

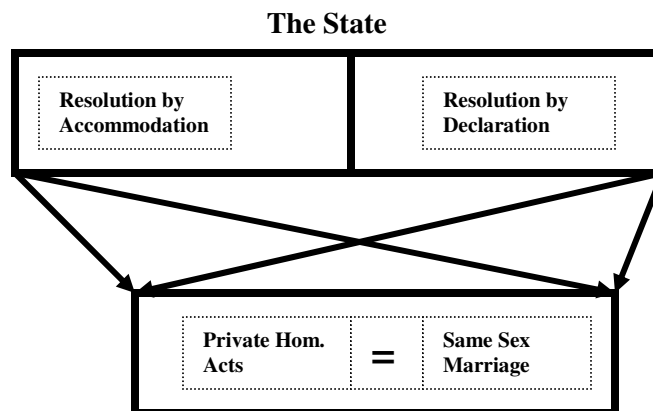
April 20, 2007

- **Boonin's Critique of Jordan**

Recall Jordan's central argument (paraphrased from p. 356, text)

- P1:** If (a) there is a public dilemma about *X* & (b) It's possible to resolve the public dilemma by accommodation & (c) there is no overriding reason to resolve the public dilemma by declaration, then the state¹ should resolve the dilemma by accommodation.²
- P2:** There is a public dilemma about same sex marriage.
- P3:** It's possible for the State to resolve the public dilemma by accommodation if it refuses to sanction same-sex marriage, as long as it permits private homosexual acts between consenting adults.
- P4:** It is not possible for the State to resolve the dilemma by accommodation if it sanctions same-sex marriages, because this would, for all intents and purposes, be equivalent to a resolution by declaration, "leaving no room for accommodation."
- P5:** There is no overriding reason for the State to resolve the dilemma by declaration.
- C:** The State should hence refuse to sanction same-sex marriages, as long as it permits private homosexual acts between consenting adults.

Boonin's first critique, in which he argues that Jordan commits the fallacy of equivocation³ insofar as he interchanges the notions of 'homosexual acts' with 'same sex marriage', make **P2** false. According to Boonin, this also (like a sequence of cascading dominos) render **P3**, **P4**, **P5** false as well. One simple way to see this is depicted below by the following two diagrams:



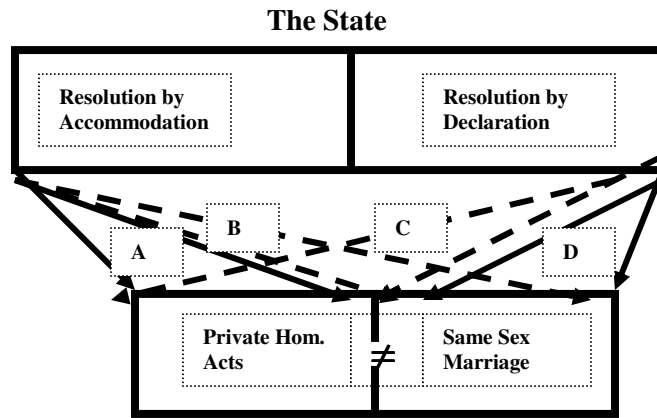
Jordan's Scenario

¹ Jordan means by 'state' any ruling governmental authority, possessing the legitimacy and means to enact policy declarations.

² Note that this premise is a 'mini-argument' (possessing three premises and a conclusion). It's phrased as a conditional statement (recall April 13 notes).

³ See Feb. 2 posting, of argument fallacies

The above diagram represents the scenario presented by Jordan. It's 'either/or'. However, according to Boonin, if we recognize that 'private homosexual acts' is a notion distinct from that of 'same sex marriage', we're left with the following scenario:



Boonin's Scenario

In other words, the State has multiple options. **Option A:** (denoted by : \longrightarrow) resolve the issue of private homosexual acts by accommodation *or* **Option B:** (denoted by : \dashrightarrow) resolve the issue of same sex marriage by declaration, *or* **Option C:** (denoted by : \dashrightarrow) resolve the issue of private homosexual acts by declaration *or* **Option D:** (denoted by : \longrightarrow) resolve the issue of same sex marriage by accommodation.

The examples that Boonin explicitly discusses (p. 368) are: the State permitting same sex marriages but making it harder for homosexuals to obtain a license (a resolution of same sex marriage by accommodation, i.e., **Option B**) . Or the State unqualifiedly sanction same sex marriages and make private homosexual acts illegal outside of marriage, but allow heterosexual acts outside of marriage (a resolution of private homosexual acts by accommodation⁴, i.e., **Option A**). Or the State could unqualifiedly permit private homosexual acts between consenting adults and refuse to sanction same sex marriage (**Option D**).

