

## Same-Sex Marriage and Equality ... Again The Collectivist Argument

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### Abstract:

Williams accepts that McDonough's Logical Argument (MLA) that homosexuals have always had the same marriage rights as heterosexuals, namely the right to marry one eligible adult of the opposite gender, is correct *at the individual level*, but holds that it is wrong at the "collective" level because the homosexual couple *qua* couple is not treated equally with heterosexual couples. The present paper argues that Williams' counterargument fails. First, Williams' argument from analogy, that the right to marry is relevantly analogous to the right to assemble, fails. Second, Williams fails to give any meaning to the view that the homosexual couple *qua* couple marries, which, therefore, turns out to be a misleading way of saying that the individuals that make up the couple marry, which returns one to the individual level at which, Williams admits, there is no inequality. The paper then argues that Williams' "collectivist ascent", coupled with the appeal to equality, commits one to a species of polygamy so extreme that actual polygamists would reject it. Finally, the paper argues that Williams' claim that MLA is inconsistent with an appeal to equality to justify same-sex marriage misunderstands MLA. MLA only argues against the attempt to justify same-sex marriage by simple logical *inference*. It is not inconsistent with the view that same marriage can be *made* an equal right via the democratic process.

**Keywords:** Same-sex marriage, collective rights, individual rights, polygamy, democratic process

Williams (2011, 589) argues against McDonough's (2005) Logical Argument (hereafter MLA) that same-sex marriage (hereafter SSM) is not an equal rights issue because homosexuals have traditionally had exactly the same right to marry as heterosexuals, namely, the right to marry one other eligible person of the opposite sex. MLA is a response to the editorial in *The Economist* (2004) that the case for SSM begins with equality pure and simple: "Why should one set of loving, consenting adults be denied a right that other adults have and which, if exercised, will do no damage to anyone else". MLA does not argue against SSM. Since it is only directed against one argument, the *Economist's* argument from "equality pure and simple," MLA admits that one might justify SSM by some other means. Williams sees MLA as important because the appeal to equality is the most popular argument for SSM. He mentions Garret (2009a) and (2009b), Mohr (2005), and

several SCOTUS rulings, that appeal to the right to equal treatment under the law. Williams remarks that since he has seen no replies to MLA, it is important to show that it fails (590). In fact, there have now been multiple replies to MLA by Held (2007), (2009), and (2013), Rajceck (2008), Reitan (2014), Drabek (2014), and Chambers (2017) - and McDonough (2019) has replied to them. However, Williams employs an intriguing strategy entirely different from the other critics of MLA, specifically, the view that the right to marry should not be viewed as an individual right but as a *collective* right akin to the right to assemble. Call this Williams’ “collectivist ascent”! Like MLA, Williams does not purport to provide any substantive argument for or against SSM. Williams is only making a logical point about MLA (594).

The paper argues that though Williams’ “collectivist” argument is intriguing, it also fails. § I summarizes Williams’ “collectivist” argument. § II argues that Williams’ argument fails to refute MLA. § III argues that on a natural reading, William’s “collectivist” *necessitates* that the most extreme sort of polygamy is also justified § IV argues, contra Williams, that MLA is fully *consistent* with the justification of SSM by appeal to equality.

### **I.) Williams’ Argument**

Williams admits that it is tempting to dismiss MLA out of hand because it obviously treats people unequally. Williams considers the example of a government policy that allows every resident “the same” right to a transfusion of any of the available blood types: either A, B, or AB blood. Williams argues that MLA is committed to hold that this policy gives all residents the equal right to receive a blood transfusion where it is just unfortunate that people with type O blood miss out (592). Since persons with blood type O are just as deserving as others to get a transfusion, and since, on this policy they are “not permitted” to get one, this is “unjust” (592). However, Williams abandons this argument because there is a major dis-analogy between the inability to get blood transfusions and the inability to marry the person of one’s choice. The former can cost one one’s life but latter does not.

Williams proposes the following better example and argument. Suppose nation N extends to its citizens the right to assemble, but with a proviso. All citizens are equally entitled to assemble but not with members of their own “ethnicity.” Call N’s policy on the Right to Assemble, NRA and the argument Williams bases on it “Williams’ Argument from NRA” or WNRA! On NRA, a Muslim is entitled to assemble with a Sikh, a Buddhist or a Hindu, but no Muslim would be entitled to assemble with another Muslim, no Sikh with another Sikh, and so on. This “thought experiment”, Williams claims, shows that “McDonough’s understanding of equality implies, absurdly that the right to assemble [according to NRA] is not a violation of equality” (592). For, although, on NRA, Muslims, Sikh’s and all other ethnicities are “equally entitled to assemble with members of other ethnicities, and all citizens of N are equally prohibited from assembling with members of other ethnicities,” on a deeper level, NRA “does not entitle Muslims or Sikhs to assemble [all italics, Williams]” (592). The italicized “s” on the end of “Muslims” and “Sikhs” is crucial to Williams’ point. For the two “levels”, the more superficial level and

