

How Wolterstorff's Defense of Same-Sex Marriage Violates His Theory of Justice

Philosophical Note on Wolterstorff's Argument for Same-Sex Marriage

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Nicholas Wolterstorff is a prominent representative of Reformed epistemology and has a carefully argued theory of justice based on the inherent worth of human beings. In *Justice: Rights and Wrongs*, he founds justice on the recognition of inherent rights that are ultimately grounded in the worth of human beings created in God's image.¹ In *Justice in Love*, he argues that justice and love are perfectly compatible.² In *Journey toward Justice*, he recounts the personal encounters that awakened him to the inherent worth of the vulnerable and the oppressed and to the inescapable responsibility to defend their rights because of their vulnerability and the concrete harm they have experienced.³

Wolterstorff has recently applied his theory of justice to the discussion about same-sex marriage (SSM).⁴ Although his defense of SSM has some

ABSTRACT: According to Nicholas Wolterstorff's analysis, the biblical view of justice defends the inherent natural rights of the most vulnerable minorities. As homosexuals are such a vulnerable minority, he argues that church and state ought to recognize same-sex marriage. My aim is to critique Wolterstorff's argument for failing to apply his own theory and to acknowledge the natural rights of children, who are the most vulnerable persons involved. By ignoring the natural law emphasis on the natural structures of marriage, such as gender complementarity, he ends up undermining children's natural right to know and be reared by their biological parents.

1. Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton, NJ: Princeton University Press, 2008).

2. Nicholas Wolterstorff, *Justice in Love* (Grand Rapids, MI: Eerdmans, 2011).

3. Nicholas Wolterstorff, *Journey toward Justice* (Grand Rapids, MI: Baker Academic, 2013).

4. Nicholas Wolterstorff, "Biblical Justice, the Missing Component in the Same-Sex Marriage Discussion" (lecture at Neland Avenue Christian Reformed Church, Grand Rapids, Michigan, October 13, 2016), <https://www.youtube.com/watch?v=NkFE0sSF0fU>. Nicholas Wolterstorff, "Response to Matthew Tuininga on Sexuality and Scripture," *Perspectives: A Journal of Reformed Thought* 1 (2017), accessed March 7, 2017, <https://perspectivesjournal.org/blog/2017/02/28/response-matthew-tuininga-sexuality-scripture-2>.

serious weaknesses, the main problem is not in his theory of justice but in his failure to apply it consistently and to employ its full potential. Instead of starting with the most vulnerable persons (children) and their inherent natural right to know and be raised by their biological father and mother, his focus is adult-centered. I argue that this deficiency results from a false dichotomy he creates between theories of justice based on intrinsic worth (for example, his own theory) and those based on right order (for example, the natural law theory). By dismissing legitimate elements of truth in the natural law perspective, he fails to account properly for the natural structures of marriage, such as gender complementarity, that safeguard children's relationships to their biological origins. Thereby he undermines children's identity and relationship rights with regard to their biological parents, which are arguably their most fundamental human rights. The moral violation involved in causing this incalculable suffering and harm to children undermines the moral fabric of society as well as its cultural potential, stability, and prosperity.

In his discussion of marriage, Wolterstorff fails to apply the structural approach defended in his book, *The Mighty and the Almighty*, and to analyze the question of SSM in light of "the likely consequences for the state's justice system as a whole."⁵ Marriage is not just an institution among many, but it is so fully integrated into many complex and intersecting layers of our public and private lives including family law, adoption, religion, education, property, civil rights, and employment that changes in marriage law have wide-reaching implications for the justice system as a whole, as Francis J. Beckwith has convincingly argued.⁶

Instead of taking into consideration these society-wide implications, Wolterstorff bases his account of marriage on assumptions about the nature of homosexual love. He ignores the fact that the institution of marriage is dependent on "many fundamental questions about the meaning and nature of life including the relationship between men and women and their children as well as the proper end of our sexual powers and their place in marriage."⁷ These foundations of the institution of marriage are not reducible to the nature of romantic love and affection.

Wolterstorff disregards the natural law arguments that the nature of human beings, gender complementarity, and children's identity- and relationship rights require the gender-diverse structure of marriage.⁸ He fails to

5. Nicholas Wolterstorff, *The Mighty and the Almighty* (New York: Cambridge University Press, 2013), 117.

6. Francis J. Beckwith, "Justificatory Liberalism and Same-Sex Marriage," *Ratio Juris* 26 (2013): 487–509; *Taking Rites Seriously: Law, Politics, and the Reasonableness of Faith* (New York: Cambridge University Press, 2015), ch. 7.

7. Beckwith, *Taking Rites Seriously*, 191.

8. See, e.g., Patrick Lee and Robert P. George, *Conjugal Union: What Marriage Is and Why It Matters* (New York: Cambridge University Press, 2014); Sherif Girgis, Robert P. George, and Ryan T. Anderson, *What Is Marriage? Man and Woman: A Defense* (New York: Encounter Books, 2012); Alexander Pruss, *One Body: An Essay on Christian Social Ethics* (Notre Dame,

consider the significance of the father-mother-child bond as the foundational unit of society and the evidence that the weakening of this bond leads to moral, societal, and cultural decline.⁹

Wolterstorff justifiably critiques liberals for restricting the freedom of expression of religious people in the public square.¹⁰ However, by his support of SSM, he implicitly endorses such restrictions himself. The gender-diverse view of marriage is “deeply embedded in, and in most cases integral to many of the reasonable worldviews (including religious ones) of citizens who reject SSM,” as Beckwith points out.¹¹ Therefore, “the effects and con-

IN: Notre Dame University Press, 2013); J. Budziszewski, *On the Meaning of Sex* (Wilmington: ISI Books, 2012); Margaret Somerville, *The Ethical Imagination: Journeys of the Human Spirit* (Montreal: McGill-Queen’s University Press, 2009). Relevant essay collections include: *Divorcing Marriage: Unveiling the Dangers in Canada’s New Social Experiment*, ed. Daniel Cere and Douglas Farrow (Montreal: McGill-Queen’s University Press, 2005); *Marriage and Same-Sex Unions*, ed. Lynn D. Wardle, Mark Strasser, William C. Duncan, and David Orgon Coolidge (Westport, CT: Praeger, 2003).

