the current definition of marriage is erroneous and discriminatory.

In relation to this argument, it may be noted that the very view that the state may not by law impose its moral judgment on individuals often involves a positive moral judgment which is not neutral.

It may involve, for example, the assertion that the individual's will is sovereign in matters of sexual intimacy fundamental to a person's identity and happiness. But this argument - for the sovereignty of the individual's will - is in effect a moral argument for state support for the exercise of such will. The state must render to such individuals the attendant benefits of marriage - tax incentives, adoption rights, intestacy rights, and so on. So what had seemed to be the state's refusal to make a moral judgment that limits marriage to its traditional definition, so that it could remain neutral, puts upon the state the same duties as it would have had if it made a positive moral judgment that extended the definition of marriage.

More sophisticated advocates of change make the positive moral judgment for the extended definition of marriage. The traditional definition is conventional and ought to be remade, they say.

First, what is the traditional definition that advocates of change seek to remake? Princeton professor of jurisprudence Robert George, in his work The

Clash Of Orthodoxies, has defined it as a two-in-one-flesh communion of persons that is consummated and actualised by acts that are reproductive in type, whether or not they are reproductive in effect (or even motivated by the desire to reproduce). As such, persons who are infertile or have no intent for procreation may still participate in marital acts.

Is this definition metaphysical or religious? Or is it conventional and malleable according to opinion? The answer hinges on whether there is indeed something unique about the two-in-one-flesh communion that Professor George mentioned.

American professor of ethics Germain Grisez has been quoted by Prof George to explain it thus: 'Though a male and a female are complete individuals with respect to other functions...with respect to reproduction they are only potential parts of a mated pair, which is the complete organism capable of reproducing sexually. Even if the mated pair is sterile, intercourse, provided it is the reproductive behaviour characteristic of the species, makes the copulating male and female one organism.'

The idea of the male and the female as a single reproductive principle undergirds the idea of a two-in-one-flesh communion. Prof George suggests that a sexual act that is reproductive in type is unique in that it unites two persons organically; it is physically impossible for persons of the same gender to be regarded as a single reproductive principle.

Some may disagree that the ability to combine in a single reproductive principle has any normative significance. As Catholic theologian Rosemary Ruether notes, and Emory University professor Michael Perry cites in his latest book, Toward A Theory Of Human Rights, advocates of change may argue, for example, that love may be centred on 'communion between two selves rather than on biologistic concepts of procreative complementarity'.

Considering these opposing views, I asked my students whether they could come up with a workable redefinition of marriage that did not discriminate.

Some suggested marriage should be the lifelong exclusive commitment of two persons engaged in a sexual relationship.

But what if you have two men committed to a lifelong friendship, but who have no homosexual tendencies and who indeed have decided to be celibate? If homosexuals could marry, should not celibate people of the same gender have equal rights to 'marry'? Was not the association of marriage with sex as conventional as the association of marriage with sex of the reproductive type?

Or what about threesomes or foursomes engaged in exclusive sexual relationships among themselves, if they too sought the right to marry?

If marriage laws are not to discriminate, should we not refrain from discriminating against people who have the capacity to love more than one Significant Other?

How to find a workable redefinition of marriage that is inclusive yet not over-inclusive, that does not discriminate yet draws the line somewhere?

Some might suggest that marriage can indeed be extended to cover the situations mentioned. But if so, any two (or more) persons could jump on the bandwagon and claim lifelong commitments for tax and other benefits.

Given all these problems, perhaps the best thing is that the traditional definition of marriage should remain.

The writer teaches legal philosophy at the National University of Singapore.