

# (Re)Defining Marriage: Changes and Challenges

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## Abstract

This paper examines different ways of defining marriage in order to understand the current debate about legal same-sex marriage. A review of cross-cultural and historical definitions of marriage indicates there is no one definition of marriage that fits all cultures. An examination of the function of marriage in Western society concludes that marriage has changed from a focus on kinship and economic ties to romantic and sentimental ties, a change that has implications for both gender and sexuality in defining marriage. Linked to the changing function of marriage, the paper discusses legal definitions of marriage and several recent court cases. Finally, the paper discusses how normative definitions of marriage are shifting in response to structural changes in society. Based on the trajectory of the functional and legal changes, the paper concludes that same-sex marriage is likely to be legal in all 50 states in the not-too-distant future.

KEYWORDS: same-sex marriage, traditional marriage, marriage debate

In June 2009 I joined other family members in celebrating my parents' 50<sup>th</sup> wedding anniversary. Reflecting back on the half century they have been together was also an opportunity to consider the ways in which the meaning and definition of marriage had changed during that time. When they wed in 1959, it seemed only natural that my father would become the main breadwinner of the family and my mother would stay out of the paid labor force and raise the children. My parents maintained these distinct roles even as the larger society changed, with more women entering the paid labor force and some men becoming more active and involved in domestic life.

Of course, since 1959 there have been more challenges to marital norms than just the changing roles of men and women within marriage. Consider that in 1969, only a decade after my parents were married, a confrontation between police and gay men during a raid on the Stonewall Inn in New York City led to several days of riots and the emergence of the lesbian & gay rights movement. It is doubtful that anyone in 1969 would have imagined an eventual debate about marriage equality and that by 2014 seventeen states and the federal government would legally recognize same-sex marriages.<sup>i</sup>

Obviously, such social change has not come without controversy. Whereas some embrace broadening the definition of marriage to include same-sex marriage, others view such changes with a profound sense of loss and a significant concern that same-sex marriage reflects the decline and destruction of marriage. Moreover, the many state and federal court cases currently under litigation demonstrate the debate over the definition of marriage remains contentious and unsettled.

No doubt there are many who would point to the countercultural movements of the 1960s and argue that the break from “traditional” marriage is rooted there. But a closer examination of social changes in the last half century and the social forces propelling these changes could lead us to see that by the 1950s, the understanding of marriage was already undergoing significant change. In fact, one can argue that by the 1950s couples like my parents were already in marriages that were, at their core, based on both cultural and structural foundations which would logically lead to the current debates over the meaning of marriage today. If such an analysis is correct, it could be further argued that the changes already present in the 1950s will inevitably lead to the legalization of same-sex marriage in all 50 states within the not-too-distant future.

The claim that the legalization of same-sex marriage in the US is inevitable is likely to anger some while encouraging others. But the purpose of making such a statement is not to evoke an emotional response. Rather the statement sets the stage for an examination of the definition(s) of marriage, a discussion of the ways in which these definitions are changing, and an argument that change in the way marriage is defined is linked to long-term social change. The analysis that follows will first examine cross-cultural and historical definitions before turning to examine changing functional, legal, and normative definitions.

### **Cross-cultural and Historical Definitions**

Those opposed to same-sex marriage have frequently made the claim that traditional marriage between a man and a woman is the foundation of every civilization.<sup>ii</sup> However, the term “traditional” is used in a very problematic way as this reflects a definition of marriage that embodies ideals about marriage which are recent historical developments and more common in the Western tradition. More importantly, whereas the statement that traditional marriage is the foundation for every civilization might make for useful political rhetoric, the available evidence does not support this statement.

In her comprehensive examination of marriage, family, and history, scholar Stephanie Coontz documents that there is no one definition of marriage that fits all cultures historically or cross-culturally (2005, see page 24ff). There are examples of cultures in which one woman might marry several men, often brothers, as was the case in Tibet and among the Toda of India. There were West African societies in which a woman could marry another woman (a female husband), with this practice serving a useful inheritance related function when the family had no sons.

