

Mercier's Reply to Lee

Margaret Somerville purports to be laying the groundwork for "a shared ethics based on universals that are common to all people whether or not they are religious and no matter what religion they espouse." Patrick Lee shows, if anything, that Somerville's argument does indeed rest (as I had suspected) on premises that are hidden or at least unacknowledged, two premises that he does a more certain job of outing than I would ever have dared, namely:

- (i) that "sexual acts outside marriage are objectively immoral" (PL p. 6), and
- (ii) that "same-sex sexual acts are not morally permissible" (PL p. 15, n. 8).

Rational argument is impossible between people who do not share at least basic premises. With these as the bottom line, the first thing Somerville can do, I fear, is kiss a shared ethics goodbye.

Premise (i), moreover, is even stronger than it looks. For Professor Lee is working with a definition of 'marriage'—what he calls "genuine marriage"—according to which a marriage is genuine only on the condition that the couple be open to bearing and raising children together. Another condition is also necessary, that the couple engage in sexual acts in which sperm meet oocyte at least sometimes (whether or not conception ensues). Words being our servants, not our masters, Professor Lee is free to define 'genuine marriage' any way he likes. He is not at liberty, however, to substitute his conception of "genuine" marriage when what is under discussion is marriage as this latter notion is embodied, not in Canon or Sharia Law, but in the civil laws of secular states—an equivocation that pervades his paper. Civil marriage laws allow a man who has had a vasectomy to marry a woman who has had a hysterectomy; they allow octogenarians and other certifiably infertile couples to marry; indeed, they allow people to marry who are absolutely and resolutely closed even to the very idea of bearing and raising children, however much such marriages may be considered non-genuine, or "illusory experiences of a union" by Professor Lee. It is a matter of consistency—and of

rights held *qua* human regardless of sexual orientation—that marriage of the legal sort I am talking about (the only sort that counts as genuine to the state) extends to same-sex couples.

The philosophical move—call it type-raising—to which Lee resorts time and again to explain the legitimacy (“genuineness”) of octogenarian and other certifiably or resolutely infertile marital unions is to assimilate them to procreative-*type* unions. This is exactly the sort of move that I have criticized before as contorted. It is disingenuous to pretend that octogenarian unions that could eventuate in procreation only through the intervention of a miracle are unions of a procreative-type. It is doubly disingenuous to exclude same-sex unions from the very same assimilation since they too could just as easily eventuate in procreation given a similar type of miracle. (Anticipating a reply: a miracle is a miracle, so no, one sort is neither easier nor more likely than another.) For Professor Lee’s belief that: “If the state declares same-sex unions equivalent to marriage, it will send the message that marriage is centrally about the romantic attachment and sexual relationship of adults rather than about a relationship which by its nature is oriented and suited for becoming family,” the bad news is that if such a message is to be read at all, it has been old news for as long as octogenarians and other couples determined to be or to remain infertile have been allowed to marry.

It is disingenuous enough to countenance octogenarian newlyweds as having “consented to a procreative-type union of the sort fulfilled by bearing and raising children” (a necessary condition for genuine commitment to a marital union according to Lee) in any ordinary sense of ‘consent’; it is even more disingenuous to deny the capacity for such consent to same-sex couples actively engaged in the bearing (or adopting) and raising of children on the grounds that they fail to satisfy Professor Lee’s sperm-meet-oocyte-at-least-once requirement. As I said before, if same-sex marriage were unreasonable, it wouldn’t take such unreasonable arguments to prove it.

Professor Lee’s “summary” of Somerville’s argument (PL, pp. 20–22) reveals it as the fallacy it is. Lee’s premise (1) is true but irrelevant to the ban on same-sex marriage unless we add the word ‘only’: “if the state does not recognize marriage as *only* the union of a man and a woman. . . .”; but the addition of ‘only’ makes (1) false, hence the argument unsound: the state could recognize marriage as any number of

things without failing to affirm that the permanent union of a man and a woman is the situation most suitable in which to bear and rear children. By the same token (1b) is false: the state can treat same-sex unions as marriages without denying the unique nature of the union between a man and a woman just as surely as we can treat any number of plants as flowers without denying the unique nature of pansies. At the same time, Lee's premise (3) is false *unless* we add the word "only": "if same-sex unions are declared to be equivalent to marriage, then the state does not recognize marriage as *only* the union of a man and a woman. . . ." Thus (3) is true only with 'only' while (1) is true only without it, so the appearance of validity is due to an equivocation between necessary and sufficient conditions. The equivocation cleared up, the argument is straightforwardly invalid.

I concede to Professor Lee that "ideally, children should be raised by their own loving and responsible biological parents," a concession as momentous as agreeing that it is better to be rich and healthy than poor and sick. Ideals should not displace a robust sense of reality. As to the bizarre claim that same-sex marriages "would inevitably send to fathers the message that they are dispensable," I have only this to say: Any child whose parents would use legal recognition of same-sex marriages as pretext for dispensation from their parental obligations would be better off adopted by a child-eager same-sex couple.

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