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Marriage: What is it? and Why?

by Katherine Cummings

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This piece was originally written in 2008 and appeared in Issue 77 (October-December 2008) but it seems appropriate to repeat it now, in light of the imminence of some sort of resolution in our own national move to have the Marriage Act amended to allow for same sex marriage. The change will be of greatest benefit to the gay and lesbian segments of what is so often referred to as our 'community', but even for transgenders there are benefits that apply specifically to our particular needs.

The most obvious case is where neither of the members of an existing marriage wishes to dissolve the existing legal and social partnership.

At present the situation is confused in that the couple may stay together after one transitions but only if the transitioned partner continues to maintain his/her former gender role and does not pursue the provision of revised documentation (birth certificate etc.)

Several States currently have Bills on their agendas to eliminate the unnecessary cruelty of an enforced and dishonest divorce but none of these States has yet passed the Bills into law and a simpler solution would be the passage of a Same Sex Marriage Act, or, better yet, the minor amendments necessary to turn the existing Federal Act into a more realistic and less religion-driven piece of legislation.

We have recently seen Ireland accept same sex marriage by way of a national referendum, the United Kingdom achieve it through parliamentary legislation and the United States by way of a High Court decision that relied on the underlying implications of the United States Constitution.

There have thus been multiple roads to the same destination and it is high time our nation chose a road and tested the will of the people.

Parliament is not the plaything of politicians, it is the nearest approach we have to expressing the will of the people and the politicians who purport to represent that will should be using the current parliamentary winter recess to establish just what their constituents expect of them.

The Marriage Act, 1961, defines marriage as "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life". "Man" and "woman" are not defined in this act although almost every other term is ... judge, magistrate, authorised celebrant, minor, overseas country etc. The fact that around half of these marriage contracts fail to go anywhere near being "for life" and that there are legal mechanisms for dissolving marriages, both civilly (often very uncivilly) and religiously, suggests that the concept of marriage as a voluntary lifelong union is flawed and should be re-examined.

To start with, the concept of "man" and "woman" as definable terms is muddy, to say the least (transgenders know this better than anyone) as every definition has an exception and there is no satisfactory rule which can be applied universally, in terms of anatomy at the macro or micro level, in terms of appendages nor chromosomes and genes. Nor can we humanely apply tests such as the capacity to have children since many people are incapable of procreation through accidents of birth, physical accidents or through old age, and these are hardly reasons for denying them the loving comfort and social pleasures of married life.

The real problem is that we are muddling along confusing social policy (i.e. laws and customs devised to make life easier and better for people) with religious dicta, which, in turn, are based on tribal notions of the need to outbreed the tribe next door. With over-population being the biggest single problem humanity faces (where do you think global warming comes from?) it is amazing that we are clinging to an outmoded concept of marriage, and tinkering around the edges so that people can be serial monogamists.

Nor is the concept of "one man, one woman" the only model available to us. Throughout history patriarchal societies have allowed polygamy, almost always in favour of men having multiple wives and even in modern times there are religious sects which allow, encourage or even mandate multiple spouses. Islam permits multiple wives and in some Micronesian cultures it was expected that a man would marry his brother's widows and adopt his deceased brother's children, thus guaranteeing a measure of social security in societies with marginal resources. Surely by now we have reached a point where people can self-define in terms of their own social arrangements. It is possible for consenting adults to adopt marital arrangements outside the narrow confines of the Marriage Act, but they find themselves punished by bureaucracy if they choose to do so. This has been demonstrated in many petty ways through denial of recognition of long-term same-sex relationships, through inheritance and superannuation regulations, hospital visiting access, adoption laws and many other failures to recognise the capacity of humans to love and to accept responsibility outside the restrictive norms imposed by those whose only authority rests on numbers and tradition.

The whole marriage question needs to be re-examined. What is wrong with same-sex marriage? What is wrong with polygamy? What

is wrong with polyandry? If adults of sound mind decide this is the way they wish to live their lives, and whether or not they intend it to be "for life" or for a fixed term, by what right does government decide to regulate these views? We know that polygamy and same-sex relationships can work. We have seen them work, time and time again. Those who do not believe in such things are operating on the basis of prejudice and stereotypes, the same stereotypes which saw gays and lesbians for so long as contemptible, the same blinkered view that could not see transgenders at all. And now we have moved forward a little and many gays and lesbians have been able to move into the light. Justice Michael Kirby on the one hand, Michael Mitcham on the other. Still not equal, but not as disadvantaged, ignored or persecuted as they once might have been. Transgenders, of course, are still denied many of their rights, to education, to housing, to employment, to health care ... as well as the right to marry in their true gender role.

Perhaps our best strategy to achieve the right to marriage lies not in perpetuating the "one man, one woman" pattern and insisting on recognition of our innate genders, but in a larger reform of marriage which will allow adults to define their own social contracts. One-on-one (never mind the gender), bigamy, threesomes, polygamy; what difference does it make as long as consenting adults agree to the terms and nobody is harmed.

But what about the offspring, the children of these unions? Well, polygamous marriage works in other societies and studies of children of gays and lesbians have demonstrated that they are not disadvantaged. Is there a difference between serial monogamy and polygamy? It is an illusion that we live in a Christian society. We don't, as shown by the latest census, where nearly nineteen percent of the population claimed to be atheists (leave aside the flippant doubters who called themselves Jedi or Calithumpians). Our current rules are based on Judaeo-Christian ideas (post Old Testament, of course) but we claim to be a multicultural society. Why don't we try being multicultural, for a change?

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