There were societies in which women might marry someone who is dead, a “ghost” marriage, as a way of maintaining her independence. There have been many historic cultures that have permitted same-sex marriages. And there are many cultures which either allowed for or expressed a preference for one man to marry more than one woman. Ironically the biblical narrative often used to defend traditional notions of monogamous heterosexual marriage is filled with stories of polygamous marriages. Moreover, an argument can be made that even the writers of the New Testament acknowledged members of the early church could be in polygamous marriages.<sup>iii</sup>

Given the variety of ways in which marriage has been defined by different cultures, there is little empirical support for the belief that traditional marriage is the foundation for every civilization. In fact, such a statement becomes even more inaccurate when we realize that historically among the Na, a culture in southwestern China, there was no social institution that corresponds to what we might consider marriage (32). In this culture brothers and sisters lived together and raised children who were fathered by men that had short term liaisons with the sisters. With the Na we have an example of a civilization that did not rely on monogamous marriage as the foundation of its society. The Na are only one example of a civilization that was not based on a “traditional” form of marriage. But when we consider this example, coupled with the variety of ways in which marriage has been defined in other cultures, the argument that monogamous heterosexual marriage serves as an essential foundation for any civilization unravels in light of cross-cultural and historical evidence.

## Functional Definitions

Examining the ways in which marriage has been defined establishes the case that any culture’s definition of marriage is culturally and historically situated. This understanding serves as a foundation to think about the definition of marriage in the 1950s and the current challenges and changes to this definition. It also sets the stage to examine the possibility that the institution of marriage in the 1950s was shaped by changes that have led to the same-sex marriage debate. So, how was the definition of marriage being challenged well before the 1950s or the turmoil of the 1960s?

Over the last several centuries, industrialization and urbanization increased the pace of change in society in Western societies and transformed social institutions and social structure. In writing about these changes, New York University sociology professor Robert Jackson makes a startling claim about how these changes affected gender roles:

Over the past two centuries, women’s long, conspicuous struggle for better treatment has masked a surprising condition. Men’s social dominance was doomed from the beginning. *Gender inequality could not adapt successfully to modern economic and political institutions.* No one planned this. Indeed, for a long time, the impending extinction of gender inequality was hidden from all. (1998: 1, *emphasis added*)

Whereas Jackson's text focuses on gender, his underlying arguments are also highly relevant to the changing definitions of marriage. The connection becomes clearer when Jackson links the inevitable rise in gender equality to changes in institutions of marriage and family:

The driving force behind this transformation [in gender equality] has been the migration of economic and political power outside households and its reorganization around business and political interests detached from gender. (2)

Prior to industrialization, families generally functioned as economic units under male control; women had little power in society or within their marriage and family. With industrialization, economic production moved outside of the household, and members of families began to work outside of the home for wages. This wage labor provided a source of income for women not tied to the family, kinship, or the household. Although women's participation in the paid labor force was limited at first, Jackson argues that businesses increasingly began to hire employees based on criteria that had nothing to do with gender, specifically looking for either the most qualified or the cheapest labor (71ff). Detaching labor from gender provided the structural foundation for women to move into the paid labor force. As both women and men moved into the paid labor force, the family as a unit was no longer primarily a unit of economic production and instead was becoming a unit for economic consumption.<sup>iv</sup> Thus the functions of marriage and family were being transformed by the structural and institutional changes occurring in the larger society.

With this change we also see a change in the motivation to enter marriage. As Coontz (2005) documents in her text, with the rise of industrialization economic production is no longer based within the household and inheritance of property and family businesses are less significant. Instead, what became much more important are the emotional and romantic ties between individuals. Indeed, the central theme running through Coontz's text is discussion of how marriage has moved from a focus on inheritance and economic production to a focus on romantic love and sentimental ties. This transformation was not rapid, but by the 1950s the predominant reason that couples married was because of a romantic or emotional connection and not for economic reasons or inheritance rights.

