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The **IMFC eReview** provides analysis on public policy relating to Canadian families and marriage. Below please find a commentary on how redefining marriage brings the state back into the bedrooms of our nation.

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Bringing the state back into the bedrooms of the nation Is freedom as important as equality?

By Kate Fraher, Researcher, Institute of Marriage and Family Canada

Canadians are well versed in the main argument in favour of redefining marriage, namely that broadening marriage to include same-sex couples grants equality, while taking nothing away from heterosexuals.

A compelling argument, not to be dismissed. But not discussed in the public square are the equally compelling arguments of Canada's academics who oppose the redefinition of marriage.

Canadian professors premise their opposition to redefining marriage in three basic ways: There are those who believe redefining marriage eliminates biology as the basis for parenthood [1], those who believe any redefinition of marriage violates the right of children to know and be raised by their biological mother and father and finally, those more concerned with political freedom; once biology is eliminated as the basis for parenthood within marriage, the state begins to encroach on the rights of individuals.

Dr. Daniel Cere, professor of Religion, Ethics and Public Policy at McGill University believes that biology matters [2]. He argues that the law needs to acknowledge the significance of sexual difference as a foundational feature of the social-sexual ecology of human life. Marriage is the one unique institutional framework designed to channel sex difference into stable long-term unions open to the children that naturally result from male-female bonding [3].

He points to recent studies that have discovered inherent differences between the male and female brain, as well as studies that highlight the unique bond that exists between biological mothers and their infants, also known as maternal attachment [4]. These findings, he says, disprove claims that gender and sex are mere social construction and somehow culturally malleable [5]. Marriage is meant to address sexual difference by sustaining complex forms of social interdependency between men and women—not an easy task—and to ensure rights of children to their parents [6].

Canada's Dr. Margaret Somerville, Founding Director of the Centre for

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An Op-Ed by Andrea Mrozek,
Manager of Research and
Communications for IMFC

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Medicine, Ethics and Law at McGill University, has been widely criticized for her views, which focus on the rights of children. Of all the academics researching this topic, she is one of the few who has garnered mainstream media attention—rather animosity—for her work. For over twenty years, Dr. Somerville has been advocating that children’s rights should be at the centre of debates that involve possible changes to the laws of reproduction [7]. She says that sanctioning homosexual marriage is a “societal declaration that children don’t have any basic right to know who their biological parents are and that they don’t need both a mother and a father” [8].

Cere wonders why so little attention has been paid to Somerville’s concern. Part of the problem, he suggests, could be that any meaningful admission of children’s rights would raise questions about violations in other areas of Canadian law [9]. Rights are not based on utilitarian outcomes: whether a child fares better in a heterosexual home versus a homosexual one is therefore somewhat irrelevant. The value of torture, for example, in extracting information from persons deemed to be potential threats to society does not justify this violation of human rights [10]. “We don’t fiddle with basic rights in order to promote particular outcomes even if those outcomes are recognized as good.” he says [11].

Cere and Canadian-born political scholar Dr. Seana Sugrue both agree that the redefinition of marriage by the state is a threat to political liberalism. They both cite John Locke, the father of political liberalism, who “recognized that the market and conjugal society require a measure of autonomy from overly zealous state regulation to function effectively” [12]. Sugrue and Cere agree that marriage, like the market, is a pre-political institution which operates on self-generated norms. When the state tries to dictate these norms, the normative structure of the institution collapses and political freedom is lost [13].

Examples of the state dictating rights abound: most recently, a woman in Ontario asked to be defined as a child’s third parent. Cere says the success of liberal democracy depends on “its capacity to recognize and respect the freedom and autonomy of the basic sectors of civil society” [14].

Debating marriage should have always included at least some consideration of Canada’s most beautiful minds, gentle intellects quietly asserting “radical” notions on children, biology and freedom. How many of us would not want to know our parents, if given the choice? How many of us don’t believe that biology plays a role in our lives? And how many of us are eager to see state control grow? Equality was only ever one part of the marriage debate.

[1] Cere, Daniel. (2005). *The Future of Family Law: Law and the Marriage Crisis in North America*. New York: Institute for American Values. pp. 7. http://www.marriedebate.com/pdf/future_of_family_law.pdf

[2] Dr. Daniel Cere is the Principal Investigator of *The Future of Family Law: Law and the Marriage Crisis in North America*. (2005). New York: Institute for American Values. Some of the ideas mentioned in this article can be found in his report. http://www.marriedebate.com/pdf/future_of_family_law.pdf

[3] D. Cere, personal communication, November 7, 2006.

[4] For example, Dr. Louann Brizendine write recently on biological male-female differences in *The Female Brain*, Morgan Road Books, August 2006. For a study on maternal attachment see Nitschke et al. (2003). “Orbitofrontal cortex tracks positive mood in mothers viewing pictures of their newborn infants” *NeuroImage* 21 (2004) 583–592.

<http://brainimaging.waisman.wisc.edu/publications/2004/Orbitofrontal%20cortex%20tracks%20positive%20mood%20in%20mothers.pdf>

[5] Margaret Somerville also believes that 'essential differences' exist between men and women in terms of biology that are not culturally or socially constructed. See her latest book, *The Ethical Imagination: Journeys of the Human Spirit*, House of Anansi Press, Toronto 2006. pp. 99. Dr. Daniel Cere also agrees that gender differences cannot be constructed by the state (personal communication, November 3, 2006).

[6] D. Cere, personal communication, November 7, 2006.

[7] D. Cere, personal communication, November 3, 2006.

[8] Somerville, M. (2003, October 6). The Other 'Rights Question' In Same-Sex Marriage... *The Calgary Herald*, pp. A11. Can also be found at: <http://www.marriageinstitute.ca/pages/otherright.htm>

[9] These violations could include, but are not limited to current divorce laws, marriage laws, laws surrounding common-law relationships, cohabitation and reproductive rights. D. Cere, personal communication, November 3, 2006.

[10] D. Cere, personal communication, November 3, 2006.

[11] Ibid.

[12] Dr. Seana Sugrue talking about John Locke in "Soft Despotism and Same-Sex Marriage." (2006). *The Meaning of Marriage*. Dallas: Spence Publishing Company. pp. 179-180.

[13] Ibid.

[14] D. Cere, personal communication, November 3, 2006. Note: Most scholars refer to the market, the family and religion as the three main components of civil society.

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