the “deeper” level, are, respectively, the level of individual rights and the level of group rights. Although NRA allows each *individual* Muslim, each individual Sikh, and so on to assemble with *individual* members of other ethnicities, NRA “denies *all* ethnicities *any* right to assemble [all italics Williams’]” (592). Since NRA does not entitle even a pair of Muslims, or a pair of Sikhs to assemble with each other, it prevents “every ethnicity from itself assembling” (592-3). Since “assembling is an intrinsically *collective* action because one cannot assemble by oneself”, Williams claims that “the right to assemble is best seen as an intrinsically collective right ... that belongs to a social unit or collective ... not to the individual constituents of the collective *qua* individuals” (593). Thus, if X is an intrinsically a *collective* action, X involves rights not possessed by the individual members of X. Call this Williams’ “collectivist ascent”! But, this “collectivist” right to assemble is analogous to the right to marry,

I can no more marry by myself than I can assemble by myself. Marriage is an intrinsically collective institution, as assembling is an intrinsically collective action. ... [and] both proponents and opponents of same-sex marriage see marriage as an institution that *couples* enter [Williams’s emphasis]; so strictly speaking, ‘married’ more accurately describes couples than individuals (593).

From this Williams infers that although on MLA, which he accepts at the individual level, same-sex *individuals* in traditional societies have always had exactly the same marriage rights that homosexual individuals have to marry one eligible adult person of the opposite sex, it is still true that “same sex couples ... are denied the [same] right to marry” that is enjoyed by opposite sex couples in traditional societies (593). Since the inequality cannot be found at the individual level, Williams makes a “collectivist ascent” in order to find it at the higher level. No individual *qua* individual is wronged by traditional marriage, but the homosexual couple *qua* couple is treated unequally.

Williams recognizes that some may object to his claim that the description “married” applies more properly to couples than to individuals. Although one typically says that that Jim, not that Jim-Lucy, is married, when we say that someone, e.g., Jim, is married “it is understood that that he or she is married to someone” (593). Thus, “it makes more sense, *strictly speaking* [emphasis added], to see individuals exercising their right to marry or assemble, not as individuals, but as members of a collective” (593). One *must* make this collectivist ascent because marrying, like assembling, always involves a collective. Thus, in traditional societies, the homosexual *couple*, Bill-and-Bob, do not have the *same* right to marry that the heterosexual couple, Jack-and-Jill do. MLA fails at the level of collective rights.

## II.) Reply to Williams

Williams core argument, WNRA, is based on his NRA-example that permits *individual* Muslims, Sikh’s, etc., to assemble with anyone *not* in their “ethnic” group but does not permit any of them to assemble with members of their own ethnic group. However, he begins his discussion

by stating that it is tempting to compare MLA with the view that the government policy that allows everyone “the same” right to a transfusion of blood types, A, B, AB, does, in one sense, treat everyone equally even though it effectively, “bars” people with type O blood from receiving blood transfusions. Williams argues that this government policy is “unacceptable,” but abandons it because of certain dis-analogies and attempts to develop a better example, NRA, and argument, WNRA, to combat MLA.

Despite the fact that Williams quickly abandons his “argument from blood types,” the present author feels Williams gives up on it too easily and for the wrong reason. That is, the fact that the right to get the right blood transfusion is about life and death but the right to marry is *not* relevant to the *logical* point that is at issue. Although the present author believes that this argument also, in the final analysis, fails, but it is *far* more interesting than Williams realizes. However, since Williams abandons the argument from blood types, it is not further considered here.

Consider now Williams’ main argument! According to WNRA, NRA gives all citizens the equal right to assemble with the proviso that they cannot assemble with members of their own ethnicity. A Muslim is entitled to assemble with a Sikh, and so on, but not with another Muslim. Note first that Williams states NRA in terms of ethnicities and then gives an example that involves, not ethnicities, but religions, Muslim, Sikh, Hindu, etc. This might be a small point except that there is more *emotive* power to a policy that prevents different *religions* from assembling than one that prevents different ethnicities from assembling, e.g., a policy that prevents Muslims from assembling may be more emotional than one that prevents Caucasians from assembling. However, this minor point need not be pursued further here.

