

Marriage: What's in a name?

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Legislation passed by the UK government in July 2013 means that same-sex couples in England and Wales will soon be able to get married, with the first weddings likely to take place in summer 2014. The complex debate around same-sex marriage often seems to set the Church and the State against one another, but how real is the conflict? John Moffatt SJ tries to navigate through the tensions and find the way forward.

The law governing marriage in England and Wales underwent a significant change this summer when the Marriage (Same Sex Couples) Bill received Royal Assent on 17 July 2013. Those who supported this change to the legal definition of marriage did so in the name of equality and civil liberties. The argument runs: homosexual men and women have as much right as their heterosexual peers to enjoy the entitlements offered by civil marriage law. However, marriage also has a definition in Anglican and Catholic canon law. This states clearly that marriage is between a man and a woman, and reflects a theology centred on their mutual love and support and their fruitful union. Is it within the remit of the State to change the definition of a Christian sacrament? Surely it is overreaching its competence? Further, if we change the definition of marriage we surely undermine still more an institution that, despite assaults, remains essential for the well-being of our society?

This conflict has appeared to pit Church against State in a now-familiar pattern. Though some of the public debate has actually been very thoughtful, the issue has provided material for those who seem to prefer a narrative of polarisation. It allows some secularists to portray Christians as unreconstructed bigots that stand in the way of the reasonable development of civil liberties for all citizens. Equally, it allows some Christians to portray the State as a Stalinist monster,



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swallowing up religious freedoms, attacking family life and striving to erase all trace of religion from the public domain.

Now there are certainly some Christians who have very clearly-defined ideas about right and wrong in the area of other people's sexuality. There are also some secularists who would be only too happy to see the power of religion further reduced. Nor can it be unhelpful for a government under attack from

the Churches for the social consequences of its fiscal policies to have such a diversion, which, in the eyes of many, sends Christians tumbling off the moral high ground. Nevertheless, for those of us more puzzled than enraged by the issue, there seems to be a preliminary question worth asking: how real is the conflict? Ignatius of Loyola, who had felt the heat of the Inquisition, proposed a principle to be applied in spiritual conversations in order to lower the temperature in an atmosphere of suspicion about orthodoxy: try and put the best possible construction on the view that your conversation partner has expressed (*Spiritual Exercises* §22). What happens if we try this here?

Is the State going beyond its jurisdiction in redefining marriage? This implies a further question: is the State redefining Catholic (or Anglican, or Jewish) marriage? The answer to the second question would appear to be no. The current definition of marriage used in civil marriage ceremonies is clearly derived from the

definition in Anglican canon law. But any change to that (civil) definition makes no change to Catholic or Anglican canon law. This being so, since the civil conditions and effects of marriage have been determined by the State since 1753 (to the benefit, in 1836, of non-Anglican religious groups) and since it is possible to be civilly married without any reference to religion, the State does not appear to be overreaching itself in extending the benefits of civil marriage to same-sex couples. Part of the appearance of conflict is that we are using one word to refer to two different things. So from now on, I am going to call them C-marriage (civil) and R-marriage (religious) to make things clearer.

But there is a further problem. The State has already resolved the issue of the legal entitlements of same-sex couples by instituting civil partnerships. The whole point of that legislation was to give same-sex couples exactly the same entitlements as married heterosexual couples. So what does extending the definition of marriage actually add? One thing it confers is a highly resonant name (we will come back to that). But the other, more significant for our immediate argument, is the possibility of a same-sex couple being C-married by a minister of religion. Currently, civil partnerships have to be joined in registry offices by a registrar – though recent legislation allows some use of religious symbolism. But only ministers of religion can conduct a *religious ritual* that has the civil effects of a C-marriage. By extending the definition of marriage it becomes *possible* for same-sex partners to be C-married with such a ritual. Suddenly it does look as if the State might indeed be trespassing on other people's territory.