9. The inability of a same-sex relationship to realize the unitive and procreative goods of marriage is brought into sharp focus in its failure to support the father-mother-child bond. According to the Harvard sociologist Carle Zimmerman’s classic *Family and Civilization* (New York: Harper & Brothers, 1947), 782–3, the rise and fall of civilization is dependent on the strength of that bond: In familism “we can approach closely that dream of the philosophers, determining the ‘first’ cause in social systems.” When “we speak of the ‘fall’ of great civilizations like those of Rome or Greece, in which an inner decay is the main agency, we are justified in giving an absolute causal analysis” in terms of familistic decay. (A shortened version of *Family and Civilization* with some commentary, edited by James Kurth, has been published by ISI Books (Wilmington, DE, 2008.) The negative social consequences of the disintegration of the family are a central focus of contemporary family sociology. Extensive meta-analyses of relevant social science research show the benefit of the intact family of married biological parents for children’s healthy development and the well-being of society: Sara McLanahan, Elizabeth Donahue, Ron Haskins, “Introducing the Issue,” *The Future of Children* 15 (2005): 3–12; W. Bradley Wilcox, William B. Doherty, Helen Fisher, et al., *Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences* (New York: Institute for American Values, 2005). Contemporary analyses of the wider societal consequences of SSM include Ryan Anderson, *Truth Overruled: The Future of Marriage and Religious Freedom* (Washington, DC: Regnery, 2015); Gabriele Kuby, *The Global Sexual Revolution: Destruction of Freedom in the Name of Freedom* (Kettering, OH: Life Site, 2015); Patricia Morgan, *The Marriage Files: The Purpose, Limits and Fate of Marriage* (London: Wilberforce, 2014); *The Meaning of Marriage: Family, State, Market and Morals*, ed. Robert P. George and Jean Bethke Elshtain (Dallas: Spence, 2006). The issue is being debated in John Corvino and Maggie Gallagher: *Debating Same-Sex Marriage* (New York: Oxford University Press, 2012); John Corvino, Ryan T. Anderson, and Sherif Girgis, *Debating Religious Liberty and Discrimination* (New York: Oxford University Press, 2017).

10. “It’s when we bring into the picture persons for whom it is a matter of religious conviction that they ought to strive for a religiously integrated existence . . . that the unfairness of liberalism to religion comes to light” (Nicholas Wolterstorff, “Why We Should Reject What Liberalism Tells Us,” in *Religion and Contemporary Liberalism*, ed. Paul J. Weithman (Notre Dame, IN: University of Notre Dame Press, 1997), 177). See also, Nicholas Wolterstorff, “The Role of Religion in Decision and Discussion of Political Issues,” in Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham, MD: Rowman and Littlefield, 1997).

11. Beckwith, *Taking Rites Seriously*, 9.

sequences of legal recognition of SSM will likely include coercion, punishment, and marginalization of these dissenters in a variety of public enterprises and venues found in the plethora of institutions that inhabit the world of business, education, government and law.”¹² These consequences will not be the result of the recognition of SSM by itself. However, as SSM is grafted on the laws, institutions and practices currently in place in liberal democracies, it will lead to the unjust coercion, punishment and marginalization of those citizens who choose to live consistently with comprehensive doctrines that regard same-sex intercourse as gravely immoral and SSM as a metaphysical impossibility.¹³

Does Love Trump Gender Complementarity?

Wolterstorff assumes that homosexuality is a “creational variance” rather than a disorder.¹⁴ As the biological or psychological concept of individual variation views behavior in a continuum, every point in the continuum has equal value in nature. Insofar as homosexual desires are just one creational variance within the continuum of sexual desires, Wolterstorff argues that homosexual couples have an equal right to express their desires within a committed covenantal relationship. Thus, church and state ought to respect their covenantal relationships by allowing them to enter into SSM.

Wolterstorff finds his argument for SSM on his belief that homosexual couples are similar to heterosexual couples with respect to erotic love and affection, which he understands in isolation from natural structures like gender complementarity.¹⁵ For Wolterstorff, the crucial question is whether the persons involved experience the intimacy as natural. “When those with ho-

12. Ibid.

13. Beckwith, *Taking Rites Seriously*, 193–204; Francis J. Beckwith, “Legal Neutrality and Same-Sex Marriage,” *Philosophia Christi* 7 (2005): 19–25; “Wedding Bell Blues: Understanding the Same-Sex Marriage Debate,” *Christian Research Institute*, Article DH261. J. Budziszewski argues that SSM is a metaphysical impossibility in “The Illusion of Gay Marriage,” *Philosophia Christi* 7 (2005): 45–52.

