



**Feminism and the Same-sex
Marriage Debate**

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MARRIAGEQUALITY

This paper surveys some of the major arguments within the feminist movement in the debate on same-sex marriage. It asserts that formal equality before the law is a fundamental principle of human rights and as such must be a core objective for all feminists. The case of the right to choose to marry is one instance where there remains clear and systematic discrimination in that a civil institution of immense legal, economic, cultural and symbolic power is maintained solely for the protection and benefit of one group in society – heterosexuals. While the arguments against the institution of marriage within feminism are legion, these are necessarily weakened by their focus on heterosexual arrangements. This paper argues that marriage as currently framed in Ireland functions to perpetuate heteronormative gender roles and that winning the right to choose to marry would have a radical and positive impact on the institution and, importantly, on the practical issues faced by families who are currently denied access to it.

For many lesbians and feminists, the issue of same-sex marriage is inextricably linked with the longstanding critique of marriage as an institution. Radical feminist assessments have remained remarkably consistent in their portrayal of its differing and unequal effects on men and women, despite the many legal and social changes that have taken place over the last one hundred years. Marriage has

been shown to offer men a better, longer, healthier life with greater freedom and more power, while it has the opposite effect on women, limiting, impoverishing and in many cases providing a context that leaves them vulnerable to spousal violence and abuse. It symbolises male supremacy and female subordination and the intersection of these with the state. It prioritises couple relationships and heterosexuality and sets them up as the criteria for the attribution of social status; it makes these the norms against which all other relationship forms are measured, and in addition it has been the privileged context for reproduction and childrearing. Marriage and the family have been historically, and continue to be, a site of oppression of women and are therefore placed at the centre of feminist critique, theorising and law reform projects. While individual women may well within their own marriages challenge traditional norms such as the sexual division of labour, though not very successfully as the recent Equality Authority report¹ shows, it is held that the socio-legal institution at a larger level still embodies patriarchal and heterosexist world views, modes of thought and behaviour.

It is beyond the scope of this project to discuss the various grounds covered by these multiple debates within feminist thought; rather the focus will be on the relevance and application of these critiques to the issue of same-sex marriage. The

¹The Equality Authority, (2008) *Gender Inequalities in Time Use - The Distribution of Caring, Housework and Employment Among Women and Men in Ireland*

political and legal status of lesbian and gay partnerships should be of central concern to LGBT activists; it is after all our intimate relationships that have been the focus of our marginalisation by heterosexuals. The removal of all formal inequalities must be a priority for any lesbian and gay political movement and the exclusion of any group in society from a choice to participate in a major social institution like marriage creates a subsidiary and secondary status for their relationships. Many feminist arguments against same-sex marriage are weakened by their sole focus on the oppression of heterosexual women (or at least women who married). These arguments are clearly inappropriate as a means of interrogating lesbian and gay marriage as they are based on the gender hierarchy of traditional marriage. Nor do they take into account the significant issues arising from the heterosexist displacement of lesbian and gay men from civil society. Heterosexual privilege is dependent on the right of access to the family, and legally sanctioned couple relationships. The ideology that we are unfit for family relationships and that the institution of marriage must be protected from us is central to lesbian and gay subordination. Whether one agrees with this system of social organisation or not, it is clear that marriage is a primary social institution, it is pertinent to almost every sphere of social interaction and thus our systematic exclusion from it is a marker of official, state endorsed second class status. It is

fundamentally unjust that lesbians and gay men are not free to access this social institution that has immense legal and symbolic power.

Theorists have argued that the same-sex marriage debate has led to a polarisation of views, and the framing of a dichotomy which demands that a stance is taken either for or against marriage without problematising marriage itself as a social and economic institution. It has been pointed out that very little room exists in the debate for any position other than absolute support for same-sex marriage or total opposition to it. For many, the act of coming out was a political statement that had the advantage of allowing the issue of marriage to be avoided. However, this political stance is complicated by the lived reality of being denied significant rights available to married people and the severe hardship and practical problems this can cause, which leaves many lesbian and gay people in a singularly uncomfortable position. Feminists are increasingly rejecting this false dichotomy and the notion that they must wholeheartedly embrace or reject the historic critique of this institution. Some lesbians persuaded by a feminist traditional anti-marriage point of view have nonetheless found themselves in the position of advocating for the right to enter a social structure they had criticised for years. Demanding the right to marry does not mean that one endorses the traditional conception of marriage.

