

## THE GAY MARRIAGE DEBATE – AFTERTHOUGHTS

Piers Benn

*This article analyses some familiar arguments both for, and against, same-sex civil marriage. I argue that it is not enough to defend gay marriage by a simple appeal to equality, unless one addresses the view that same-sex marriage would be contrary to the objective nature and purpose of marriage. I illustrate the ways in which a stand-off is reached in discussions of this particular matter. I also suggest that there is a mystery about what the ‘upgrade’ from a faithful relationship to marriage amounts to, but that part of the answer is that marriage embodies a state-recognized social transition. This is underpinned by the interest that society has in marriage, largely owing to its facilitating a stable environment for children. However, I suggest that marriage also properly functions as a way to uphold commitment and love, and conclude that there is no good reason not to uphold – through marriage – those things in same-sex relationships. But I concede that religious organisations with theological objections to same-sex marriage should not be obliged to conduct gay weddings.*

In February 2013, a UK parliamentary Bill to legalise same-sex marriage was approved by the House of Commons. There will be stronger resistance to the Bill in the House of Lords, but there is little doubt it will be approved there as well. Although some commentaries on the issue were insightful, there was a fair amount of huffing and puffing on both sides.

There are many – like the gay Tory columnist Matthew Parris – who think that once same-sex weddings have

taken place, people will look back and wonder what the fuss had been about. He compares them with MPs who once opposed the 1967 Act that legalised male homosexual acts, but couldn't see the problem once it had been passed and generally accepted. Like most of us, they had conformist tendencies. And perhaps because of this, they followed the liberalising trends and became embarrassed about their earlier attitude, once the challengers of the earlier *status quo* reached a critical mass.

The same thing is happening with attitudes to same-sex marriage. However, conformity operates in more than one direction. It is too early to know whether the forces of conformity will eventually lead people to change their attitudes yet again, if enough others do so too. In that case, some people will wonder why they had ever accepted gay marriage; why they had gone with the tide so readily.

But what are the best *arguments* for and against same-sex marriage?

The most frequently aired argument on the 'pro' side appeals to a familiar conception of fairness. Fairness is thought to entail equality of treatment for heterosexuals and homosexuals. So if straight people can marry, it is unfair to gay people if they cannot do the same. But although this is enough for many people, it won't quite do – or not yet. For fairness may be more precisely understood as requiring equal treatment of equals, and unequal treatment of those who are not equals. So the obvious question is whether gay relationships are, or can be, equal to straight ones, in a way that is relevant to the case for same-sex marriage.

Opponents of the Bill deny this. They usually appeal to what (in their view) marriage essentially *is*, and what it is *for*. In their view there can be no same-sex marriage, because marriage is – essentially – a sexual union between a man and a woman, founded on a mutual vow of permanence and sexual exclusivity. And though it may serve many purposes, central among them is to provide an optimal environment for bringing up children.

Advocates of same-sex marriage (or 'marriage') challenge this traditional account, in predictable ways. *Why*, they ask, can marriage exist only between a man and a woman? The obvious way to create same-sex marriage is to legislate for it. And why should a true account of what it is *for*, exclude same-sex marriage? Opponents, just as predictably, say this misses the point. Parliament can pass whatever laws it likes – it can legislate for men to 'marry' their mothers, if it chooses – but human laws cannot turn such relationships into real marriages. But again, one wants to ask: why not? On what basis can anyone pronounce on what constitutes a real marriage?

Much of the opposition comes from religious organisations, and any attempt to force them to conduct same-sex weddings would complicate things. In many cultures, weddings are religious ceremonies in which the blessing of God is sought for the union. You are married only if God sanctions this union, even if there are no outwardly discernible differences between the lives led by married and unmarried couples. And according to a traditional Christian account, the nature and purposes of marriage are ordained by God. Procreation is foremost in this account, even in Churches that have no objection to contraception. Moreover, the institution of marriage is held to be obviously good for society, in providing an ideal environment for the raising of children, among other things. So in view of the significance mainstream religions give to marriage, there is the problem of whether religious institutions should be obliged by law to conduct same-sex marriages, even though this goes against their core doctrines. This would be a particularly difficult problem for the Church of England, given its peculiar position as an established Church.

