

Privacy, Authenticity, and Equality: The Moral and Legal Case for the Right to Homosexual Marriage

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Thesis

- **The Declaration of Independence**
- **Natural law and self-evidence**
- **Life, liberty, happiness, equality**
- **A commitment to these values implies that gay and lesbian couples should have the right to legal marriage**

Liberty

- **Mill and harm to others**
- **Equal freedom**
- **Homosexual marriage is compatible with harm to others and equal freedom principles**
- **What about harm to society?**
- **Communitarian critique**

Authenticity

- **Being true to who you really are**
- **Challenging to explain this value**
- **Examples of authentic and inauthentic actions**
- **Sexuality as a part of who one really is**
- **Commitment to a marriage as a part of who one really is**

Privacy

- **Difficulty in defining**
- **Immunity from the focused attention of others (the state)**
- **None of the state's business**
- **Intimacy**
- **Marriage is intimate, none of the state's business, and citizens are entitled to immunity from the state's attention**

Equality

- **Equality and obvious differences**
- **Being similarly situated**
- **Charge of vacuity**
- **When is one entitled to equal treatment?**
 - A fundamental liberty
 - Truly authentic choice
 - When it's private
- **Burden is on those who would deny equal treatment**

Defenses of Exclusion

- **Religious objections**
 - But, commitment to secular institutions
- **Sociological objections**
 - Empirical hypothesis
 - Lack of evidence
 - Counter intuitions
- **Offense objections**
 - Devlin's test
 - Too late!

Constitutional Precedent

- *Planned Parenthood v. Casey*
- *Lawrence v. Texas*
- **Justice Kennedy**
 - Central role

Loving v. Virginia

- ***Loving* as an Equal Protection case**
- **Marriage as a fundamental right**
- **Strict scrutiny in all marriage cases**
- ***Loving* as a privacy case**
 - Citizens relying on precedent
 - State relying on precedent
 - Metaphor of group reliance
- **Right to sexual privacy**

Summary

- **Values of liberty, authenticity, privacy, and equality all support a right to homosexual marriage**
- **Objections to homosexual marriage can be countered**
- ***Lawrence* gives a right to sexual privacy**
- ***Loving* gives a right to Equal Protection in all marriage cases**