Obviously, the State can also adopt any combinations of the four options above, so long as it doesn't enforce or mandate contradictory policy.

The point is, for Boonin, that once one recognizes the above scenario, most of the premises Jordan's are false, so the entire argument is unsound. Another way of thinking about what Boonin is saying here is that Jordan's equivocation makes him guilty of an 'either/or' fallacy, or fallacy disjunction.⁵

Jordan's first critique generated some insightful responses from many in the different sections. In particular, both **Christopher Young** (§ 0206) and **Ahmad Samarah** (§ 0202) felt that the disinction between 'private homosexual acts' versus 'same sex marriage' shared plenty of overlap. Granted, they're not the same concept (as Boonin states) but according to Christopher, Ahmad, and others, it's also misleading to think of them as *sharing nothing in common*. One

⁴ It may however at the outset appear to be a resolution by declaration (i.e. **Option C**) however keep in mind here that private homosexuals acts aren't outrightly *forbidden*, only *restricted* by the State (in the same manner that **Option B** presented extra restrictions tacked on to same sex marriage).

⁵ See Feb. 2 posting

should recognize that the above concepts *mostly* overlap. For the institution of marriage obviously involves the notion of sexual acts between two people. Consider, for example, the 17th Puritanical laws which allowed a woman to divorce her husband if he ‘failed to perform his husbandly duties’, i.e. had regular sexual intercourse with her. The converse is also true: sexual acts between two people obviously involves the notion of marriage: fornication was punishable by death in 16th century Italy. (William Shakespeare’s *Measure for Measure*) and in many cultures past and present, sex outside of marriage was in the very least seen with disapproval.

Hence once one recognizes and appreciates the significant overlap these above two concepts share, then Boonin here appears to be engaging in much hair-splitting: the above distinctions may not make much of *moral* difference. One way to see this is to ask oneself how *probable* some of those above options (A-D) are, however *logically possible* they may be. For instance: imagine the ludicrous scenario where the state declares *all* private homosexual acts between two consenting adults illegal and at the same time qualifiedly sanctions same sex marriages, i.e. **Options C & Options B**. There’s obviously nothing logically contradictory going on here, nevertheless, such a policy is patently absurd.

Pearl Horng (§ 0207) on the other hand, raised the interesting question concerning the general distinction between *morality* and *policy*. For instance, in a *moral* sense, one might appreciate that private homosexual acts and same sex marriage share much in the way overlap. Nevertheless, from a standpoint of *policy*, Boonin’s distinctions are important. If nothing else, they indicate the ‘either/or’ fallacy of Jordan, resulting from his equivocation. The State has many options on the table, in this matter, even if some seem ridiculous, from a moral sense.

Christopher Young (§ 0206) also pointed out that ‘slippery slope’ problem latent in **Option B**. The State could in principle make it *practically* unfeasible to obtain a same-sex marriage license, for instance. Such possibility of exploitation, sanction by such a policy, could collapse **Option B** into **Option D**, in which same sex marriages are *de facto* illegal.

As far as Boonin’s second batch of criticisms, aimed at Jordan’s claims concerning the supposed disanalogy between same sex marriages, and mixed race marriages/dating⁶, most in the three sections felt he was making more substantive points. Still, however, akin to the objections voiced

⁶ Recall Boonin’s responses:

- **Response 1:** It’s not altogether that mixed race dating/marriages is no loner a public policy dilemma, but even if it were, Jordan is making legislation *contingent* on whether or not a public dilemma exists or not. This leaves him open to the fallacy of the *many/few* (recall Feb. 2 posting). Just because *many* (or for that matter *few*) believe or endorse in X, or feel conflicted about X, etc., doesn’t make X necessarily morally legitimate or true, or worthy of legislation (pro or con) etc. Suppose for instance, as was common in Medieval Europe, that a majority of people believed that those who were left handed were morally inferior, and possibly possessed by devils. Basing legislation on this public sentiment, whether or not a dilemma, is obviously wrongheaded. Legislation should be based on *other* evidence. Belief in X is not evidence for X.
- **Response 2:** Banning mixed race marriage doesn’t imply racial discrimination. “Every black-white couple consists of one black person and one white person, the total number of blacks and whites adversely affected in this way is the same.” (368) On the other hand, banning Banning same sex marriages adversely affects homosexuals *only*. (There’s no corresponding heterosexual, as there is a corresponding racial opposite, adversely affected).
- **Response 3:** Behavior *is* the issue, *not* identity, in both cases (same sex marriage and mixed race dating/marriage). One could easily imagine cases in which someone against mixed race marriage feels that the issue has to do with preserving and being loyal to one’s ethnicity, which is a separate issue from harboring contempt towards other ethnicities.