However, the only way this move could be genuinely invasive would be if the legislation *instructed* ministers of religion to conduct same-sex marriages. It is hard to see, though, that such an instruction (even if intended) could ever be enforced; in fact, the Church of England and the Church in Wales will be banned in law from conducting same-sex marriages. Ministers of religion do not conduct C-marriages as such; rather they conduct R-marriages which have the same legal effects as C-marriages. But in the Catholic and Anglican world, R-marriage, by its internal definition, does not include the possibility of same-sex marriage. Someone going to a Catholic priest and requesting a same-sex R-marriage would be in the position of a

divorced heterosexual asking for an R-marriage without a prior annulment of the previous R-marriage. The State does not compel the priest to enact such an R-marriage either.

So this move has to be read as permissive, rather than prescriptive: it allows the *possibility* that ministers of religion perform a religious act recognising a same-sex partnership with the effects of C-marriage, but does not oblige them to do so. This seems a legitimate exercise of State authority in extending the freedoms of its citizens. Clearly Catholic priests will not be offering Catholic R-marriages to gay couples, but that is no reason why it should not be possible for a Quaker to perform a Blessing Ritual for such a couple which at the same time conferred the benefits of C-marriage.

Let us now look at what good reasons Catholics might have for resisting a change to sacramental R-marriage. Equality legislation springs from a noble and praiseworthy concern to make things fairer for all men and women in a free society. However, it is logically limited by the boundaries of 'relevant sameness'. In applying for a job, a man and a woman have relevant sameness, but in applying for maternity leave they do not. In applying for the civil benefits of C-marriage, same-sex couples have relevant sameness with heterosexual couples, but do they have relevant sameness in the case of R-marriage?

When we move from C-marriage to R-marriage, we add to questions of rights and entitlements a 'theology of sign'. An R-married couple live out an ecclesially-recognised sign that makes present God's saving action in the world. The language of that sign is drawn from the pre-Christian institution of monogamous marriage. This is already embedded in Jewish text as a metaphor for God's creative, covenantal love and is then taken up in Christian texts as a metaphor for Christ's love for his Church. At the Council of Trent in 1547, Christian marriage is recognised as an official sacrament initiated by a public, religious act. But the peculiarity of such an official sign is that it speaks through an actual, social history. Here that history essentially references a very specific bit of the human narrative – the lifelong, committed love between a man and a woman that includes the possibility of having children and raising a family.

For this reason, I suggest, same-sex unions do not have the 'relevant sameness' to qualify for R-marriage. This does not deny their capacity to reflect the covenantal love of God or to present the love of Christ to the world. It is merely to say that when they do so, they do so referencing a different bit of the human narrative that needs to be elaborated in a new way. Both a long sea journey and a pilgrimage on foot can provide powerful metaphors for human life, but they are different metaphors rooted in differently evocative bits of human experience.

This reflection draws us to what might be going on more widely at the more visceral level. I said earlier that one of the things the new legislation offers is the use of a highly resonant name. 'Marriage' is still a significant institution. As discussed, it has evolved in the Christian and pre-Christian social history of the Mediterranean and European clans, tribes and nations to be embedded in our culture, and even for those who are not religious it can have deep resonances. It is entwined with powerful human stories, unites families and confers a recognised social status. There is perhaps a deep attraction here for some who have hitherto been excluded from that narrative and from that status.

Conversely, there is a sense for many – heterosexual and homosexual, Christian and non-Christian – that to change the narrative of marriage must be bad for society. At the more abstract end of the conversation, we encounter a secular version of the argument for preserving R-marriage. Marriage as a partnership between a man and a woman is rooted in the sociobiology of humanity; it is a part of our cultural DNA and symbolises something central to human self-understanding, irrespective of sexual orientation. What civil states around the world are proposing is a sort of cultural genetic modification, which is as fraught as GM with dangers that we cannot even anticipate. Marriage is a cultural archetype that in some, intuitive way can only be destroyed by being modified, to the detriment of all humanity.

This argument would be most plausible if there were indeed one, universal, human narrative about marriage across time and culture. Certainly in Western culture, saturated with the Jewish-Christian tradition, it seems self-evidently true that marriage comes about as the freely-willed choice of the two partners for the

begetting of children. Further, Christianity has promoted mutual love as a key element in marriage. But free will and mutual love are not necessarily primary elements in all versions of marriage throughout the ages and around the world. From the Bronze Age Codex Hammurabi to traditional African marriages managed by the village elders, we see a range of alternative concerns. These are often dominated by the importance of ensuring that a man should have 'his' offspring, balanced with protecting the rights of the woman as she is transferred from the ownership of her family to that of her husband. Less technologically-focused cultures than those of the West have also found surprising and ingenious natural means to ensure the arrival and recognition of children in cases of infertility.