It is true that many males in the 1950s took on the role of the "primary breadwinner," especially males in the middle and upper classes. But this fact should not obscure the fact that women could survive economically without marrying. Moreover, the role of a male as a primary breadwinner was only feasible when men earned enough to support a family on just their wages. Within a few decades of the 50s, as average wages for males stagnated, women moved into the paid labor force in increasing numbers. At this point it became clearer that marriage was not intrinsically about gender-based economic or kinship roles, but was a partnership where the majority of marital partners worked in the paid labor force. Perhaps most couples did not fully

grasp what was happening when they married in the 1950s, but there was no longer any structural or institutional necessity for the male breadwinner role and the female domestic care companion. Marrying for romance and not for economic reasons meant that the definition of marriage had already changed.

This change in the definition of marriage, from a relationship where economic considerations were most important, to a relationship where sentimental reasons dominated, can inform our discussion of same-sex marriage. If marriage has become more of a partnership based on romance and love, then the focus is on a collaborative partnership more than on maintaining distinct, separate roles for husbands and wives. If distinct gender roles are no longer inherently required in a marriage, it appears logical that a marital partnership based on romance is not inherently linked to heterosexuality. Both Jackson's and Coontz's arguments lead to the conclusion that there is little institutional or structural support in society to maintain a heterosexual only definition of marriage.

If someone were to write a text on the rise of the lesbian and gay rights movement, one wonders if the author would make statements similar to those Jackson made about gender equality in his text. Paraphrasing the previously cited quote from his text, we might conclude: "Over the past decades, lesbians' and gays' long, conspicuous struggle for better treatment has masked a surprising condition. Heterosexual social dominance was doomed from the beginning. Marriage definitions that were restricted to heterosexuals could not adapt successfully to modern economic and political institutions."

## **Legal Definition**

Making the case that marriage definitions vary across cultures and across time and that current definitions of marriage are not inherently tied to gender roles or sexuality sets the stage for considering the legal definition of marriage. Wrestling with the law may move us beyond sociological analysis, but focusing on how legal definitions shape inequalities in society fits within the purview of sociological inquiry.

A marriage license is a legal contract that does much more than permit two individuals to make a commitment to each other. It is estimated that a legal marriage grants the couple approximately 1400 federal-and state-recognized legal rights and obligations. As a legal contract, the marriage license is based on rules that define who can or cannot get married, establishes the legal rights and obligations within the marriage, and determines what happens when a marriage ends through either death or divorce. For example, legal marriage typically means that a partner who survives the death of the spouse is entitled to inherit property and have sole custody of the children in the event there was no signed will assigning these rights elsewhere. When a marital partner is incapacitated due to health issues, a spouse has right to be present and has the legal power of attorney to make medical decisions for the other partner. A marital partner can obtain social security benefits in the event of the spouse's death. An employed spouse can typically add

the other partner to the employee's health insurance policy. And in the event of a divorce, the marital partners have the right and obligation to have the courts determine an equitable division of property and determine child custody arrangements. This is only a small sample of the many legal rights and obligations granted to marital partners.<sup>v</sup>

The current debate over same-sex marriage raises questions about the equity of providing some individuals the access to these rights while denying access to others on the basis of sexuality. Those who are in favor of same-sex marriage challenge the state to show that it has a compelling interest in providing rights and obligations to one group of individuals while denying these to others. For example, they would ask if the state could demonstrate that it has a compelling interest in allowing a heterosexual spouse to make medical decisions for an incapacitated spouse while denying that same right to a gay or lesbian partner in a similar situation. Or they might ask if the state could demonstrate a compelling interest in establishing inheritance rights for heterosexual couples while denying same-sex couples these same rights. Perhaps some rights can be obtained by same-sex couples through work with an attorney, but many of the 1400 rights and obligations granted to married couples cannot be accessed without the legal recognition of a marriage.