above, there was a general discomfort against what was perceived as logic-chopping on Boonin's part. For instance, in the case of Responses 2 and 3 (see footnote 6), in a moral sense, it seems hard to separate issues of identity: After all, isn't it *because* of my race, that I'm not allowed to marry some I love who happens to be from another race? As far as *behavior* is concerned, it's certainly not so simple to *will* one's feelings. (This is the stuff of great literature, the universally tragic theme of lovers who *cannot but want to be with each other*, but are prevented so, because of various social barriers.) Also, it seems disingenuous to say that mixed race marriages don't imply discrimination in the sense of Response 2: akin to saying "two wrongs make a right."

- **Thompson on Preferential Hiring**

Most in all section saw the connection with her themes in the article she wrote on abortion. Essentially, Thompson advocates a position in which *rights as claims* are distinguished from, and take precedence over, *recommended* (but not *required*) norms. Recall her article defending abortion: "It would be *very nice* if " the older brother shared *his* chocolate with his younger brother, *but* he's not duty-bound to do so. It's his *right* to do with his chocolate as he sees fit, as it is a woman's *right* to choose what to do with her body. The same overarching themes set the tone in Thompson's argument here. This was explicit in her apples-distribution thought experiment, as well as others (the eating club, etc.)

Shanelle Johnson (§ 0207) questioned why caveat (4) ("there may be people who would say that I don't really, or don't fully own those apples" (381)) was even mentioned by Thompson, as she automatically dismisses it: "If anyone says that I don't own the apples, or, more generally, that no one really fully owns anything, he will regard what I say in the remainder of this section as...as an idle academic exercise." (381) In other words, Thompson seems to be guilty of a red-herring argument fallacy, insofar as she straw-mans anyone who may qualify her somewhat absolutist position on rights of claims of ownership.

The issue (for Thompson) is that a right (of ownership) is an *individual* property. Individual properties for Thompson seem to take precedence over relational properties, like responsibility in giving and sharing.⁷ Shanelle's underlying point, as echoed by **Oneg Pruitt (§ 0207)** is that Thompson's *three* caveats (the fourth one she doesn't even take seriously) may not be enough to sway preferential hiring in a manner that Thompson wants to advocate. In other words, as **Oneg** pointed out, a sexist or racist could justify his or her preferential hiring on similar rights-as-claims grounds, in a manner consistent with Caveats (1) – (3). Granted, Thompson's points focused only on academic positions at universities (whether public or private, which the latter, of course, are not entirely so) and the policies she advocates (which she claims are *not* based on racial or sexual identity) invoke "common decency" (386). "*Perhaps* justice doesn't require making amends to them [women, African-Americans] as well; but common decency certainly does." (386) But as Chanelle and Oneg pointed out, according to Thompson's own terms, appeals to decency might not override her right-as-claims position. Simply substitute her oft-used phrase in the previous article: "It would be *very nice* to make amends, but is the employer *required to*?" Thompson shifts attention towards the end of the article on notions of restitution for the white males who may be adversely affected, which appears a change-of-subject which doesn't address the issue of concern here. (Namely, how do appeals to decency override right-as-claims?)

⁷ Recall Marquis' arguments here against abortion. Future-of-value is an individual property, overriding relational properties like the impact the child would have on the mother and the mother's network of relations with the rest of society.

Lauren Grimes (§ 0202) also took issue with some of the concocted thought-experiments involving the eating club, insofar as Thompson seemed to present too few viable alternatives, and thus run the risk of ‘either/or’ fallacies. “[T]he headwaiter cannot distribute the tart just in any manner...[i]f the tart won’t keep until next meeting.” (383) For Lauren, this was a poor analogy, as in the case of time-sensitive hiring practices, there *are* ways to postpone hiring someone ‘until the next meeting.’ For instance, suppose two positions urgently need filling. Nevertheless, temporary arrangements can be made to tie departments over until some ad-hoc policy is decided on the next meeting. The tart analogy would have been more convincing if the option would have included freezing it or at least part of it.