14. Wolterstorff, “Response to Matthew Tuininga on Sexuality and Scripture.”

15. By defining marriage in terms of affection and desire, Wolterstorff tacitly assumes the neo-Gnostic body-self dualism of liberal secularism analyzed in Patrick Lee and Robert P. George, *Body-Self Dualism in Contemporary Ethics and Politics* (New York: Cambridge University Press, 2008). Within such a neo-Gnostic vision, male–female complementarity is not essential to marriage. “For if the body is not part of the personal reality of the human being, there can be nothing morally or humanly important about ‘merely biological’ union, apart from its contingent psychological effects . . . The conjugal conception of marriage as a union of the sort that would be naturally fulfilled by the spouses having and bringing up children together strikes the ear of the neo-Gnostic as, at best, unnecessary, and at worst, discriminatory and exploitative” (Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington: ISI Books, 2016), 168–170).

mosexual orientation act on their desires in a loving, committed relationship, [they] are not, as far as I can see, violating the love command.”¹⁶

Wolterstorff appeals to a Christianized version of a form of reasoning that John Haldane calls *argumentum ad consummationem*.¹⁷ The Wolterstorffian version of this argument runs as follows: *Major premise*: human love is expressed in terms of one’s sexual orientation in a continuum from exclusively heterosexual to exclusively homosexual and one has the right to consummate one’s desires in a covenantal relationship. *Minor premise*: you cannot choose your sexual orientation and therefore you cannot choose the gender of the person you fall in love with. *Conclusion*: sincerely loving desires in both heterosexual and homosexual expression may be consummated in a covenantal relationship and ought to be sanctioned as marriage by both church and state.

Wolterstorff’s account differs from the traditional Christian one, according to which the one-flesh union intended in erotic love can be realized only in a man-woman union.¹⁸ Insofar as erotic love in a same-sex relationship creates “the illusion of the union proper to erotic love,”¹⁹ it is not properly adjusted to the reality of the other person. “In love, one ought not to treat someone as what the person is not.”²⁰

Even if Wolterstorff were right in his claim that homosexuality is a creational variance rather than an expression of the brokenness of fallen humanity, this would not constitute a sufficient reason to redefine marriage. Wolterstorff argues that a committed homosexual relationship is a life-good that deserves the sanction of the marriage institution. Nevertheless, his theory implies we do not have a right to everything that is good: rights trump goods.²¹ In this case, the inherent natural rights of children to their biological father and mother trump whatever good the redefinition of marriage would bring to same-sex couples. Wolterstorff’s theory of justice requires that the structure of marriage acknowledge the inherent worth and rights of all parties involved with special emphasis on the most vulnerable members—in this case, children. Genderless marriage endangers children’s identity rights by sending the message that children do not need a father and a mother.²²

16. Wolterstorff, “Lecture on Same-Sex Marriage.”

17. John Haldane, “Same Sex Marriage: A View from across the Atlantic,” *Nova et Vetera*, 10 (2012): 649–56. By his analysis of *argumentum ad consummationem* Haldane wants to show the weakness of the reasoning used to support SSM.

18. See Andreas J. Köstenberger and David W. Jones, *God, Marriage, and Family: Rebuilding the Biblical Foundation*, 2nd ed. (Wheaton, IL: Crossway, 2010); Roger Scruton, *Sexual Desire: A Philosophical Investigation* (London: Continuum, 2006); John Witte Jr., *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition* (Louisville, KY: Westminster John Knox, 2012).

19. Pruss, *One Body*, 364.

20. *Ibid.*, 275.

21. Wolterstorff, *Justice*, 5.

22. This is the gist of the so-called message argument, which Maggie Gallagher defends and her opponent John Corvino admits “may be the best argument the other side has,” in Corvino

Without its gendered structure, marriage is incapable of supporting the natural union of father, mother, and child.

Wolterstorff discusses the procreative function of marriage exclusively from the adult point of view. He argues that same-sex couples can provide or exhibit all of the fundamental goods of marriage except for “a secure environment within which children may be born.” He continues: “But the fact that the church marries couples who are beyond childbearing age indicates that it does not regard procreation or the possibility of procreation as essential to marriage.”²³

Wolterstorff thus ignores the viewpoint of children and disregards the fact that stable bodily unions aimed at procreation are universally distinguished from other relationships involving friendship and companionship. He forgets that although marriage is constantly evolving, it “reflects one idea that does not change: For every child, a mother and a father.”²⁴

While not all gender-diverse marriages produce children, the structure of gender-diverse marriage secures that every child is born into the home of her biological parents. To break this structure violates children’s identity and relationship rights. Same-sex unions structurally separate the child from either her biological father or mother.

In order to reconcile the tension between his position on SSM and his rights-based theory, Wolterstorff could argue that although it is a desirable life-good for children to be raised by their biological parents, it is not a universal human right. He could appeal to the fact that in many cases this ideal is not attainable due to divorce, the death of a parent, their extreme poverty or other circumstances beyond anyone’s control.

Such an argumentative move, however, would bring into sharper focus the tension with Wolterstorff’s theory of justice. First, although the violation of children’s identity and relationship rights cannot always be prevented, the implied normative claim is not thereby repealed, as “rights are normative bonds,”²⁵ not law-like necessities. Compare this to children’s right to life, which is not repealed by the fact that many children are killed or die due to illness or natural catastrophes.

Second, basic principles in Wolterstorff’s theory of justice make it hard to deny children’s basic identity and relationship rights. Human beings have worth as the unique individuals they are. Since God has created human beings as bodily beings, their biological origin, their status as a child of a father and a mother, is intrinsic to their human nature and individual identity. The child’s right to discover her identity in relation to her biological origin is grounded in her worth as a person created in God’s image and loved by God.

and Gallagher, *Debating Same-Sex Marriage*, 55.