There are two main parts to WNRA. In the first part, Williams draws his first set of conclusions about the right of various religions to assemble from his description of NRA. In the second part, he claims that there is an analogy between NRA and MLA’s position on equality in order to show that MLA fails. There will, accordingly, be two parts to the present critique of WNRA. Consider William’s first set of inferences from NRA!

Williams main conclusions from NRA is that though it allows individual Muslims, individual Sikhs, and so on the *equal* right to assemble, it prevents *all* Muslims, *all* Sikhs and so on, each taken *collectively* as groups, from assembling at all! MLA does not allow *any* right to Muslim *groups* qua groups, Sikh *groups* qua groups and so on to assemble. Since Williams finds this intolerable, and since he takes it to follow from MLA, MLA is refuted. But first, is NRA really intolerable, and second, if it is intolerable, is this *because it treats different groups unequally*?

In fact, a social science fiction thought-experiment can be used to illustrate *conditions* in which such a policy makes sense. It is the year 2050 and a certain state N is plagued by massive inter-religious violence so great that the very survival of N itself is threatened by the decimation of its population. It is agreed by the various state and religious leaders that the root cause of the violence is that the different religious groups do not really know each other. Muslims assemble only with Muslims, Sikh’s with Sikh’s, and so on. As a consequence, each group harbors bizarre

false superstitions about the other groups. N, therefore, issues an edict that for 6 months, at which point it may or may not be renewed, depending on conditions at that time, each citizen in N is permitted to assemble only with members of other groups, not with members of their own. Thus, for the next six months, a dinner party composed of 5 Muslims or 5 Sikh's is not permitted, but a dinner party of one Muslim, one Sikh, one Hindu, one Christian, and one Jew, is permitted. The present author suggests that in these kinds of circumstances, this policy is not intolerable but has a certain plausibility. *Policies must be judged relative to factual conditions on the ground.* However, since Williams only states the policy in the abstract, he mistakenly infers that since it would, *given present conditions* in New York, be intolerable, that it is intolerable *per se*. But this is a mistake. One can imagine conditions in which this kind of policy might make sense.

Next, assuming that, in *current conditions* in 2020 in New York, NRA is seen to be intolerable, is it intolerable because it treats Muslims, Sikh's and so on, *unequally*? The answer is, No. For, even if NRA would be intolerable in contemporary New York, it would not be because it treats any group *unequally*. For NRA denies the right to group-assembly for all the religions *equally*. Williams purports to show that NRA is intolerable because MLA "implies ... absurdly that the right to assemble that N extends to its citizens is not a violation of equality" (592), but WNRA only attempts to show that it treats the different groups intolerably, not that this intolerability derives from a violation of equal treatment. In fact, if NRA would be judged to be wrong for contemporary New York, it would be *because we value things other than equality*, e.g., the right to pray with members of one's own religion, to take care of family members, to help one's friends, and the like. If NRA is wrong for present day New York, it is because it gets the wrong *balance* of these *various* values – not because of any violation of equal rights.

The second stage of Williams' argument is based on his assertion of an *analogy* between the NRA's policy on the various religion's rights to assemble and MLA's view about a same-sex couple's right to marry. This is really the core of Williams' argument and this part might still have weight even if the prior part does not. The analogy is supposed to be between the Muslim or the Sikh groups on the one hand and the homosexual groups (couples) on the other. Williams claims that just as NRA allegedly discriminates against Muslim *couples*, MLA discriminates against homosexual *couples* because it permits heterosexual *couples* the right to marry but denies that *same* right to homosexual *couples*. For, in the final analysis, all the philosophical subtleties aside, MLA supports the right to marry for heterosexual couples, but "same sex couples are denied the right to marry" (593). Does not Williams' "collectivist ascent" capture this common intuition about the inequality between the two cases?

The first point that must be made about WNRA is that not only is it based on the problematic notion of collective rights, but that it states an extremely weak criterion for constituting a relevant collective, namely, that the relevant action involves more than one person: "it is understood that that he or she is married to someone." There is, however, much discussion in the literature about what conditions must be satisfied if a collective to be of the right *sort* to