In my view, it would be wrong to try to force religious institutions to marry people of the same sex. It would be wrong for the clergy to conduct services against their own conscience, and it would therefore be wrong for the State to require them to do so. The Church of England is fiercely split on the issue, and is already in an awkward enough

position with regard to many ordinary heterosexual marriages, with some clergymen wincing when they conduct weddings for people who clearly have no Christian belief or commitment. Many clergy say that they *cannot* marry a gay couple, because there can be no such thing as a gay marriage – the ‘wedding’ would be meaningless at best, sacrilegious at worst. They might also point out that same-sex couples would still be able to marry (or ‘marry’) in a civil ceremony, if the law is changed to allow this, just as heterosexual couples can. So the debate needs to focus on whether there should be *civil* marriage ceremonies for homosexual couples, as there are for heterosexual couples. This brings us back to the question of the nature and purpose of marriage.

Some people will shrug their shoulders and ask why it should matter whether or not there is a legal ceremony of marriage for gay couples: if it makes people happy and harms no one, then we should by all means let it go ahead. On this view – to put it somewhat crudely – to see a couple as married is no more than to see them as having a certificate saying they are married. If that certificate means a lot to them, by all means let them have it.

But if this is all it is, it is hard to see why people want it so much. Many people want it, of course, because they think it is more than this piece of paper. So we now have the question of what this additional element can be. Suppose that a gay couple in a civil partnership want their relationship ‘upgraded’ to marriage. What would this ‘upgrade’ amount to? What is the difference between their current status, and their desired status? After all, they may have lived together in a faithful sexual relationship for years; they may have been recognised as a couple by everyone they knew, and so on. So neither the observable nature of their relationship, nor its social recognition, would be changed by civil marriage. Why then would they desire it?

Here is a possible answer, that has always applied to heterosexual marriages: a marriage is not a mere living arrangement, or the mere existence of a certificate, but is

founded in vows that are witnessed and ratified by a recognised authority. A civil marriage is thus, in some sense, endorsed by the State. To be meaningful at all, it has to be an officially recognised *transition* – an objective change in status. And this helps to understand why social conservatives regard the co-existence, with marriage, of other living arrangements that mimic it, as undermining the institution of marriage. Hence, to the question posed by many social liberals – what is the point of marriage if people can have relationships with the same quality and purposes without it? – comes the logically equivalent ‘conservative’ question – how can these other relationships be regarded as equal to marriage (or even legitimate at all) if marriage does indeed have a point? Moreover, in view of the centrality of a *sexual* relationship in traditional understandings of marriage, there comes the question – which may be uncomfortable for those who take it seriously – of what, if anything, is the proper place of sexual relationships apart from marriage? This too is relevant, for it is clear that at the root of many people’s objection to gay marriage is a moral objection to homosexual activity. To put it harshly: if gay sex *per se* is bad enough, a solemnly declared intention to carry on with it in a particular relationship is, in an important way, worse.

These days, concerns like this will mostly be raised by people with a traditional religious commitment. However, since this discussion is about civil marriage for gay people, it leads back to the question of what the point is of civil marriage in general. Some people, of course, deny that it has any good or useful function at all. Gay people who hold this view may not want to campaign for gay marriage. At the other end of the spectrum of moral attitudes, I recently heard a well-known Catholic philosopher suggest that the State should get out of marriage altogether and leave it to religious institutions, since only such institutions – especially the Catholic Church – have a true understanding of what marriage is. In his view, there should be civil partnerships for straight and gay people alike, with marriage the preserve of religious bodies.

Whatever should be said about this, marriage is widely regarded as beneficial for society. All societies observed by anthropologists have some form of marriage, and there must be a reason for this. The most obvious benefits to societies that accrue from marriage are practical, somewhat unromantic things: to provide a stable and loving environment for children (for example, without a succession of stepfathers or boyfriends intruding into the lives of a mother's existing children), to secure the transmission of property down the generations, to maximise loving mutual support for spouses, to secure an environment for (one hopes) a fulfilling sex life and to provide a safeguard against sexual jealousy – which can be a lethally destructive emotion. Of course, we all know that many marriages are not like this. But this obvious fact does not show that the institution does not provide net benefit to society. It is also clear that many relationships of cohabitation that were never formalised by a state official in a marriage ceremony are, in effect, 'quasi-marriages', providing at least many of the benefits of marriage. So if marriage is of net benefit to society, for the reasons above, then quasi-marriage is likely to be as well.

