

MARRIAGE: A QUESTION OF CHURCH VS. STATE

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A recent Center for Constructive Alternatives conference discussed the question of whether the idea of legalized homosexual marriage represents an attack on the traditional family. In the main the speakers felt that such “gay marriage” should not be encouraged, and the greater portion of speakers also felt that a Federal Marriage Amendment, defining marriage as existing between “one man and one woman,” would be the appropriate way to halt the destruction of traditional family structure and societal morals. I disagree. I believe that there are so many inconsistencies in the idea of either allowing or banning homosexual marriage, that the subject of marriage should be taken out of the legal realm entirely and returned to the realm of the church, where it originated and where the final authority for such a commitment must rest. It is not homosexual marriage which threatens the traditional family, but the fact that marriage has been brought down the level of the law in the first place.

Relevant to this discussion, of course, is the question: what is marriage? Marriage is primarily a religious or social commitment. It has traditionally taken place with the appropriate religious ceremony (that of the religion held to by the couple marrying), and is a very important religious institution. America has long been regarded as being a country where religious discrimination does not exist – for her to take a stance on what marriage may or may not be, would be legal religious discrimination.

The definition of marriage is elusive. The only aspect of it which the CCA speakers agreed was very traditional, was the question of procreation – the idea that marriage has traditionally existed to create a structure in which children may be brought into the world and raised as safely as possible. Hadley Arks, in his speech on “The Family and the Laws,”

remarked that marriage is “the most proper framework for the begetting and nurturing of children” (Arkes 11). However, a definition of marriage based on the issue of procreation raises infinite objections. What, say the advocates of gay marriage, about heterosexual couples who marry with neither the intention or the ability to procreate? Are their marriages then invalid, merely because it has nothing to do with procreation? That certainly is a valid objection to the definition of marriage as a situation primarily geared toward the raising of children.

Perhaps, then, one can define marriage as it has traditionally been, a commitment between a man and a woman. Here are yet more obstacles; firstly, that there is a vast debate, mainly among religions, over the question of polygamy. Many religions, including Christianity/Judaism at one point, found the practice of one man marrying multiple women to be perfectly acceptable. The Mormon religion not only found this practice acceptable but “understood man to make greater progress toward eternity by engaging in the practice of polygamy” (Kmiec 1 – 2). Evidently, one cannot define marriage as a union between one man and one woman without engaging ourselves in the polygamy debate, which is certainly not our intention.

How, then, can I define marriage, without launching into a lengthy, contentious, and awkward analytic treatise? It is fair, for the purposes of this paper, to define “marriage” as “a social and religious commitment which two (or sometimes more) people make with the intention of dedicating the remainder of their lives to one another.” I will (again, *only* for the purposes of this paper) define the family as “a small social unit, usually consisting of less than ten members, which is geared towards the raising of children with the love and care they deserve.” Although these definitions are vague, they cannot be made more specific in the bounds of the law – it is for religious authorities to determine the appropriateness of specific unions; divorce, co-habitation,

polygamy, heterosexual and homosexual marriage are all very delicate social issues which are beyond the realm of the law.

In the wake of the strong and successful civil rights movement of the twentieth century, any argument in favor of outlawing homosexual marriage is seen as an affront to the natural rights of each human being to live as he or she pleases, so long as he or she does not harm any other member of society. “Homosexual rights... is an idea that began to assume the force and energy of a movement hard on the heels of the women’s movement...” (Decter 3). A vast majority of America citizens see the gay rights movement as holding the same moral authority as the feminist movement or the civil rights movement held. Affirmative action laws, which forbid an employer to hire or fire employees on the basis of their sexual orientation, imply that the law is not in favor of such discrimination. Such a restriction on homosexual legal activities is likely to be met with great public dissent; as Tom Bray put it in his CCA speech, “Americans like optimism and progress; they pride themselves on their tolerance and inclusiveness” (Bray 8). Outlawing the right of two freely consenting adults to enter into a mutually agreeable contract is not only contrary to the turn public opinion has taken in the past few decades, it is inconsistent with the anti-discrimination laws currently in place in the legal system.

On the other hand, to grant homosexual marriage the same legal status as traditional, heterosexual marriage would be a gross legal inconsistency, if only due to the precedent of the *Reynolds* decision. It would also be contrary to the wishes of another large portion of public opinion – those citizens who advocate the support of the traditional family system and “rescuing marriage and the family from the grip of... a morally corrupting popular culture” (Popenoe 12). The truth is that the disagreement over homosexual marriage reaches the intensity of a religious war. Opponents of gay marriage make strong and absolute arguments which are based in

religious and social tradition. Advocates of gay marriage make compelling arguments based on civil rights issues, non-discrimination, and personal freedom. Since each side of the disagreement bases its argument on entirely different foundations, there can be no compromise. Any decision the Supreme Court could reach on the issue would be highly controversial and would be a decision which favored one religious outlook over another (since the issue in question is a tradition-and-Judeo-Christianity based worldview versus a human-rights-based worldview.) There is no right answer, from a legal perspective.

Is homosexual marriage a threat to the traditional family structure? Perhaps; perhaps not. What is more relevant at this point is the fact that the dependence of marriage upon the legal system *is* a threat to the traditional structure of marriage. When the United States of America was founded as a nation, it was unique in that it kept a very strong separation of church and state. I believe that with the *Reynolds* decision, when polygamy was legally condemned, the policy-makers of America strayed from that all-important separation of church and state. I strongly believe that either an acceptance or a condemnation of homosexual marriage would be the same thing – one more step towards the union of church and state, which is destructive to religion and destructive to law. It is for this reason that I am vehemently opposed to a Federal Marriage Amendment.