

The PM is not championing a tradition of marriage

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The government of Canada will soon ask MPs whether they wish to reopen the debate on same-sex marriage. If so, the government will introduce legislation to restore what it calls the "traditional definition" of marriage. If not, Plan B will be a Defence of Religions Act. It would let public officials refuse to perform same-sex marriages and shield religious leaders critical of homosexuality from human-rights complaints.

The marriage debate has consumed plenty of ink, but it's striking how uninformed that debate has often been. The two major parties have framed the matter in black and white: For the Liberals under Paul Martin, you either supported the Charter of Rights and Freedoms or you opposed it. For Stephen Harper and his Conservatives, you either stand for marriage's traditional definition or you are against it. The Liberals made it all about the Charter; the Conservatives make it all about tradition.

I appreciate that, for the Conservatives, invoking tradition saves a lot of trouble. It eliminates the need to identify real harm resulting from same-sex marriages, or to provide reasons for changing things back. The idea is that tradition is self-evidently good.

But this reliance on tradition overlooks two points. First, until quite recently, the rules governing marriage and their values would have appeared repugnant today. Second, the changes leading to the modern law of marriage have been made at regular intervals over the past century. Talk of the traditional definition wrongly implies a historical stability in marriage. Instead, the only tradition that can comfortably be claimed for marriage today is one of constant change.

Everyone acknowledges that, in the distant past, marriage served social goals other than romantic, companionate love. But significant changes to the law of marriage are relatively recent. This is true across Canada, but especially in Quebec.

For centuries, the law merged a married woman's legal personality into her husband's. She couldn't manage her own assets or make a contract. Her husband did, on her behalf. Married women acquired civil rights in Ontario and other common law provinces in the 1880s. Long enough ago that Canadian marriage "traditionally" regards husbands and wives as equals? In Quebec, the change was made just over 40 years ago.

Traditional marriage in this country kept women in their place. Until the early 1980s, the criminal law denied the possibility that sex between husband and wife might be rape. Until the mid-1980s, traditional marriage punished unfaithful spouses. Adulterous wives were deemed to have waived their right to support. Adulterous husbands, in turn, could be ordered to pay onerous alimony.

Until the late 1970s and early 1980s, marriage law policed reproduction. Children born to married parents were legitimate. Children born to unmarried parents were bastards. For centuries, this regulation was a core function of traditional marriage.

Some of these changes -- equal rights and obligations of spouses, no necessary link to reproduction -- equip marriage to accommodate same-sex couples. Debates so far have neglected the high degree to which same-sex marriage was made possible not only by battles for Charter rights, but also by changes in family law.

Conservatives occasionally acknowledge these reforms while struggling to salvage a traditional essence of marriage. Ethicist Margaret Somerville contends that, before same-sex marriage, all changes to marriage had been collateral or secondary. By contrast, she argues, same-sex marriage is a change to marriage's inherent nature.

Though convenient, this distinction doesn't help much. The features I have mentioned were not incidental but deeply important to marriage's social and legal role. Each change provoked opposition and alarm that the entire institution of marriage was threatened. Sustaining the distinction requires believing that you occupy a superior position and see marriage more clearly than all past generations. It's not a particularly plausible or attractive stand.

Admittedly, unless the Conservatives really have a hidden agenda, their ambition is not to roll back all the changes to marriage. I doubt they dream of punishing spouses for adultery or labelling the children of unmarried parents as bastards. What they mean by the traditional definition of marriage is the law as it stood just before same-sex couples won the right to marry. Constitutional lawyers agree that such a change would infringe the Charter and entail prolonged, costly litigation. It seems a funny objective for people who say they support families. Still, our politicians are entitled to try if they must.

What is incoherent and deceptive is packaging such efforts as a restoration of a lofty tradition of marriage. The Prime Minister and the Conservatives aren't championing a tradition of marriage. They accept the many changes made to marriage over the years, all but the one welcoming gays and lesbians.

Several words come to mind to describe such a policy. Traditional isn't one of them.

Robert Leckey teaches family law at McGill University.