Any argument for marriage as an archetype, a symbol necessary for the good of society, would need to consider not just the various, idealised, 'intuitive' senses of what marriage is about, but also the real sociology of marriage, both throughout the ages and contemporary. Only in this way could we see if there was a secular 'essence' of marriage. We may find that, as in Africa, different models of marriage co-exist side by side. Thus Catholic couples will often have the Church wedding, participating dutifully in the Christian narrative of marriage, but will then go on to have the traditional wedding ceremony, at which point they will be 'really' married. We may well discover that, as in most instances of human living, we find strong family resemblances between different models, but no one essence. We may also find that human societies are more adaptable and flexible than we thought.

Such an argument for the reservation of marriage for heterosexual couples, though abstract, is utilitarian (this is a descriptive, not a pejorative term). To claim that changing the definition of marriage would be damaging to humanity is to argue for the greatest good of the greatest number; it is to argue that the welfare of the majority outweighs the potential happiness of the much smaller number of homosexual partners. That would provide a sufficient reason not to accord a homosexual couple the same right to social status as a heterosexual couple using the term 'marriage'. But our highly intuitive 'necessary archetype' argument so far seems too diffuse for us to be sure of our conclusion. Can we pin down more precisely what might go wrong in society if we modified our archetype?

It would seem to many to be a self-evident truth that the ideal building block of society is a stable and happy family producing confident and mature children by natural means. Many also have the belief that homosexual partnerships, because the criterion 'by natural means' is not an option, not only cannot provide such a building block, but, by offering an alternative model of relationships and child-rearing, undermine the ideal. If their beliefs are true, it follows that to give such partnerships the title 'marriage' must destroy something which is for the good of society.

However, for the utilitarian argument to have force several things that begin life as sincerely-held beliefs must also turn out to be matters of fact. On closer inspection, the 'by natural means' clause does not seem to be critical to the good of society. We accept that heterosexual couples can successfully adopt and raise children not genetically their own, because the evidence seems to suggest that this is true. The criterion of raising children does not appear to be a critical issue, either: there are respectably married people who remain childless and contribute in valuable ways to society. The key issues, for the good of society, are most likely to be: (a) whether or not children brought up in homosexual marriages can become good, happy citizens; and (b) whether by allowing homosexuals to marry, heterosexuals either will be discouraged from entering stable marriages that produce happy citizens, or will be encouraged to abandon an existing marriage.

The second of these can provisionally be resolved by surveying married couples and those thinking about marriage. I would not want to anticipate the results of such a survey but have yet to meet anyone for whom this issue would affect their marriage. Studies relevant to the first issue suggest that, other things being equal, children benefit from having a male and female parent. However, being brought up in a loving environ-

ment with clear boundaries, good humour, respect, a sense of mutual commitment and reliability, concern and compassion, would seem to be at least as critical, if not more so. Simply having a male and female parent after all has not always enabled people to become good and happy citizens. From this point of view, (a) seems less of an issue than it first appears. We might accordingly reflect that something may indeed not be the *ideal* building block of society, but that does not mean that it cannot be a *useful* building block.

Of course, further evidence may demonstrate that this point of view is erroneous.

The issue has touched on something deep about our shared ideals for human relationships and the education of the young in a trans-Christian society. Our collective memory is indeed shaped by elements from a tradition in which Christianity has determined the meaning and quality of marriage. But perhaps the wider issue is not so much about homosexuals and heterosexuals as it is about the interaction, in this most intimate area of human life, between the public and the private, public acceptance and personal fulfilment; and about the good of the many, the different experiences of love and the virtue of commitment, together with the ideal education of our young. As a society we are still working these things out together. Careful listening, compassion and, above all, attention to reality will be important. We may well discover that people are more adaptable than we thought, and (perhaps) that letting go of some sincerely-held beliefs need not mean the end of civilisation.

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