It is not necessary for these women to argue that marriage in itself is a social good; equality is the social good towards which they are working.

Having access to it has not prevented heterosexuals from challenging traditional marriage; there is no reason to think that it will have this effect on lesbians and gay men. Lesbian feminists will continue to support a radical and democratic vision of family values that will include legal options to support chosen gender and sexual relational rights such as civil unions, domestic partnerships etc. *where they are open to all*. Ultimately the goal of feminism is to bring about a restructuring of society that allows for mutual participation of women and a valuing of their work. The extension of civil marriage to same-sex couples will not, by itself, bring about this change, but it will certainly contribute to it and as such can only be considered as integral to the broader feminist project.

A significant proportion of lesbian feminist engagement with the issue of same-sex marriage has been focused on the trenchant critiques of marriage as a heteropatriarchal institution oppressive to women. These arguments are numerous and convincing. However, the feminist radical voices in support of same-sex marriage are more compelling. Nan Hunter² argues that the legalisation

²Hunter, Nan D (1991) 'Marriage, Law, and Gender: A Feminist Inquiry' Law & Sexuality, 1: 9–30.

of same-sex marriage would radically denaturalise the social and political construction of male/female difference. The notion of lesbian and gay marriage challenges traditional gender roles and upsets the hierarchy that these distinctions maintain and support. Homophobia and heterosexism are founded on binary gender categories, the assumption that there are proper masculine and feminine roles and identities to which we should all aspire. The elimination of homophobia entails the removal of this binary.

The Gender Recognition Act (2004) in the UK allows transsexual people to marry a person of a different gender even if they have not undergone full sex reassignment surgery. This (in a jurisdiction that allows lesbian and gay men only access to civil partnership and specifically preserves marriage for heterosexuals) indicates that the different sex requirement of marriage is not as crucial as it might seem. What is more important for the maintenance of patriarchy is the requirement that both parties appropriately perform heteronormative gender roles. In the same way that the legal ban on interracial marriages served to maintain a racial caste in South Africa and parts of the USA, the prohibition on gay marriage keeps a gender caste intact. Access to civil marriage for same-sex couples would therefore have a beneficial effect on all women regardless of their sexuality or marital status.

It would also make lesbians and gay men more visible as couples, individuals, partners, family and full participants in civil society. It will contribute to a change in assumptions about who may love whom and the meaning and practice of parenting and reproduction.

As well as its social, economic and legal power, marriage also has huge symbolic power; it is far more than simply a set of rules. To remove the choice from lesbians and gay men to enter this social institution is to disenfranchise and degrade a whole section of society, regardless of whether as individuals they experience these feelings or would choose to marry. Rather than dismiss the pursuit of this right as liberal reformism, feminist theorists must grapple fully with the meaning of exclusion for all people. Exclusion from marriage on the grounds of race, ethnicity, religion or sexual orientation has been used throughout history as a tool of oppression. Forty US states once had anti-miscegenation laws on the statute books forbidding interracial marriage, the last of these only repealed in 1967 when the US Supreme Court overturned them in the Loving v Virginia case. Similarly in 1935, Nazis passed a law forbidding marriages between Jews and nationals of German or kindred blood. In 1985 the Immorality Act and the Prohibition of Mixed Marriage Act was repealed in South Africa, which up to then

had banned interracial sexual contact and marriage. Feminists who support civil marriage for same-sex couples argue that the preservation of the institution for heterosexuals only, is as offensive and discriminatory as the preservation of the institution for white people only or any other single group in society.