be granted collective rights (which conditions can, in fact, be quite complicated), and, second, about the question whether the notion of group rights is incompatible with the notion of individual rights (Jones 2016, §'s 6-9). Obviously, these thorny issues cannot be settled here, but, to take just one example to illustrate the point, some have argued that the best candidates for group rights are entities that possess some kind of “formal unity”, like the US army, the Red Cross, university faculties or business corporations that survive changes in their members (Jones 2016, § 6). Indeed, the present author is sympathetic to the view that there are some conditions in which it is plausible to claim that *some* collectives, e.g., indigenous peoples, might be accorded special collective rights. For example, many indigenous peoples who have not had contact with the global community might be literally wiped out by diseases, like the flu, that are not a serious threat to advanced global civilizations themselves in which most members have developed significant immunity to these diseases. It can, therefore, be argued that such indigenous peoples have a *collective right* to be protected from people who want to build tourist hotels filled with lots of sneezing rich people in their native homelands. However, WNRA’s criterion for being a deserving collective, that performing some action (marrying) necessarily involves at least two people, is far too general to justify a claim for collective rights. Although Jones (2016, § 3) says that “No one promiscuously ascribes rights to every kind of group”, WNRA employs the *widest possible* criterion for granting collective rights, namely, that *all* collectives (that require people to do things together) deserve collective rights. Thus, on WNRA’s criterion, a baseball team, a group of children singing together, and the couple composed of con-artists and their victims all deserve collective rights. After all, if one cons, one must con *someone*. The present author would, therefore, like to see a more sustained rigorous attempt to develop the view that homosexual *couples* (that is the “collective” Williams identifies), on the basis of very *specific* criteria, deserve to accorded certain collective rights. Note, by the way, that this would be different from the attempt to develop the view that homosexuals (as a group) deserve some kind of collective rights. In any case, WNRA is *far* too generous at granting collective rights. With that preliminary remark out of the way, let us proceed to WNRA itself!

First, William’s claim that “same sex couples are denied the right to marry” is misleading. When, in everyday language, one says that A gets married, one means that A marries someone other than itself, thereby forming a new entity. That is, marriage involves a coming together of two antecedently separate entities, e.g., Jack and Jill, who, by getting married, produce a new union, the married couple, Jack-and-Jill, that is treated as a unit for certain purposes (community property, income tax, etc.). Since Williams treats the homosexual couple as a collective (the couple denied the right to marry), one must, following this logic of everyday language, identify two separate entities, each of which exists antecedent to the marriage that, with the marriage, produces a new entity, a new union, with new properties. So, what are the two separate entities that exist antecedent to WNRA’s proposed homosexual marriage, which, by marrying, form a new union after the marriage? Unfortunately, there are no obvious choices here.

It is useful to illustrate this using a *concrete* example. Suppose the proposed homosexual couple who want to get married is John and Bob. The proposed two entities who are denied the right to marry cannot be John and Bob themselves because Williams' admits that MLA has shown that at the individual level heterosexual and homosexuals *are* treated equally. That is the whole motivation for William's "collectivist ascent". Suppose, therefore, it is claimed that the relevant couple is the *unmarried* couple, John-and-Bob. Williams has said that it is the homosexual couple *qua* couple, John-and-Bob, that is denied the right to marry. So who, or what, does it want to marry? For if marriage requires two *antecedently* existing *separate* entities that, with the marriage, produce a new union, and the unmarried couple, John-and-Bob, is one of those antecedently existing entities, the couple that wants to get married, who or what is the other one? Williams has not identified any antecedently existing separate entity for that couple *qua* couple, to marry. That option does not work. Perhaps one claims, therefore, that the homosexual couple *qua* couple marries itself (and that this happens somehow when the *individuals* John and Bob exchange vows). But this will not do because one still requires two separate antecedently existing entities to marry and with this option one only has one, the couple *qua* couple, John-and-Bob. The fact that it marries itself does not somehow turn this one couple into two antecedently existing *separate* entities. Finally, might one claim, in desperation, that it is the *married* homosexual couple, John-and-Bob, that is denied the right to marry? But this will also clearly not work. Since marriage requires two antecedently existing separate entities that, with the marriage, form a new union, and since the married couple John-and-Bob came into being with the marriage, that married couple, John-and-Bob, does not satisfy the requirement of separate *antecedent* existence.

The plain reason why every effort to find some antecedently existing separate entity for the homosexual couple *qua* couple to marry fails is that the talk about the homosexual couple *qua* couple being denied the right to marry is really only a *misleading* way of describing the fact that the two *individuals*, John and Bob, are denied the right to marry. Thus, Williams has not given any meaning to his claim that the homosexual couple *qua* couple is denied the right to marry. In order to do so, he would need to identify a separate antecedently existing entity for that couple *qua* couple to marry. In brief, Williams is faced with a dilemma. If he says that it is the couple *qua* couple, John-and-Bob, that wants to marry, he cannot provide the antecedently existing separate entity that this couple *qua* couple, is supposed to marry. And since there is nothing for this couple *qua* couple to marry, there is no basis for saying that the couple *qua* couple is being treated unequally or unjustly. If Rob has a deed that entitles him to Jason's Golden Fleece and demands that he be given the Golden Fleece, but there never was any Golden Fleece, then Jason is not being treated unequally or unjustly when he is denied the right to have the Golden Fleece. But if Williams says that for the couple *qua* couple to get married just is for the individuals who make it up to marry, then one is back to the individuals that, Williams admits, possess exactly the same marriage rights as heterosexuals. In this case, Williams' claim that, "strictly speaking," it is the couple *qua* couple that gets married turns

out to be a misleading way of saying that the individuals that make up the couple get married (Griffin 2008, 256-276). WNRA fails.