23. Wolterstorff, “Lecture on Same-Sex Marriage.”

24. David Blankenhorn, *The Future of Marriage* (New York: Encounter Books, 2007), 91.

25. Wolterstorff, *Justice*, 4.

The argument that a child's right to know and to be reared by her biological father and mother is an inherent natural right can be summarized as follows:

- (1) A human child is a finite personal being created in the image of the infinite personal God by the biological union of her father and mother as complementary gendered beings.
- (2) Therefore, her unique identity is partly derivative of her personal origin in the love relationship of her father and mother.
- (3) The very idea of a finite personal being existing within time involves a unique identity to be unfolded in the process of personal development.
- (4) The unique identity of a human child is tied to her biological characteristics, which are in a process of unfolding throughout her growth and development.
- (5) In order to understand her unique personal identity, she needs to live in close contact with her biological origin.
- (6) Since a human child has intrinsic worth as the unique individual she is, she has the right to know and relate to those personal beings who gave her life and thereby can best support her development as a personal being with unique identity.
- (7) Therefore, a human child has the right to know and be reared by her biological father and mother. This right is inherent and natural since it is inherent in her nature as a finite personal being created in the image of God through the mediation of her biological father and mother becoming one flesh.

The child's search for her unique identity is inherent in her human nature. Therefore, to obstruct this search is to violate the innermost core of her humanity.

What if parents are abusive? Doesn't that make it impossible to respect the child's right to be reared by her parents? In this case, children's identity rights are overridden by another moral right with a stronger claim, namely, the child's right not to be abused. Even a child born as a consequence of rape may want at some point of her life to know the wider family and kin from which she originates even if she does not want to create a personal relationship with her rapist father.²⁶

26. I am grateful to Professor Wolterstorff who, in personal correspondence, suggested these examples as possible difficult cases for my position that children have a universal human right to know and be reared by their father and mother.

Justice to the Vulnerable and the Oppressed

A major part of Wolterstorff's argument is an exegesis of biblical passages about homosexuality, even though they have only indirect relevance to the question about the structure of marriage. More relevant is to discuss the biblical teaching about the father-mother-child bond.²⁷ The commandment "Honor your father and mother" assumes the correlative right to be reared by one's father and mother. The societal disintegration of the bond between mother, father, and child leads to an increase in the number of orphans. Their extreme vulnerability is forcefully expressed in various biblical passages exhorting us to protect them from injustice. Wolterstorff discusses these passages extensively in *Justice*: "A striking feature of how the Old Testament writers talk about justice is the frequency with which they connect justice . . . with the treatment of widows, orphans, resident aliens, and the poor."²⁸ He points out that "the members of this quartet regularly get special attention when justice, *mishpat*, is under discussion" since they "were *the bottom ones, the low ones, the lowly*."²⁹ He continues: "Given their position at the bottom of the social hierarchy, they were especially vulnerable to being treated with injustice. They were downtrodden . . . The rich and the powerful put them down, tread on them, trampled them. Rendering justice to them is often described as 'lifting them up.'³⁰ When biblical writers speak about the plight of widows, orphans, aliens and the impoverished they often have in mind "the collapse or perversion of the judicial system."³¹ The Bible exhorts us to defend the rights of orphans against structural injustice especially when the increasingly corrupt judicial system undermines their rights.

The debate about SSM touches the wider horizons of assumptions involved in biblical hermeneutics, central of which is one's view of human

27. Robert A. J. Gagnon, in *The Bible and Homosexual Practice: Texts and Hermeneutics* (Nashville: Abingdon, 2001), shows that the key argument in the early Judeo-Christian opposition to same-sex intercourse was based on the complementarity of male and female. He argues that "the biblical texts that speak directly to the issue of same-sex intercourse express unambiguous opposition to it and do so in large part on the credible grounds of the anatomical, procreative, and interpersonal complementarity of male and female" (40). By setting the relevant texts within their ancient Near Eastern background, he shows that the gender-diverse view of marriage is inherent in the creation story of Genesis 1–3. "Male and female he created them" intimates that the fullness of God's image "comes together in the union of male and female in marriage" (58). The level at which Levitical laws condemn all violations of the sanctity of male-female marriage "goes far beyond anything currently known in the ancient Near East" (56). Gagnon argues that Jesus's strict enforcement (Mark 10:1–12; Luke 16:18) of the gender-diverse view of marriage inherent in the Genesis passage has no equal in the Rabbinical thought of Jesus's time (193–209). A balanced hermeneutics focuses on the positive biblical teaching about the mother-father-child bond, which permeates the whole of Scripture and sets the passages about same-sex intercourse in this wider context.

28. Wolterstorff, *Justice*, 75.

29. *Ibid.*, 75–6.

30. *Ibid.*, 76.

31. *Ibid.*, 78.

nature. If the body is part of the personal reality of human beings, as the Jewish and Christian traditions affirm, the biological union of man and woman receives special significance, which it loses if we are merely minds or selves inhabiting bodies. The latter neo-Gnostic anthropology seems to influence Wolterstorff's biblical hermeneutics about marriage, which downplays the significance of the husband-wife one-flesh union capable of producing new life.³²

Children's Identity and Relationship Rights

While addressing the question of "whether justice requires the acceptance of same-sex marriage by state and church,"³³ Wolterstorff argues that homosexuals are a vulnerable and oppressed minority whose rights we should be defending. Yet Margaret Somerville points out that even though homosexuals are a vulnerable group, "as adults their claims take second place to children's needs and rights. Moreover, in upholding children's rights we are acting in the best interests of all children, whether their sexual orientation later proves to be straight or gay, and of all citizens, because, at one stage, all of us are children."³⁴ The crucial question that Wolterstorff fails to discuss is this: How does genderless marriage affect children's inherent natural rights?

