



## A Libertarian Case for Legalizing Gay Marriage

**Peter Lindsay**, Georgia State University

Gay marriage has certainly sparked sharp political disagreements, but voters and thinkers across the U.S. ideological spectrum could possibly come together on this issue. As I will show, certain logical arguments in favor of legal recognition of gay marriages can appeal not only to Democrats, but also to libertarians within the Republican Party – and some arguments might even prove acceptable to religious conservatives.

### The Political Context

Before addressing the logical aspects of the gay marriage issue, let's be clear why Republicans are divided on this matter. Libertarians see the issue as one of individual freedom from government intrusion, while Christian conservatives understand legal marriage in moral terms, as a statement about what makes for a good society. This divide is sure to be inflamed if gay marriage remains a top issue going into 2016 – and that, in turn, may well rest on how the U.S. Supreme Court rules in June 2015 on petitions from the states of Ohio, Tennessee, Kentucky and Michigan that ask for state bans on single-sex marriages to remain in place. Odds are that the Supreme Court will strike down state bans and declare gay marriage constitutionally acceptable across the entire nation. But if the Court rules that states can make various legal choices, then quite a few might follow the lead of Roy Moore, Chief Justice of the Alabama Supreme Court, to rule out licensing of gay unions. The issue would remain contentious both inside the GOP and between Republicans and Democrats. Arguments would still need to be mounted.

### A Logical Case for Legally Recognized Marriage

Logically, the place to start is very basic: why should governments get involved in sanctioning marriages – *any marriages* – in the first place? Starting from libertarian principles, the underlying question is what, as a general proposition, governments should legitimately do – and the answer is “as little as possible.” In the libertarian view, governments are meant to provide police and fire protection, build roads and lighthouses, defend borders, and perhaps provide education to children and teens (some libertarians would question the last function). From this minimalist perspective, why should governments sanction marriages at all? After all, weddings are often conducted according to religious traditions, so what added purpose is served by granting legal recognition to what a religious body has done?

A potential response is that, from a libertarian point of view, sanctioning marriages costs very little in public funds and is not especially coercive. And there are upsides. Government sanctioning ensures numerous legal protections for those who marry – such as allowing people to extend medical benefits to living spouses and providing for spouses after they die. Legal protections often endure after legal unions dissolve, as happens to more than half of all U.S. marriages. In the event of divorce, courts can ensure that property rights and parental obligations are sustained in the best interests of all parties. This happens in ways consonant with

libertarian concerns about individual rights, especially with regard to private property.

Another argument for legal recognition stresses that marriage furthers social stability. This focus is slightly less libertarian, but could be acceptable to some of that mindset. Progressives might have stronger reservations, if they see legal marriage as anti-feminist or feel that it is about property and little else. But anyone arguing the case for legal recognition can acknowledge these potential libertarian or progressive reservations without picking much of a fight, simply by making the modest empirical observation that the legally constituted family is an important social safety net in most societies, serving as a prototypical voluntarily established form of social sharing based on love. Libertarians could accept this. And progressives need not believe that families are fully adequate safety-net providers; they can still call for strong welfare states.

## Logically, Gender is Irrelevant

But here's where the other logical shoe drops. So far, I have made no mention whatsoever of gender. Neither the individual nor the public interest in legal marriage rests in any way on unions formed only between members of the opposite sex. Who marries – in terms of gender, race, or religion – is simply not relevant. All that counts is that two individuals with intimate ties want their bond protected – by a government that has some interest in protecting that bond.

To be sure, religious conservatives argue that more than just stability and civil rights are at stake. They feel that government should aim to affirm and promote the sanctity of heterosexual unions. But on this point, libertarians – indeed, any defenders of the First Amendment – respond that the only political question at stake is legal recognition, which cannot properly be subordinated to any one conception of social morality, religious or otherwise. Religious groups remain free to define marriage as they choose, but government should not choose moral sides. That position resonates especially strongly in America, where religious and moral commitments are widely viewed as private matters. Many conscientious members of *both* major political parties reject the idea that state power can be used to foist the deeply held beliefs of some citizens onto others.

Religious conservatives themselves have good reasons to share this view, because the flip side is that the public sphere must not meddle with religion. Government should not favor some religions over others, and citizens should be free to pursue religious goals without government interference. If churches choose not to marry two people – for *whatever* reasons – progressives and libertarians must accept this as their prerogative. Couples are, after all, free to find their own church, or belong to none at all.

This right of exclusion or intolerance does not extend to public matters, however. Unlike religious bodies, governments need to tread cautiously in affirming *any* particular moral conception of marriage, be it gay, straight, Christian or Muslim. Why should government try to anoint any one “American way” of intimacy? Doing that would imperil American norms of toleration and minimal government intrusion. After all, if legislative bans on gay marriage are all right, what is to prevent similar legal bans on, say, Christian marriage? That might not happen any time soon, but it would be logically possible. In short, to paraphrase Voltaire, although you may not like your neighbors' gay relationship, you should, as a loyal citizen – Democrat or Republican – defend to the death their right to marry.

Research for this brief was drawn from Peter M. Lindsay, "Gay Marriage Bans Point to Too Much Government," *Atlanta Journal-Constitution*, November 14, 2008.

**Research for this brief was drawn from Peter M. Lindsay, "Gay Marriage Bans Point to Too Much Government," *Atlanta Journal-Constitution*, November 14, 2008.**