In summary, Williams' WNRA against MLA, built on his example, NRA, fails. First, one can imagine social conditions in which NRA would not be intolerable. Second, even if one considers NRA being applied in current conditions, say in New York, it may treat Muslims intolerably, but it would also treat Sikh's and Hindu's *equally* intolerably. Williams confuses between the claim that NRA is intolerable in certain circumstances and the claim that it is intolerable *because it violates some principle of equal treatment under the law*. Next, in the most important part of WNRA, Williams asserts an analogy between the right to assemble and the homosexual couples right to marry. First, however, Williams has provided no argument that the homosexual couple *qua* couple that, perhaps like indigenous peoples, constitutes the special *kind* of collective that deserves collective rights. His claim that if one marries one must marry someone adopts the *weakest possible* criterion for being such a collective, so weak that it includes baseball players and the couple composed of con artists and their victims. Second, his central claim that the homosexual couple *qua* couple is denied the right to marry is misleading. For, following everyday language, one must be able to identify some entity for the homosexual couple *qua* couple to marry. But no such entity can be specified. The view that the homosexual couple *qua* couple is denied the right to marry turns out just to be a misleading way of saying that the two homosexual *individuals* are denied the right to marry. But Williams has already admitted that there is no inequality at that individual level. Although the present author is intrigued by the notion of "collective rights" for homosexual couples, or, perhaps, for homosexuals as a collective, Williams has not yet provided those arguments.

### III.) The Slippery Slope to Polygamy

Williams bemoans the fact that discussions of same-sex marriage often devolves into arguments of polygamy, that is, the introduction of a slippery slope argument that if one allows same sex-marriage then surely polygamy (and perhaps other horrors) is next (593). However, it is Williams' "collectivist ascent", combined with the appeal to equality, that makes the accusation of a slippery slope to an argument for polygamy inevitable.

In the previous section it is argued that since Williams has not identified any entity that a couple *qua* couple could marry, he has not given any meaning to his notion that the homosexual couple *qua* couple is denied the right to marry. However, the idea of the couple *qua* couple marrying is not nonsensical in itself. One can imagine a society, not ours, perhaps, but some "brave new world" in the "enlightened" future in which, not just individuals, but couples *qua* couples, can marry. One might fill out the parameters for the new types of marriages in this science fiction thought-experiment in many different ways, so only a few can be sketched here. Consider first the simplest type of case. In future society S, not just individuals, like Jack and Jill, can get married, but couples, like Jack-and-Jill, can marry. Who, or what, might the couple *qua* couple, Jack-and-Jill,

marry? In the simplest case, Jack-and-Jill might marry some individual, e.g., Jack-and-Jill might marry Susan. In this case, one can identify two separate entities that exist antecedent to the “marriage”, the couple *qua* couple, Jack-and-Jill, and Susan, which, by marrying, create a new union, Jack-and-Jill-and-Susan, that did not exist prior to the marriage. Further, Jack-and-Jill-and-Susan *qua* triple might have legal rights, property rights, etc., that none of the antecedently existing individuals, Jack, Jill, and Susan, or couples *qua* couples, Jack-and-Jill, had.

The second more complicated kind of case is that S’s rules permit couples to marry other couples. If this is permitted, Jack-and-Jill might marry Brad-and-Angelina. In this case, one antecedently existing couple *qua* couple, Jack-and-Jill, marries another antecedently existing couple *qua* couple, Brad-and-Angelina, to form a new union, Jack-and-Jill-and-Brad-and-Angelina, that has new rights, e.g., property rights, not had by any of the antecedently existing individuals or couples *qua* couples.