The discussion of the compelling interest of the states and the rights of couples to form legal marriages regardless of sexual orientation can be linked to the earlier discussion that suggested that marriage is no longer inherently tied to gender and, as argued, no longer inherently tied to sexuality. Perhaps, then, it is not surprising that when the Iowa Supreme Court was faced with a court case challenging legal statutes which defined marriage as only between a man and a woman, in their 2009 ruling they concluded:

We are firmly convinced the exclusion of gay and lesbian people from the institution of civil marriage does not substantially further any important governmental objective. The legislature has excluded a historically disfavored class of persons from a supremely important civil institution without a constitutionally sufficient justification. (67)

In their unanimous decision the justices wrestled with the function and place of legal marriage and could not find any compelling state interest in preventing lesbians and gays from obtaining a legal marriage in Iowa. Instead they stated that preventing gays and lesbians from obtaining a legal marriage would constitute an unconstitutional injustice to such individuals.

More recently, US District Court judge Arenda L. Wright Allen came to a similar conclusion in her ruling against Virginia's banning of same-sex marriage. The judge argued that gay and lesbian individuals, like heterosexuals, should have the same legal rights to form a marriage based on intimate emotional connections:

Gay and lesbian individuals share the same capacity as heterosexual individuals to form, preserve and celebrate loving, intimate and lasting relationships. Such relationships are created through the exercise of sacred, personal choices – choices, like the choices made by every other citizen, that must be free from unwarranted government interference. (2014, para. 22)

In coming to the conclusion that marriage should be legal for same-sex couples, the judge also made connections to the 1967 Loving v. Virginia Supreme Court ruling. The 1967 Supreme Court decision ruled in favor of Mildred and Richard Loving and struck down Virginia's ban on interracial marriage, in part citing the equal protection clause of the 14<sup>th</sup> amendment to the US constitution. Wright Allen's decision also cites the 14<sup>th</sup> amendment as a basis for her ruling. But the judge made the connection between her ruling and the previous 1967 case even stronger. As a preface to her ruling Wright Allen quoted the speech Mildred Loving delivered on the 40<sup>th</sup> anniversary of the Loving v. Virginia decision:

...not a day goes by that I don't think of Richard and our love, our right to marry, and how much it meant to me to have that freedom to marry the person precious to me, even if others thought he was the wrong kind of person for me to marry. I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. Government has no business imposing some people's religious beliefs over others. (1)

Both Mildred Loving and Wright Allen have come to the conclusion that the legal definition of marriage should be based on romantic or emotional ties. More importantly, the ruling by Wright Allen, like the Iowa Supreme Court decision, is an indication the legal definition of marriage is starting to change in response to the institutional and structural changes discussed earlier in the paper.

### **Normative Definitions**

The response to court decisions in favor same sex marriage has not been universally positive. There is no shortage of individuals or groups who claim that marriage should be only heterosexual. Such claims for what marriage *should be* are normative claims about marriage and these normative definitions of marriage can be considered separately from cross-cultural, historical, functional, and legal definitions.

The Iowa Supreme Court decision recognized that much of the opposition to same-sex marriage is based on religious belief (Iowa Supreme Court Ruling, 2009, 63ff). Religion often serves as a strong cultural force and a source of important social norms for its followers.

Conservative evangelicals are often among the opponents to same-sex marriage and among proponents of “traditional” marriage. These conservative evangelicals are also noted for their high view or more literal reading of their scriptures, the Bible.

Normative definitions of marriage are important cultural understandings that shape the beliefs and actions of religious groups such as conservative evangelicals. However, even the definitions based on their reading of scripture do change over time. For example, some conservative evangelicals continue to maintain the belief that the man should be the head of the household. They continue to hold this belief even as many in the culture have rejected the ideal of male headship and in spite of the previously discussed changes in society which have removed any inherent structural or institutional support for patriarchy. Yet, even among the defenders of male headship it appears that their view of headship has changed over time, softening to what sociologist Sally Gallagher terms “symbolic headship and practical egalitarianism” (2003), a finding that is line with what sociologist Brad Wilcox (2004) discovered in his analysis of evangelical men. Such symbolic headship serves as way of appearing to resist cultural change through defining the boundaries between the larger culture and evangelical subculture. But this is only a symbolic boundary as on a practical level their marriages have accommodated to societal changes and moved in the direction of egalitarianism.

