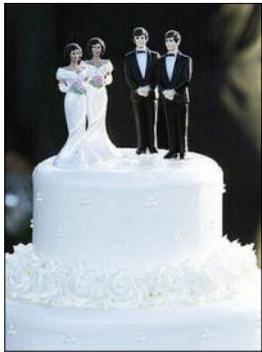


[Gay marriage is a libertarian issue](#) [1]

Written by [Sam Bowman](#) [2] | Tuesday 31 January 2012



Over at the Telegraph, the ASI's JP Floru has an [excellent article in defence of gay marriage](#) [3]. He makes the point that what we think of as the "tradition of marriage" ? the state- and church-endorsed institution that is currently reserved for heterosexual relationships ? is in fact a relatively new phenomenon rooted in modern codifications of common law practices. [Per Hayek](#) [4], this creation of state-created legislation instead of case-based, court-created law has had desultory effects in all sorts of spheres of life, by replacing the bottom-up with the top-down. JP argues:

Before the first ever Marriage Act (1753) established common procedures to enter into a legal marriage, there was a wide range of ceremonies and customs by which people thought of themselves as being married...

With the Marriage Act 1753 state and church came together to decide what was marriage, and what wasn't. From then on, a mere agreement would never be sufficient anymore to give all the legal consequences of a marriage as defined by statute. The heavy hand of government closed the door to the endless variety of unions which existed before, to be recognised as a valid marriage.

[Read the whole thing](#) [3].

You don't have to believe that same-sex marriages existed in pre-modern times (though [some academics do](#) [5]) to see their emergence *now* as a part of a healthy institution of marriage; what is necessary is for people to have the freedom to adapt. JP's point about the patchwork quilt of practices that existed before marriage's codification is important ? once the state gets involved with the messiness of life, it tends to impose its own kind of order on things without much care for why things were messy in the first place. Fundamentally, JP says the state should get out of marriage (as it should get out of every other aspect of our private lives). But, failing that, there is an overwhelming case for it to extend marriage rights to same-sex couples to allow them to live their lives with dignity and the same privileges that heterosexual married couples currently enjoy.

Some libertarians argue that this is the wrong position to take: they say that arguing for same-sex marriage within state boundaries amounts to "extending state privilege" and is not a form of justice. JP is not writing for this narrow group, so he doesn't discuss this, but I think he would agree with [Steve Horwitz](#) [6], who compares the injustice of many US states' current marriage laws to the injustice of a social security system that withheld benefits from black people. It is in the interests of liberty for the state to be as indiscriminate

as possible even where it is acting unjustly; so, for instance, while a state social security system may be an unjust infringement upon our liberty, one that excluded black people would be even worse.

It's great to see articles like JP's in media outlets like the Telegraph. I have a feeling that the fight will be won in the next few years, despite resistance from some sections. After that, the next push has to be for true freedom for everybody: for the state to get out of marriage altogether.

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