Once one goes down this collectivist road, however, of allowing couples *qua* couples to marry other individuals or other couples *qua* couples, there is literally no end to the exotic permutations of the marriage-institution that can be “logically” generated. For example, one can imagine that Jack-and-Jill *qua* couple only wish to marry Susan on the understanding that Susan is not permitted to marry Bob. That is only the beginning. One can also imagine that Jack-and-Jill *qua* couple marry Susan to form the triple Jack-and-Jill-and-Susan, but Susan goes on to marry Amy, with the result that Susan is part of two marriages, Jack-and-Jill-and-Susan and Susan-and-Amy, but Jack and Jill have no marital connection with Amy. The permutations and possibilities here are literally infinite. For once one *genuinely* gives meaning to the view that the couple *qua* couple is the “collective” unitary agency that possesses rights to get married, one is faced with the limitless potential for different exotic combinations of marital relationships, so extreme that actual polygamists would not accept it.

One could, of course, put a stop to this infinite regress with some *ad hoc* decision. Society S, recognizing the impracticability of these limitless permutations, and the potentially infinite amount of profitable new work for lawyers, might legislate that only traditional marriages between individuals and individuals and marriages between couples and couples are permitted. Call the marriages between couples and couples “first level marriages”! On this arrangement, only traditional marriages (between two individuals *qua* individuals) and “first-level” marriages between two couples *qua* couples are permitted. However, if S did establish such a law, it would then soon find itself challenged on the grounds that if Jack-and-Jill are permitted to marry Brad-and-Angelina to form a new quadruped marriage, Jack-and-Jill-and-Brad-and-Angelina, then Dave-and-Mary-and-Jeb-and-Felicia will be treated *unequally* when they are not permitted to marry Harry-and-Alice-and-Peter-and-Joan to form a new marital octuple marriage Dave-and-Mary-and-Jeb-and-Felicia-and-Harry-and-Alice-and-Peter-and-Joan. After all, Dave-and-Mary-and-Ralph-and-Felicia on the one hand and Harry-and-Alice-and-Peter-and-Joan on the other will, following the instructions laid out clearly in *The Economist*, claim that “the case for allowing [these two four-person marriages to marry] begins with equality pure and simple. Why should one loving, consenting set of adults

be denied a right that other such adults have and which, if exercised, will do no damage to anyone else?”. *The Economist* editorial, from the beginning, referenced a “loving set of adults”. It did not limit the “set” to couples. The argument for polygamy is implicit in the simplistic formulation in the 2004 *Economist* editorial.

To be clear, Williams does not propose such exotic possibilities himself. However, it is Williams’ “collectivist ascent,” coupled with the appeal to equality, that makes this *dialectical* advance into polygamous marriage inevitable. For it is a consequence of Williams’ “collectivist ascent” that the couple *qua* couple is a new higher-level unitary entity with *new* “collective” rights to marry over and about the rights of the individuals involved, coupled with the appeal to equality, that leads to this chaos of polygamous possibilities. For since these new higher level entities, couples *qua* couples, have the right to marry, and since one can only marry an antecedently existing couple other than oneself, and since no one in this discussion has raised the possibility of marrying non-human entities, it follows that these new couples *qua* couples have the right, based on an appeal to equality, to enter into polygamous marriages. Further, since this same principle can, in order to satisfy the requirement of equal treatment to all, be applied again to these new higher-level collectivist marital groups, consisting, say, of eight individuals, and then, again to yet higher level collectives and so on *ad infinitum*, there is, in principle, no limit on the size of the polygamous marriages that must, *on grounds of equality*, be permitted. The potential proliferation of n-tuple sized marriages, for any n, is, of course, impossible to satisfy in the real world. No society could in *practice* possibly deal with such “logically” generated social chaos. It is necessary to think through the *unintended* logical consequences of one’s well-intentioned principles.

It was pointed out in § II above that in the literature on collective rights many restrictions and conditions are suggested that must be satisfied if a given collective is to be considered eligible to be granted collective rights. This is, in part, because the “collectivist ascent”, though, perhaps, justified in some cases (e.g., indigenous peoples), is a fraught with problems, e.g., the proliferation of practically unworkable exotic new species of marriage. The slippery slope to polygamy is only one of them.

#### IV.) Salvaging the Appeal to Equality

One of Williams’ main claims is that MLA undermines the popular “appeal to equality” normally used in attempted justifications of SSM. In fact, MLA is entirely consistent with the appeal to equality in this and other ethical cases. In order to see why, note that Williams’ several times in the paper refers to “McDonough’s understanding of equality”. In fact, McDonough has no understanding of equality (apologies to McDonough). For MLA is only directed against the appeal to a certain *abstract* notion of equality handed him by *The Economist* (“equality pure and simple”). MLA does not purport to provide any general analysis or theory of equality. MLA only opposes the creation of new rights via *illegitimate* “logical” inferences, but there *are* other legitimate ways to create new rights.