As human beings in search of their identity and life's meaning, children have a special need to trace their origin and to live in touch with it. Children, therefore, have three fundamental human rights with respect to their biological origins (their very coming into being) that cannot be taken away from them without incurring incalculable harm: "their rights to knowledge of their biological origins; their rights to be reared within their immediate and wider biological families; and their rights to a parent of each sex."³⁵ The question

32. One of Wolterstorff's central hermeneutical principles in the interpretation of Scripture is that we cannot interpret God to say anything "that would not conduce to our love of God and neighbor" (Wolterstorff, *Divine Discourse* (New York: Cambridge University Press, 2000), 207). "Accordingly, if we the interpreters believe, on careful reflection," that a certain interpretation "would not so conduce or is thus incompatible, we are to conclude that God did not say that" (ibid.). Wolterstorff applies this principle to his discussion of SSM and argues that we cannot interpret Scripture in a way that would make God forbid SSM. Because of his neglect of the elements of truth in the natural law perspective, Wolterstorff applies his hermeneutics of love within a neo-Gnostic framework and finds the structure of marriage on adults' committed relationships in isolation from the one-flesh union of husband and wife that secures the biological links between parents and children. As a result, children's basic human rights are undermined.

33. Wolterstorff, "Response to Matthew Tuininga on Sexuality and Scripture."

34. Margaret Somerville, "Children's Human Rights and Unlinking Child-Parent Biological Bonds with Adoption, Same-Sex Marriage and New Reproductive Technologies," *Journal of Family Studies* 13 (2007): 195.

35. Ibid., 179.

of identity is central to being human, as Aristotle has argued: no one would want to attain happiness at the cost of losing his identity.³⁶

The biological origin of a human child in a love relationship between a woman and man forms the basis for her identity in several respects: (1) Her moral identity as a human being with inherent worth is supported by the fact that her existence is the fruit of the love between her mother and father. (2) Her social identity is founded on the web of social relations where she is located as the child of her parents. (3) A foundation of her sexual identity is the awareness that she is the fruit of the love between a man and a woman. (4) She acquires her national identity by association with her kin and its place in the wider community of a nation. In this way, she is able to locate her special place as a member of humanity. (5) Her biological origin connects her with previous generations and with human history. To break this historical connection leaves her without an acknowledged place within the chain of human generations. (6) Through her historical origin she participates in her mother's and father's cultural heritages with their languages, literature, and art.³⁷

Man-woman marriage naturally combines all these dimensions of children's identity in one integrated whole instead of leaving children with a disconnected web of ambiguous sources of identity and unanswered questions that hamper their coming to know who they are. Genderless marriage undermines children's right to an integrated identity by setting fatherless and motherless families as an ideal: the structure of SSM separates children either from their biological mother or father and thereby deprives them of the opportunity to develop an integrated moral, social, sexual, historical, and kinship identity in relation to their double biological origin.³⁸

What about Children in Same-Sex Families?

To defend his position, Wolterstorff could argue that children in same-sex families need SSM to secure a stable home environment and to make them feel that their families are accepted. Isn't the redefinition of marriage in genderless terms required in order to protect the children that are already living in same-sex households?

36. Aristotle, *Nicomachean Ethics*, 9.4 (116a20–23), 8.7 (1159a9–12).

37. The Genesis passage describing Adam's search for a proper mate indicates that it was only in the woman that he found "someone with whom he could ultimately discover and discern his humanity" (Witte, *From Sacrament to Contract*, 33). This indicates that the child born of their union naturally discovers her humanity and individual identity in relation to her biological father and mother. Adam's remark, "This at last is bone of my bones and flesh of my flesh" (Gen. 2:23), applies by extension to the child that is born of the one-flesh union.

38. Since human identity has a divine origin in addition to a human one, a person whose identity has been wounded on the human plane can seek a healing of her identity in Christ's redemptive work in a love relationship with her Creator God. "A father to the fatherless . . . is God in his holy dwelling" (Ps. 68:5).

The problem with this suggestion is that it incorporates a structural injustice into the definition of marriage, and therefore, as Douglas Farrow argues, “considered on its own merits,” such a proposal is “explicable only as an act of determined cynicism.”³⁹ The point is that children in same-sex households are separated from their biological father or mother. The very structure of same-sex relationships makes it impossible to connect the child to both her biological mother and father. So this can hardly be regarded as normative and hardly as an adequate basis for redefining marriage in a way that undermines the natural law norm protecting children’s right to a mother and a father.

Including same-sex couples in the marriage institution may increase the stability of same-sex families in the short term (although there is no empirical evidence for that). In the long term, however, it will lead to greater instability in the institution of marriage as a whole, because the genderless redefinition of marriage will make it harder for anyone to understand the rationale behind the norms of marriage, and thus people will be less likely to adhere to them. “The state’s laws and policies partly shape the general culture. If the state conveys a gravely distorted view of marriage, it will weaken and undermine its members’ capacities for full and rich participation in this critical aspect of human flourishing.”⁴⁰

As SSM conveys the message that children do not need a father and a mother, a boy or a girl who grows up absorbing this message may feel less need to marry before having children. Once married, they will be less likely to stay together in the pressures of family life. As a result, more children will be abandoned by their parents. Thus, the redefinition of marriage in genderless terms will accelerate the decline of marriage: it will make marriage less

39. Douglas Farrow, “Rights and Responsibilities,” in *Divorcing Marriage*, 112.

40. Lee and George, *Conjugal Union*, 105. The classical understanding of the ways that marriage contributes to human flourishing was gradually developed through Aristotle, Musonius Rufus, Aquinas, and others. According to this view, the human good of committed marriage expresses itself as both friendship and “the transmission of life not just of the mother or just of the father but of this couple and their family and their people” (John Finnis, *Natural Law and Natural Rights*, 2nd ed. (New York: Oxford University Press, 2011), 447–8). Marriage is like friendship in that “the members of this relationship care for each other for the sake of each other” (Lee and George, *Conjugal Union*, 49). Furthermore, marriage “is oriented towards the (multileveled) union of the spouses and towards procreation as two aspects of a single good” (ibid., 51). As a distinct community, marriage is the bodily, emotional, and spiritual union of the spouses that may lead to their conceiving and rearing of children in a way consistent with their self-integration, inner harmony, and integrity. “The distinctiveness of this basic human good is suggested by the fact that this fulfills the person precisely as male or female in a way not done by other basic goods” (55). A healthy marriage promotes moral integrity and various psychological and biological benefits in the life of both the spouses and the children, because it is a genuine human good. Within a committed gender-diverse marriage, life is transmitted to new persons in such a way that respects their human worth as ends in themselves by fulfilling both their need for love and identity. The well-being of the family is a precondition for the flourishing of civilization, as was pointed out earlier.

