

# Homosexuals and the New Public Philosophy

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With humanity's millennia-old focus on collective survival no longer a primary concern, a few fortunate societies in the West have become preoccupied with matters of human, or individual, rights. In recent decades, we have experienced a second flowering of the individualism associated with such 19th-century thinkers as John Stuart Mill.

The rights of the individual were submerged by the horrors of the first half of the 20th century. But since the 1960s, the passions expended until then on righting collective wrongs have been increasingly channeled into securing human rights. Indeed, if the West can be said to have a public philosophy nowadays, it is a philosophy of human rights.

One result of gay marriages is that there might be a revival

of conventional marriages.

A small but significant example of this is Britain's recent debate in parliament of a bill recognizing the right to same-sex marriage, which follows a decision taken in France this spring to legalize same-sex marriage. Indeed, Britain is something of a latecomer. Thirteen countries already allow gay marriage, and the usually conservative current U.S. Supreme Court recently struck down the "Defense of Marriage Act," adopted in 1996 explicitly to ban gay marriages, as well as a law prohibiting gay marriage in California.

Only in 2004 were British gays allowed to form "civil partnerships" — relationships with the same legal status as marriage but without the title. This did not settle the matter, though. The passion for human rights simply moved to the next level. Denial of gay couples' legal right to call themselves married has become intolerably discriminatory. But allowing them to marry has proved a harder legislative nut to crack than allowing them civil partnerships.

The parliamentary debate that has preceded the likely passage of this legislation revealed a classic case of an institution, marriage, coming into conflict with a cause, human rights. Both opponents and supporters of the bill concede that marriage has changed in various ways over time. They also agree that a central core has remained constant. But they disagree about what that core is.

The chief argument of those opposed to the bill is that marriage has always meant a lifelong union aimed at procreation and child-rearing. This is its "normative" meaning — the best that the human race has come up with to secure its survival. As such, marriage is inescapably to a member of the opposite sex.

Against this, supporters of same-sex marriage argue that the one constant that defines the married state is a loving couple's commitment to "share their life journey." Love and commitment are the only relevant criteria. It is simply unfair to withhold the status of marriage from those who want to make this public vow.

There have been many ingenious attempts to split the difference. In the House of Lords, Lord Mackay moved an amendment to distinguish between marriage (same-sex) and marriage (opposite-sex). The common word marriage, he argued, would remove any discrimination, but the parentheses would recognize that the two states were different.

Supporters of the bill allowing same-sex marriage pooh-poohed "marriage in parentheses." With the defeat of the Mackay amendment by 314 votes to 119, much of the bill's original form remains intact. Churches would not be required to consecrate same-sex unions or teachers to promote them against their conscience. But as far as the state is concerned, marriage would be gender-blind.

The arguments on both sides have been of high quality, especially in the House of Lords. But as I have sat and listened to the debate, I can't help wondering what a break it is in human history for so much intellect and feeling to be focused on such a small matter as the state's withholding of a word, marriage, but not its substance.

On the lexicographic point, opponents of same-sex marriage are surely right. Historically, marriage has not been, as one peer described it, an "elongated envelope," into which any expression of love and commitment can be packed. It is not so regarded in contemporary Britain — and even less so in the non-Western world, where unions of men and women are considered the norm.

But there is a glaring weakness in the arguments of the bill's opponents. While they hint darkly at the "unintended consequences" of legalizing same-sex marriage, they cannot spell out exactly what these consequences would be. It is not obvious that "normal" marriage, procreation or child-rearing would be threatened by this "add on."

In fact, opponents of the bill fail to mention that traditional marriage is in a fairly advanced state of decay in Western societies. Fewer and fewer people are bothering to get married, and marriage is regarded less and less as a lifelong union. Families are having fewer and fewer children, and more and more children are born out of wedlock. So one of the "unintended consequences" of the bill might be to add welcome recruits to the ranks of the married, even if these recruits are of a historically unusual kind.

After much soul-searching, I voted for the bill, though without any acute sense that I was striking a blow for freedom. There is a clear status benefit to the minority, no obvious harm is being done to the majority, and the long-term consequences are unfathomable. In the end, it seemed a no-brainer.

Yet it left me uncomfortable. Every institution, Mill wrote in "On Liberty," had to justify its keep. If it could not, it deserved to be swept away.

But what counts as justification? The very institution in which I sit, the House of Lords, has no rational justification in terms of its composition or powers. But the very longevity of an institution like marriage is some mark of its worth. At the least, prudence should give the reformer pause.

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