Wittgenstein (1958, 186) asked what we would say when someone G who had always added “2” like the rest of us (e.g., added “2” to “2” to get “4”, added “2” to “96” to get “98” and so on), suddenly, when they got to “1000” began adding “2” to “1000” to get “1004”, “2” to “1260” to get “1264” and so on - and, when asked why they were not doing the “same” as they had done before, answered, “but that is the *same*”. Similarly, what would we say when, for three thousand years, people have nearly universally understood a marriage as a union of one man and one woman, but are suddenly told by someone F that henceforth one is to count a union of one man and one man, or of one woman and one woman, as a marriage – and when F is asked why s/he is not doing the same thing people have always done before, answers, “But that is the *same*. We are just treating the cases *equally*.” How is one to resolve such questions? Wittgenstein (1958, 197) appeals to “regular use” or *established practices* to explain his mathematical *criterion* for how one is “to go on” adding. That is, he would, appealing to *established practices*, say that that G is *not* adding *correctly*. Note that there is something essentially *conservative* about Wittgenstein’s view. If one follows that model in ethical cases, one should say that the proponents of SSM do not apply the word “marriage” *correctly* when they “go on” to describe a union of a male and a male as a “marriage”. However, although Wittgenstein’s appeal to his conservative criteria may be correct in mathematics, things are not that simple in ethics. For one *must*, obviously, permit the possibility of change in our ethical categories. One must, therefore, ask, where do our various categories, e.g., that “4” is the “sum” of “2” plus “2”, that a “marriage” is a union of one man and one woman, come from? They do not, so to speak, “fall from heaven” on some luminous tablets.

Wittgenstein (25, 415), in his discussion of mathematical addition, refers one to “the natural history of man.” However, that highly general remark does not give one much guidance outside that limited domain. Since, as human products, there is nothing *sacred* about our established ethical categories, they can be changed, and, in fact, there are ways we appeal to established practice, but in a more complicated way, to change our ethical categories. We do not look only at what people have done in “the natural history of man”. We also look at established practices for determining what people ought to do. Specifically, in “liberal democracies”, we appeal to a *higher-level* established practice, namely, “the democratic process”. For, although many philosophers seem to think that the argument for SSM is an argument that we must make different *inferences*, as if it were a class exercise, it is, in fact, an argument that we should start to *live* in major different ways, and the appropriate means for that sort of change is the democratic process. This has already been done successfully in the case of SSM. In 2015, to everyone’s surprise, Roman Catholic Ireland, when the authorities condescended to appeal to “the people” in a national referendum, legalized SSM by a compelling majority. Of course, there will be *countless* sorts of considerations that go into a “people’s” decisions in such controversial cases, certainly nothing so simple as a single logical inference, especially one that is so “pure and simple” as the one originally proposed by *The Economist*.

The democratic process is not, however, held in high esteem in some quarters these days. It is slow. It is, like all human things, fallible. It may even go backwards at times. Worst of all, it

does not keep up with intellectual fashions. For, in a democratic process, one must actually try to convince “the people,” or at least a broad swath of them, and that includes, not only the intellectuals, but also Tolstoy’s (1978, 65-66) “the poor, the simple, and the ignorant, the pilgrims, the monks ...and the peasants”. One might add the steelworkers, the taxi drivers, and the cashiers. Since it is not nearly so easy to convince such a diverse group of people to make such a controversial change in categories as it is to convince the students class, it is always tempting to try an end-run around “the people” by means of some newly discovered “logical” inference, preferably one so simple that even a child can see it (even though, astonishingly, no one in 3,000 years of recorded human history ever noticed it until prompted, recently, after the genesis of a political movement, by their teachers). But if the democratic process is fallible, so are human inferences, especially the ones that are so “pure and simple”. As Camus (1956, 3) observed, with existential anguish, “philosophy ... can be used for any purpose”. By contrast, since changing people’s *hearts*, in a free and fair democratic process involves, not just intellectual exercises, but the sort of *wisdom* that only comes about as the result of extensive life experiences concerning *countless* matters that cannot be reduced to some single “simple” inference, it is very hard. But that is precisely why it can be trusted more than simple intellectual maneuvers. This is no argument against the contributions of intellectuals. The reasonings that emerge from philosophy and sociology classrooms can be a *necessary* and *wonderful* contribution to the culture. But the genius of democracy is that the wisdom of a vastly diverse group of people is a good counterbalance to the trendy intellectual fashions (“equality pure and simple”).