common and less stable, thereby leading to an increased number of children who are separated from their biological father or mother.⁴¹

Thus, Wolterstorff's support of SSM implies that the adult right to legal recognition of his sexual identity overrides the child's right to discover her unique identity in relationship to her biological father and mother. Such an argumentative move is especially problematic for Wolterstorff, whose theory requires us to defend the rights of the vulnerable.

By his support of SSM, Wolterstorff implicitly claims that children do not need a father and a mother: a social parent can replace a biological one without the child incurring any harm or injustice. In this way, Wolterstorff disregards the research evidence according to which mothers and fathers generally have different strengths in parenting and that the absence of the mother or the father harms children's development in different ways.⁴² He fails to acknowledge the *polaric complementarity* of fathers and mothers, who are not just different, but different in corresponding ways: "Each sex completes what the other lacks, and helps bring the other into balance."⁴³

To support his case, Wolterstorff could appeal to many same-sex parenting studies that downplay the significance of biology and emphasize the role of the "social mother" or "social father" (that is, the mother or father not biologically related to the child) at the cost of the biological mother or father. Douglas Allen, however, criticizes the reliability of these studies by pointing

41. Lee and George, *Conjugal Union*, 121–2, 126–7.

42. A recent overview of research in this area is William Bradley Wilcox and Kathleen Kovner Kline, eds., *Gender and Parenthood: Biological and Social Scientific Perspectives* (New York: Columbia University Press, 2013). Rob Palkoviz ("Gendered Parenting's Implications for Children's Well-Being," in *Gender and Parenthood*, 215–48) points out that children benefit from the unique parenting styles of mothers and fathers as they are typically modeled in child rearing. Mothers have an important significance in showing closeness, understanding and making applications suitable to the child's level of development. Fathers tend to be more firm, demanding, and positively reinforcing. Thus they develop children's openness to the outside world, social competency, self-esteem, and prosocial behavior. The father's presence is associated with a delayed onset of puberty in daughters (suggesting a biochemical link) and a lower risk of teen pregnancy. The psychiatrist Scott Haltzman ("The Effect of Gender-Based Parental Influences on Raising Children," in *Gender and Parenthood*, 304–21) concludes: "Fathers and mothers both matter, particularly if each can parent in a style that reflects their gender role." Therefore "gender differences in parents are real, and, rather than be extinguished or ignored, they should be embraced" (318). Absence of gender complementarity in the family makes it difficult for children to learn how men and women relate to each other. Absence of a father predicts children's behavior problems, depression, lower self-esteem, lower life-satisfaction, and difficulties in transition to adulthood (David J. Eggebeen, "Do Fathers Uniquely Matter for Adolescent Well-Being?," in *Gender and Parenthood*, 249–50). Lack of maternal responsiveness predicts infants' insecure attachment styles that lead to problems in psychological adjustment later in life. "In fact, the research literature on the relation between quality of infant attachment and later development has been described as 'dizzying' and its effects are some of the most robust in developmental psychology": secure attachment has been described as a "multivitamin" that prevents problems and fosters healthy development (David F. Bjorklund and Ashley C. Jordan, "Human Parenting from an Evolutionary Perspective, in *Gender and Parenthood*, 71–2).

43. Budziszewski, *On the Meaning of Sex*, 41.

out that they are based on small and biased samples, some very soft questions and limited outcome measures.⁴⁴

The Production of Genetic Orphans

Article 16 of the Universal Declaration of Human Rights indicates that the right to marry is a compound right involving “the right to marry and to found a family.” Marriage establishes and institutionalizes not only one adult’s relationship to another adult, but also the relationship of those adults to the children born to them. The institution of marriage is intrinsically connected to parenthood and to the values and norms associated with bearing and raising children.

Although Wolterstorff genuinely wants to defend the rights of the oppressed and the vulnerable, he disregards the fact that the redefinition of marriage in genderless terms increases the number of orphans by destabilizing marriage and by encouraging the production of so-called genetic orphans.⁴⁵ Since genderless marriage gives adults the freedom to marry in terms of their sexual orientation and the consequent right to found a family, it im-

44. Douglas Allen, “More Heat than Light: A Critical Assessment of the Same-Sex Parenting Literature, 1995–2013,” *Marriage and Family Review* 51 (2015): 154–82. Allen points out that a great deal of same-sex parenting studies is the work of a small ideologically motivated group of activist researchers who have often recruited their respondents so that they include a great number of activists who are conscious of the political significance of the studies. The focus is often on “soft” measures of child and family performance such as self-reports on attitudes, awareness, psychological well-being, family closeness, child bonding, stigma, and self-esteem. These measures are difficult for other researchers to verify by replicating the research. With the exception of a few cases, the studies in question are not statistically representative. Samples are small (30–60 respondents on average). Of the studies conducted between 1995 and 2013 and analyzed by Allen, only four had sample sizes larger than 500. The problem with such small sample sizes is that they do not produce statistically significant results. Loren Marks analyzed the fifty-nine studies, which APA (American Psychological Association) used as the basis for their conclusion that same-sex and different-sex parenting do not differ significantly: “The available data, which are drawn primarily from small convenience samples, are insufficient to support a strong generalizable claim either way. Such a statement is not grounded in science. To make a generalizable claim, representative, large-sample studies are needed—many of them” (“Same-Sex Parenting and Children’s Outcomes: A Closer Examination of the American Psychological Association’s Brief on Lesbian and Gay Parenting,” *Social Science Research* 41 (2012): 748). A small sample size guarantees that the differences detected are not statistically significant. This does not mean, however, that no differences actually exist. Almost all the studies have focused on lesbian couples and their underage children. When interviewing underage children, researchers are subject to strict ethical rules: they may not pose questions that may cause stress to children or alienate them from their parents. The few studies based on representative samples that have so far been conducted (e.g., by interviewing adolescents or by relying on public demographic data) give us reason to suppose that children fare best within the intact family of their biological father and mother. (See, e.g., Mark Regnerus, “How Different Are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Study,” *Social Science Research* 41 (2012): 752–70).

