

# Whose rights are more important? The child's or the parents'?

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I wish that I could support same-sex marriage and I have "moral regret" that I can't. When we feel ethically bound to take a position that we know will cause hurt to others, we should - and I do - regret the hurt that causes.

If same-sex marriage involved only adults it would be much easier to agree with legalizing it. One hopes its advocates are correct that it would send a powerful message from society as a whole that discrimination against homosexual people and ill-treatment of LGBTIQ persons or a failure to respect them is abhorrent.

But marriage doesn't involve just adults; it also involves - and, arguably, primarily - children.

The [Universal Declaration of Human Rights](#) defines marriage as a compound right: men and women "have the right to marry *and* to found a family." The "right to found a family" makes marriage the societal institution that recognizes and establishes children's rights with respect to their parents and the family structure in which they are reared.

If we believe that children, including those who will be gay as adults, have a right to a mother and a father, preferably their own biological parents, and, if at all possible, to be reared by them, then we cannot support same-sex marriage because it abolishes this right. It's true this right is not always honoured, but society does not intentionally plan that outcome, which it would do in making same-sex marriage part of the norm.

Same-sex marriage also raises flow-on ethical issues.

Married gay male couples are a substantial proportion of surrogacy users. They object to legal prohibitions on commercial surrogacy, such as those in Canada, as breaching the right given to them by marriage to found a family, as altruistic surrogates are very difficult to find. Whatever our views on [the ethics of surrogacy itself](#), we prohibit payment of surrogates since it borders on selling babies or children, which is prohibited because, like slavery, in making children into a commodity, it disrespects the children involved and children, in general.

And what might the future hold?

New reproductive science has already created mouse pups with the genetic inheritance of two male mice or two female mice. Renowned Australian embryologist and stem cell scientist [Alan Trounson](#) once told me, if we wanted to know what was coming down the track with assisted reproduction technologies for humans, "look at what is happening now in animals and that's what we will be able to do in humans seven years into the future." His prediction has proven largely true.

If this happens, would prohibiting creating babies between two married men or two married women also be a breach of their right to found a family?

In debates about ethical issues such as those raised above, language is very important as it affects our emotions and intuitions, especially moral intuitions, which help to inform our decisions about what is ethical or unethical.

Same-sex marriage advocates have dropped that nomenclature to speak of "marriage equality," which rightly makes us think of fairness and the treasured Aussie value of "a fair go." That is an important and valid consideration. But what about equality and fairness to children in same-sex marriages, as compared with children in opposite-sex ones, with regard to having both a mother and a father, preferably their own biological parents, and access to all their siblings and wider biological family?

People disagree whether genetic relationship between parents and children matters. People, including same-sex couples, sometimes use reproductive technologies, rather than adopting, because it matters for them - but in so doing, they deny it to the resulting children with respect to one of their biological parents.

The ethical doctrine of "anticipated consent" provides that in making a decision that has serious impact on persons unable to give their own consent, we must be able to reasonably anticipate that if they were present they would consent. Would children consent to being deprived of a mother or a father?

Many people deprived of their biological father by being born from anonymous sperm donation tell us that they would not have consented. They describe themselves as "genetic orphans"; they say "half of me is missing"; and they ask "how could society have allowed this to happen to me?" Likewise, would they consent to being born of a surrogate mother or created from two men or two women?

Deciding whether to legalize same-sex marriage involves dealing with a clash between adults' claims and children's needs and rights. In such cases, a truly humane ethics requires choosing in favour of the weakest, most in need, most vulnerable persons. Clearly children belong to this category and they need marriage to remain the union of one man and one woman. It's argued that children in same-sex households also need married parents, but that is not possible if the rights of children, in general, with respect to their parents and family structure are to be upheld.

People who respect LGBTIQ people and their relationships and strongly oppose discrimination against them can also oppose same-sex marriage for reasons, such as I've outlined, that are not homophobic or bigoted.

People who support same-sex marriage - which seems to be most of the Australian media - need to recognize that there are valid arguments on both sides of the issue. If they do, the debate on whether to legalize same-sex marriage in Australia, whatever

form it takes, will not be divisive and destructive as is feared by some people.

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