Thus, MLA raises no objection whatsoever when the Irish *changed the categories* and *made* SSM an equal right in 2015. MLA only attempts to make a “little” logical point against the simplistic appeal to “equality pure and simple” (McDonough 2019). This consecration of SSM as an equal right in Ireland fell, not from heaven, but from the somber deliberations of “a people”. Thus, for that fraction in the rest of the world that still believes, that is, *genuinely* believes, in democracy, the best way to ensure that *true* and *lasting* justice for our “gay” brothers and sisters is by achieving victory in the “rough and tumble” of the democratic process.<sup>1</sup>

### Endnotes:

1. In 2004 Americans opposed same sex marriage by a ratio of 60% opposing it to 31% supporting it. By 2019 that ratio had virtually reversed with 61% supporting same sex marriage and 31% opposing it. “Attitudes on Same Sex Marriage: Public Opinions on Same Sex Marriage”. *Pew Research Center: Religion and Public Life* Fact Sheet. May 14, 2019. URL: <https://www.pewforum.org/fact-sheet/changing-attitudes-on-gay-marriage/>

### References:

- Camus, Albert. *The Rebel*. Anthony Bower, (Trans.). New York: Vintage, 1956.
- Chambers, Clare. *Against Marriage: An Egalitarian Defense of the Marriage-free State*. Oxford: Oxford University Press, 2017.

- Drabek, Matt. *Classify and Label: The Unintended Marginalization of Social Groups*. Lanham: Lexington Books, 2014.
- Editorial. "The Case for Gay Marriage." *The Economist* 370 (2004): 9.
- Garrett, J. "Marriage Unhitched from the State: A Defense." *Public Affairs Quarterly* 23. 2 (2009a): 161-180.
- Garrett, J. "Public Reasons for Private Vows: A Response to Gilboa." *Public Affairs Quarterly* 23. 3 (2009b): 261-273.
- Feinberg, J. "The Nature and Value of Rights." *Journal of Value Inquiry* 4 (1980): 263-267.
- Griffin, James. *On Human Rights*. Oxford: Oxford University Press, 2008.
- Held, Jacob. "Gay Marriage, Liberalism, and Recognition: The Case for Equal Treatment." *Public Affairs Quarterly* 21. 3 (2007): 221-233.
- Held, Jacob. "You can't get married, you're faggots: Mrs. Garrison and the Gay Marriage Debate." *South Park and Philosophy: You know, I learned Something Today*. (Ed.) Robert Arp. Hoboken: John Wiley and Sons, 2009. 141-153.
- Held, Jacob. "You (Still) can't get married, you're faggots: Mrs. Garrison and the Gay Marriage Debate." *The Ultimate South Park Philosophy: Respect my Philosophab!*. (Eds.) Robert Arp, Kevin Decker, and William Irwin. Hoboken: John Wiley and Sons, 2013. 223-235.
- Jones, Peter. "Group Rights." *Stanford Encyclopedia of Philosophy*, 2016.  
URL: <https://plato.stanford.edu/entries/rights-group>.
- McDonough, Richard. "Is Same-Sex Marriage an Equal Rights Issue?" *Public Affairs Quarterly* 19. 1 (2005): 51-63.
- McDonough, Richard. "Same Sex Marriage not an Equal Rights Argument, Yet." *Humanities Bulletin* 2. 2 (2019): 39-53.
- Mohr, R. *The Long Arc of Justice*. New York: Columbia University Press, 2005.
- Rajczi, Alex. "A Populist Argument for legalizing Same-Sex Marriage." *The Monist* 91. 3-4 (2008): 475-505.
- Reitan, Eric. "Public Service Announcement: Michele Bachmann's Argument against Same Sex Marriage is Bad." *The Piety that Lies Between: A Progressive Christian Perspective*, 2011.  
URL: <http://thepietythatliesbetween.blogspot.com/2011/12/philosophical-public-service.html>.
- Reitan, Eric. "The Bachmann/McDonough Principle of Non-Discrimination." *The Piety that Lies Between: A Progressive Christian Perspective*, 2014.  
URL: <http://thepietythatliesbetween.blogspot.com/2014/02/the-bachmannmcdonough-principle-of-non.html>.
- Tolstoy, Leo. "Doubts about the Meaning of Life." *Philosophy Looks toward the Future*. (Eds.) Peyton Richter and Walter Fogg. Long Grove, Ill: Waveland Press. Originally from Leo Tolstoy. 1899. *My Confessions*. (pp. 12-57) Nathan Dole, (Trans.). New York: T.Y. Crowell Co, 1978.
- Williams, Reginald. "Same Sex marriage and Equality." *Ethical Theory and Moral Practice* 14 (2011): 589-595
- Wittgenstein, Ludwig. *Philosophical Investigations*, 3<sup>rd</sup> edition. G.E.M. Anscombe, (Trans.). Oxford: Blackwell, 1958.