Like the idea of headship, it appears that the issue of same-sex marriage is important to conservative evangelicals because it serves as an in-group and out-group boundary between evangelicals and the larger society (Wilcox, 2004 p. 69). Because opposition to same-sex marriage is used as a way of defining boundaries, functioning as a form of symbolic resistance to the larger society, this position may remain strong among some evangelicals as has their opposition to gender equality. And yet Gallagher and Wilcox have shown that many conservative evangelicals have changed their views on male headship, partly in response to structural changes and the resulting increase in gender equality in the larger society. Is it possible that the cultural beliefs of conservative religious groups may be shaped by structural changes regarding marriage and that they may eventually modify their understanding of or opposition to same-sex marriage?

In fact, there is evidence that this shift is already occurring. Within the last few decades, a number of voices have emerged with-in the evangelical tradition to articulated views that support same-sex marriage. Examples of such voices would include Justin Lee, who helped found the Gay Christian Network in 2001 (<http://www.gaychristian.net/>) and whose compelling book *Torn* (2013) describes his journey of coming to terms with his sexuality, his faith, and the potential for same-sex marriage. Another example would be David Meyer’s and Letha Scanzoni’s 2006 text *What God Has Joined Together: The Christian Case for Gay Marriage*, a text that argues that Christians should support legal same-sex marriages. Most recently, James Brownson, a professor of New Testament studies at Western Theological Seminary, has also made a case for the church to recognize and affirm same-sex marriage in his book *Bible, Gender, Sexuality: Reframing the Church’s Debate on Same-Sex Relationships*. Such examples do not indicate that support for same-sex

marriage has become a dominant stance among evangelicals, but they may show a growing desire among evangelicals to reconsider their views on sexuality and same-sex marriage in light of the societal changes that have challenged the way marriage is defined and understood.

### **Concluding thoughts:**

Marriage may have seemed straightforward in the 1950s when my parents married, but it never was. Cross-cultural and historical evidence suggests that there is no empirical support for a single definition of marriage. A functional definition of marriage calls attention to the way in which marriage has changed in Western society so that romance has become more important than economic production or inheritance rights. The functional change in particular is relevant for understanding the current debate over legal same-sex marriage and the rights and obligations that lesbian and gay people are seeking. Finally, the brief examination of normative definitions of marriage, in particular those held by conservative evangelicals, demonstrates how their normative definitions of marriage might reflect both resistance and accommodation to changes in the way marriage is defined. But even in the face of such resistance, the trajectory of the functional and legal changes indicate suggest that same-sex marriage is likely to be legal in all 50 states in the not-too-distant future.

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<sup>i</sup> As of the time when this paper was written. Partly spurred on by the recent Supreme Court ruling on the Defense of Marriage Act, it is likely this number will soon increase as court cases are pending in 25 of the 33 states where same-sex marriage is not legal. See: <http://www.nbcnews.com/news/us-news/same-sex-marriage-lawsuits-exploding-u-s-courts-n35141>

<sup>ii</sup> For example, see: [http://www.usatoday.com/news/opinion/editorials/2006-05-31-opposing-view\\_x.htm](http://www.usatoday.com/news/opinion/editorials/2006-05-31-opposing-view_x.htm)

<sup>iii</sup> Consider 1 Timothy 3:2. One can argue that in the cultural context in which this is written, “the husband of one wife” make the most sense in reference to the practice of polygamy.

<sup>iv</sup> This transformation also shaped the meaning of parenthood and the role of children, though these related changes are not the focus of the paper. A fascinating examination of the changing role and meaning of children can be found in Viviana Zelizer’s text *Pricing the Priceless child*. She documents how the role of children has moved from predominantly economic to becoming valued primarily for sentimental reasons.

<sup>v</sup> Some benefits may not be granted by law, but given by companies to married couples for other reasons. For example, insurance companies may give better rates to married couples. Health clubs may give discounts for married couples who have a joint membership, etc.

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