The relative benefits of marriage and quasi-marriage lead us to an interesting, and surprisingly difficult, question in their own right. The benefits of stability and loving home environments for children can come from both arrangements alike. They lead us back to the question of what the 'upgrade' from faithful cohabitation (or civil partnerships) to marriage, can really be. This – in passing – leads to another question (at least, for those who like the minutiae of philosophical detail): what is a religious officiator or civil registrar doing when he or she pronounces that a couple is now man and wife? Is this an announcement of an existing fact, or is it a 'performative utterance' (like 'I promise') which creates the fact it announces? It seems to me more like a performative utterance. To that extent, it has some similarities with a legal ceremony conferring citizenship upon someone who is already resident in his chosen

country. The couple was not married before the ceremony, and is married after it. And the ceremony signifies the State's endorsement of a couple's living in a particular *kind* of relationship, which society recognises as constituting a marriage.

Assume that there is a purpose to this state endorsement, at least for heterosexuals. The couple's relationship is not thereby made more loving or harmonious. But it is officially recognised, and indeed in past times was widely seen as morally necessary in order that a man and woman live together as man and wife. To return, then, to the main question. Should there be state ceremonies of that kind, for same-sex couples who desire it?

The difficult issues about the relative merits of cohabitation (or quasi-marriage) and marriage, and of the value of marriage to society, arise with respect to marriage in general, and not only to the proposed same-sex marriages. But those who object to same-sex marriage often take the potentially procreative nature of heterosexual marriage to be the major defining difference. Society has, on this view, an interest in the stability of the institution in a way it seemingly does not for gay marriage. This will probably emerge when the first gay divorces come to court: why should the State require any criteria to be satisfied for divorce, other than the desire of at least one party to end the relationship? This is indeed a difficult matter, but again, it is one that already arises concerning existing divorce. The question arises largely because there is far less social expectation nowadays that people who wish to live together and perhaps raise a family, should actually be married – i.e. should have gone through a legal and/or religious ceremony. Nevertheless, marriage persists and most people consider it to have some importance. They still want an official 'stamp' on their relationships. Is there any good reason to deny this to those same-sex couples who want it?

When all is said and done, I don't think there is a good reason to deny marriage to gay people. It is true that, if same-sex couples can no more be truly married – in some

metaphysical or theological sense – than sons can be married to their mothers, then that fact cannot be altered by any legal rite. But then again, human laws should not be expected to settle such questions. Human societies decide what kinds of social arrangements they want, and they often do decide upon arrangements that substantial minorities reject as illegitimate. Divorce is a case in point, which the Roman Catholic Church does not recognise in principle, and which gives rise to some internal disagreement within other churches. But it is clear that there is an increasing acceptance within society of same-sex marriage. There is, admittedly, an interesting and slightly maverick view (put forward, for example, by Brendan O’Neill, of the webzine *spiked-online*) that gay marriage is being foisted upon the ‘masses’ by a liberal elite that wants to lecture ordinary people on which institutions they should accept. The fact is, however, that ordinary people have come round to the idea in large numbers.

What about the argument concerning procreation? We could counter this by pointing out that many married couples either cannot, or choose not to, have children, and that increasing numbers of gay couples, especially lesbians, do raise children together. But this is perhaps too obvious. There is a deeper worry that is worth addressing, which is that the solemnity of traditional marriage vows has always been reinforced by a sense of the great responsibilities involved in raising a family, and of the sacrifices that present generations must make for future ones. The thought is that by granting equal status to relationships that are less likely to be rooted in this commitment to the future, the perceived significance of all marital vows will be subtly altered; that they will become less like vows and more like contracts, or that a romanticised idea of love will occupy a more central place than it should have. But it is, of course, clear that this is happening anyway – that married couples are splitting up because romantic expectations are no longer being satisfied, or because one party falls for someone else. When this happens, it is usually bad for

children. Would allowing same-sex marriage make this any worse? We cannot be certain. But two things should be said – first, that only a minority of marriages will be gay ones, and second, that when gay people actually want to make vows in public, that suggests a seriousness that is probably lacking in many heterosexual commitments. It is even possible that a public perception of gay couples as seriously committed – something for which gay men, at least, do not currently have a great reputation – will actually enhance the seriousness with which marriage is taken in general.

This leads to a final point. There are many gay people who recoil from the hedonism and promiscuity with which the ‘gay lifestyle’ is popularly associated (mostly among men). They are, like many of us, bourgeois at heart. There is nothing wrong with that. And they long for an ‘official’ recognition that their love has the same precious worth as that of heterosexuals. This is where considerations of equality do quite properly count. The mantra ‘It’s not fair, because it isn’t equal’ is uttered prematurely in many contexts. It can easily be used as a substitute for dispassionate argument. But once these arguments have been had, we can sometimes see why equality does matter, after all.

*Piers Benn is author of Ethics (Routledge 1997) and Commitment (Acumen 2011). [piersbenn@sky.com](mailto:piersbenn@sky.com)*