

## FAMILY MARRIAGE AND PARTNERSHIP MARRIAGE

By Gabriel Moran

The way that the case for same-sex marriage has been argued has involved disingenuousness on both sides. First, opponents of same-sex marriage argued that marriage has had the same meaning for “millennia.” Advocates replied that marriage is always changing. Neither side has been entirely forthcoming. The U.S. Catholic bishops said after the decision that “marriage remains unchanged and unchangeable.” That statement is simply a denial of reality. Marriage has obviously undergone changes over the centuries; there is no eternal essence of marriage. But one has to respect the history of an institution to decide which changes do or do not make sense.

The second problem is the phrase “marriage equality.” It is an effective slogan because if “equality” is the issue opponents are in a corner. Do they really want to be on the side of inequality? But like most slogans “marriage equality” clouds the issue rather than clarifies it. People who argued against same-sex marriage logically raised the question of what are the limits of that equality. In an essay in *The New York Times* entitled “Is Polygamy Next?” William Baude argues for polygamy as the next extension of marriage equality. He concludes the essay: “Once we abandon the rigid constraints of history, we cannot be sure that we know where the future will take us.” Indeed, once we abandon those rigid constraints of history, we can call anything by any name but there is nothing left to argue about.

A plural marriage could conceivably fit within some logic of marriage but the case would have to be made within the perception of an historical evolution. The marriage of one man and several women is nothing new and it could even be construed as regression. These days plurality would presumably include one woman and several men, as well as all numerical combinations of men and women. But what is the limit? Can 5 people have a marriage? How about 50? Is there any advantage in calling a union of 5 people a marriage rather than, say, a community? It is true that “we cannot be sure that we know where the future will take us” but wherever it takes us we will not be free of our history and the imperfect institutions that help to shape us.

Same-sex marriage has some logic to it by reason of the way that the idea and the institution of marriage has evolved. In the distant past, marriage was about a man’s property which included a woman or women who could bear the children that he would father. The conclusion of Justice Kennedy’s majority opinion that marriage makes “two people greater than they once were” is almost comical in the light of history. Even in the 19<sup>th</sup> century the common-law rule of “coverture” collapsed the woman’s legal identity into that of her husband’s. A wife was legally invisible. It has been a long journey for women to get to the place where marriage could realistically be called a partnership. Not much progress toward that arrangement had been made until the human race began producing more babies than the earth or two parents could manage. The understanding of marriage as a contract to have as many babies as God or nature sends needed to be adjusted.

The big sexual revolution in the twentieth century occurred in the 1920s. The sexual behavior of women changed dramatically in that decade. There was discussion at that time of two kinds of marriage, traditional and companionate. Even the Roman Catholic Church in the 1930s accepted companionship as a secondary purpose of marriage; the primary purpose, according to the

church, was still the birth and education of children. The church altered its position in the 1960s by saying that there is no “hierarchy” of ends. Take your pick as long as you don’t interfere with the formerly primary meaning of marriage. In that framework, the Roman Catholic Church should be a supporter of same-sex marriage which is suited to the companionate function of marriage and presents no problem of interference in the process of pregnancy and conception.

The church cannot accept same-sex marriage because it does not accept gay sex. If it could see beyond that barrier it might recognize same-sex marriage as a conservative movement to shore up a troubled institution. I am somewhat puzzled why gay people have been so anxious to join an institution that fails more often than it succeeds. The upper classes in this country still consider marriage a mark of respectability but a sizeable part of the straight population has disconnected marriage and babies. And a great many of those people also have doubts that sexual companionship is helped by the stereotypes that still burden the idea of marriage.

Ten years ago I, like most of the country, was not an advocate of same-sex marriage. I was not against it; I simply did not know how big the issue was for gay couples. I thought that perhaps heterosexual couples would increasingly join gay couples in establishing unions with desirable economic protections and social approval. But why would sexual partners wish to get involved in all the husband and wife stuff where equality is still a problem? Parenthood does involve more complicated questions than a stable sexual partnership so that some of marriage tradition makes sense for the upbringing of children.

The problem with all the attention given to who can marry is that the related question of who takes care of the children can get underemphasized. The term marriage could have been rerouted to its historic role of a contract to start a family. Gay couples raising a family could have strengthened or reconnected the bond between marriage and family. The government could then have concentrated on the quality of childcare in this country where one out of five children is born into poverty. Other stable sexual unions could be blessed by the church while the government stayed out of the sex lives of those straight and gay couples who wish to contribute to society in ways other than by parenting.

The moment has passed when that linguistic direction could have been taken. The legal recognition of same-sex marriage is progress insofar as it provides gay people with the respect they deserve. But a confusion about the nature of marriage remains. Same-sex marriage is more likely to strengthen than to weaken the institution of marriage but the institution needs more help than the addition of a new population. The country needs an honest discussion of how to improve family life and get government policies that help rather than undermine families.

The Roman Catholic Church has begun a massive change in its attitude toward adoption by gay couples. In 2003 the Vatican denounced gay marriage claiming that “allowing children to be adopted by parents living in such unions would actually mean doing violence to these children.” (No evidence was offered for that claim). In a welcome change of tone, the Synod in 2014 said that “the Church pays special attention to children who live with same-sex couples and stresses that the needs and rights of the little ones must always be given priority.”

The Roman Catholic Church could make a great contribution to society by continuing to insist that the two ends of marriage are not hierarchically ordered. They now constitute two kinds of marriage that could be sacramentally distinguished. They might be called family marriage and partnership marriage. Straight and gay couples who intend to raise children need the support of family-friendly policies by the government and the support by the church. Other married couples need legal recognition of their economic partnership and they also need social support for their union. If the Roman Catholic Church were to come on board, a new way of looking at marriage might emerge that respects tradition but acknowledges the irreversible trends of the last seventy-five years. Women's equality and help for family life could be given the attention they deserve.