45. Somerville, *Ethical Imagination*, 147–9.

PLICITLY endorses their right to produce children by third-party reproductive technologies.

Since children cannot voluntarily participate in their own creation and cannot give their informed consent to the arrangement agreed upon them, their freedom and choice are often completely forgotten. They are, however, the ones most profoundly affected by the way they come into being, and their right to know their genetic origins should take precedence, as Margaret Somerville argues: “Adopted children and children born from donated sperm, ova or embryos want to know their biological identity.”⁴⁶

The ethical doctrine that needs to be respected in this context is that of “anticipated consent.” We ought to try to stand in the shoes of the person affected by our decision and to ask: “Can I reasonably anticipate that if the persons were able to be asked, they would consent to what I want to do that will affect them?” Somerville applies this principle to future children: “What might we reasonably assume that a future child would consent to if they were able to make their wishes known? Evidence is starting to come in: ‘Donor-conceived adults’ describe powerful feelings of loss of identity through not knowing one or both biological parents and their wider biological families, and describe themselves as ‘genetic orphans.’ They believe society was complicit in a serious wrong done to them in the way they were conceived and ask, ‘How could anyone think they had the right to do this to me?’”⁴⁷

It is unethical to deliberately create genetic orphans who lose a sense of connection to their individual-human-family past and experience the deep suffering and loss of identity as a result. “It is paradoxical that in an era of sensitivity to individual human rights and ‘intense’ individualism, we are prepared to wipe out for others one of the most important bases on which we found a sense of individual identity.”⁴⁸ The disintegration of marriage as

46. Somerville, “Children’s Human Rights,” 195.

47. *Ibid.*

48. *Ibid.*, 196. Natural law requires us to respect children’s basic rights to their identity and natural heritage. These rights have implications for law and public policy. Although society must support all kinds of families, it ought not to actively promote the creation, through third-party reproductive technologies, of single-parent or same-sex families that structurally deprive children of their basic human rights (Somerville, *Ethical Imagination*, 153). Since the right to marry implies the right to found a family, Wolterstorff’s support for SSM implies support for the use of third-party reproductive technology, which same-sex couples usually need to establish a family. Such technology violates children’s fundamental identity rights to know the identity of their biological parents and to come into being with genetic origins that have not been tampered with. These rights exclude cloning and the use of reproductive technology that tampers with the gametes: making embryos “by combining two ova or two sperm (so two men or two women could have their own shared baby) or creating ‘synthetic’ gametes (sperm or ova) made from adults’ stem cells (which could be used by same-sex couples, or opposite-sex ones when one person is infertile, or would allow one person to become both the ‘mother’ and ‘father’ of their own baby without the baby being a clone)” (*ibid.*, 139). There is a clear difference between the use of third-party reproductive technology and adoption. Adoption is a charitable act aimed to alleviate the suffering of orphaned children, whereas third-party reproductive technology produces genetic orphans to alleviate the suffering of childless adults. Adopted children have the

a gender-diverse conjugal union is contrary to the essential purpose of the marriage institution to protect children as persons of inherent worth rather than as means to the satisfaction of adult needs.

Undermining the Norms of Marriage

Children's basic identity and relationship rights cannot be secured without a marriage institution based on gender complementarity. The gender-diverse core of marriage helps to ensure that children are conceived naturally (they are not cloned, nor are they intentionally produced to be genetic orphans) and are reared by both their father and mother. The other marriage norms support children's identity rights only insofar as they function in the context of this natural core. (1) The norm of exclusivity secures that children are born into the home of their biological father and mother. (2) The norm of permanence helps to create a stable home environment for the entire duration of children's maturation. (3) The norm of comprehensiveness helps to ensure that children enjoy a harmonious (that is, low-conflict) home environment.

Although Wolterstorff regards marriage as a committed covenantal relationship, his redefinition of marriage as a genderless union of love undermines the intelligibility of the chief features of marriage—its twoness, its exclusion of artificial persons, its presumptions of paternity and joint property, its ethic of sexual fidelity, and its lifelong duration. These norms lose much of their intrinsic intelligibility without gender complementarity and its connection to children's identity rights: Why should love be limited to two people? Why should it be exclusive? Insofar as people do not understand the rationale of the norms, they are less likely to adhere to them in their behavior. "Hence redefining marriage . . . will lead to an incoherent view of marriage and to a greater instability in the institution of marriage."⁴⁹

Therefore, the institutionalization of SSM will have harmful social consequences: "Where the nature of marriage is obscured and the culture of marriage is weakened, fewer young men and women marry, fewer view marriage as the proper context for sexual conduct and expression, and the number of children born outside marriage dramatically increases, and with it the num-

right to know the identity of their biological parents whenever possible. Irrespective of whether children have become orphans through unfortunate circumstances or whether they have been intentionally made into genetic orphans, they are under the special protection and care of the "father of the fatherless" (Ps. 68:5). Such special care and protection should be accorded to them by church and state as well. For further work on these issues, see Francis J. Beckwith, *Defending Life: A Moral and Legal Case against Abortion Choice* (New York: Cambridge University Press, 2008), ch. 8; J. P. Moreland and Scott B. Rae, *Body and Soul: Human Nature and the Crisis in Ethics* (Downers Grove, IL: InterVarsity, 2000); John Wyatt, *Matters of Life and Death: Human Dilemmas in the Light of the Christian Faith*, 2nd ed. (Downers Grove, IL: InterVarsity, 2009).

49. Lee and George, *Conjugal Union*, 127.

ber of children growing up outside intact families.”⁵⁰ Hence, the number of orphans increases.

Why the Inconsistency?

Why has Wolterstorff ignored the plight of orphans in his discussion of marriage, even though concern for their welfare is central to his theory of justice? One reason could be the dichotomy he creates between theories of justice based on intrinsic worth and those based on right order. As marriage is connected to the family, and family members belong to different generations and have vastly different statuses and needs, it may be difficult to acknowledge the intrinsic worth of all family members in their respective roles as husband and wife, father, mother, and child, without attention to the natural structures. For example, to respect the intrinsic worth of children in their relative immaturity requires structural arrangements like the gender-complementary marriage.

Instead of relying on a conception of natural law, Wolterstorff relies on encounters with the vulnerable and the oppressed as inspiration for his thinking on justice. By feeling empathy with the marginalized and vulnerable people and listening to their voices, he intends to escape the lure of the powerful and the rich who oppress them by appealing to the need for right order.⁵¹ Since Wolterstorff uses this impressionistic and experiential approach as a replacement for, rather than as a complement to, the natural law perspective, he ends up ignoring the rights of the vulnerable children.

While Wolterstorff has “learned of relatives, friends, students, and former students who were homosexual in their orientation” and “listened to their faith, their agony, their hopes, their affections,”⁵² he tells of no similar encounters with children deprived of their mother or father due to the redefinition of marriage in genderless terms.⁵³ It is understandably difficult to discuss with an infant produced by third-party reproductive technology and surrogacy and taken from her mother’s breasts immediately after birth by a male couple. Yet this infant is obviously the most vulnerable person intimately affected by the genderless redefinition of marriage. Wolterstorff forgets his own insight that the situation of the orphans is “all-too-often unjust—demeaning, impoverished, voiceless.”⁵⁴

50. *Ibid.*, 109.

51. Wolterstorff, *Justice*, vii–ix.

52. Wolterstorff, “Response to Matthew Tuininga on Sexuality and Scripture.”

53. The voices of these children can be heard, e.g., on the pages of *Jephthah’s Daughters: Innocent Casualties in the War for Family “Equality,”* ed. Robert Oscar López and Rivka Edelman (Northridge, CA: International Children’s Rights Institute, 2015).

54. Wolterstorff, *Justice*, 79.

In his discussion of SSM, Wolterstorff ignores the defense of gender-diverse marriage by modern natural law theorists like Ryan T. Anderson, Francis, J. Beckwith, J. Budziszewski, Sherif Girgis, Robert P. George, Patrick Lee, Alexander Pruss, Margaret Somerville, and others.⁵⁵ Wolterstorff dismisses natural law theorists by relegating them to the category of right-order theories that do not place due emphasis on the inherent worth of oppressed minorities.⁵⁶ Paradoxically, it is these natural law theorists who have been the staunchest defenders of children's rights in the marriage debate. It might be more consistent with Wolterstorff's creational approach to see inherent rights and right-order views of justice as complementary rather than as alternative and competing ways to understand justice.

Concluding Remarks

My main critiques against Wolterstorff are as follows:

- (1) Wolterstorff fails to apply a fundamental principle of his theory of justice: to consider the structure of marriage from the point of view of the inherent natural rights of the most vulnerable people affected—children.
- (2) He does not study marriage from the structural point of view. He fails to consider the purpose of marriage to unite father, mother and child, and to analyze the consequences of marriage legislation for the justice system as a whole.
- (3) He views the procreative aspect of marriage exclusively from an adult-centered viewpoint and ends up undermining children's identity and relationship rights to know and be raised by their biological father and mother.
- (4) He fails to analyze the different forms of love in their full implications and to relate the bodily basis of the one-flesh union of gender-diverse marriage to considerations of the structure of marriage.
- (5) He fails to apply his principle that rights trump goods. Instead, he privileges the good of adult sexual identity over the child's fundamental right to discover her unique identity by intimate acquaintance with her biological origin and to be loved as the unique individual she is by those who gave her life.

Only the gender-diverse structure of marriage respects children's basic identity- and relationship rights, their rights to know and be reared by their biological father and mother. The moral fabric of society is founded on these basic human rights of its most vulnerable members. The natural law perspective gives us the insight that these rights are embedded in the natural

55. See notes 6, 8, 9, and 13.

56. Wolterstorff, *Journey toward Justice*, 29–34.

structures of marriage and can be adequately defended only by maintaining these structures. Once children's rights are given the priority they deserve in the legal structure, society creates preconditions for the well-being of the coming generation and with that for the advance of culture, social stability, and material prosperity.⁵⁷

57. I was helped by comments from and discussions with Nicholas Wolterstorff, Juha Ahvio, Michael Beauty, Philip Blosser, J. Budziszewski, John Haldane, Pasi Matikainen, Alvin Plantinga, Alexander Pruss, Matthew Wuethrich, and Julie Yonker, as well as by the comments of the anonymous referee. I want to thank Betty Talbert for her extensive suggestions to improve the paper.