It is a basic principle of human rights that all citizens should be treated equally before the law and this principle will only be realised when we embrace and recognise diversity. Some theorists argue that extending civil marriage to allow access by lesbians and gay men would simply result in formal equality without effecting any substantive change. Just as ending racial segregation in the US has not eliminated racism, nor can access to marriage by itself eliminate homophobia, however it is hard to imagine arguing that racial segregation should therefore stay in place. A human rights perspective conceptualises the law as a barrier against injustice and a provider of equal privileges and benefits. When two individuals marry, they enter a private welfare system with differing consequences depending on their gender and income level. Feminists have noted that the assumption that individuals should rely on their families for support is especially problematic for women who tend to have less income and wealth. Other theorists argue for the substantial economic and practical advantages of marriage and that these benefit

the most economically disadvantaged lesbians and gay men. Couples seeking to protect their relationship and family through wills and other mechanisms in the absence of a marriage contract need significant resources, including knowledge and money. This is equally the case in the dissolution of a relationship not recognised by the state, where only those with these same resources can pursue an equitable distribution of joint assets. For lesbians and gay men in receipt of social welfare benefits, recognition of same-sex relationships by the state may mean that instead of being assessed as individuals cohabiting, couples will be jointly assessed in the same way that heterosexuals are. However, this would be the situation regardless of the manner of state recognition; in other words, we are as liable to this with the introduction of civil partnership as we are with marriage.

Civil partnerships or similar legal remedies where they exist, in general offer fewer legal benefits and protections than marriage. Full adoption rights are excluded in several countries, as are some social security and tax benefits. The use of different terminology for same sex-relationships and heterosexual marriage (e.g. ‘shared home’ in the recently published heads of bill on civil partnership in Ireland as opposed to ‘family home’ as it’s referred to in marriage law) reflects a real legal distinction between them.

Kitzinger and Wilkinson³ (2004) note that in the UK civil partnership was intended to offer all the benefits and responsibilities of civil marriage, however the difference in name functions to achieve a separation from that institution. They refer to this as a 'rebranding' exercise and point out that from the government's point of view it extends rights as well as state surveillance and control of lesbian and gay citizens while preserving the privilege of marriage itself exclusively for heterosexuals. Despite the fact that civil partnerships can include many of the benefits and obligations of marriage, and that the socio-legal and political structures they reflect are hugely similar to it, they have not been the subject of extensive feminist theorising.

Civil partnership legislation mirrors and reproduces the two key areas that have always been central to the feminist critique of marriage - it focuses on the nuclear family as the basic unit of social organisation and it constructs a privatised legal relationship between members of a couple and that couple and the state. It would appear on the face of it then that many theorists are disturbed only by the label and symbolism of marriage and not the civil institution or contract itself. As Kitzinger and Wilkinson (2004) point out, achieving the separation between marriage and civil partnership thus both appeases those conservatives who wish to

³ Kitzinger, Celia and Sue Wilkinson (2004), *The Re-branding of Marriage: Why we got married instead of registering a civil partnership*, *Feminism and Psychology* Vol 14 (1):127-150

protect the institution of marriage from same-sex couples while also reassuring those feminists who wish to ‘protect’ queer culture from the assimilation that they see access to civil marriage bringing about. From a human rights perspective, the introduction of civil partnership legislation could be a useful addition to marriage legislation, but only if it is open equally to all. To restrict it only to same-sex couples, particularly when this group are not free to access civil marriage, is discriminatory, segregationist and is a clear incarnation of homophobia in legislation.

Such an arrangement also creates a hierarchy of state recognised relationships with marriage placed firmly at the top. There can be little doubt about this when the situation regarding recognition of foreign civil partnerships is examined. The recently published heads of bill on civil partnership indicated that there will be a mechanism in the law for recognising equivalent partnerships entered into in other jurisdictions. However, in France where same-sex couples are not free to marry, the civil partnership laws are open to, and have been extensively exercised by, heterosexuals. How will a heterosexual civil partnership be recognised or understood legally in this country? If heterosexuals are barred here from entering a civil partnership arrangement it seems anomalous that foreign arrangements

could be recognised. The normal reciprocal recognition of marriage arrangements are suspended in several jurisdictions when these marriages are between members of the same sex. Katherine Zappone and Ann Louise Gilligan's marriage in Canada is not recognised by the Irish state. While in the UK, Susan Wilkinson and Celia Kitzinger's valid Canadian marriage is recognised only as a civil partnership. Given the stigma still attached to homosexuality, civil partnership can only be read as secondary to marriage, particularly when these legal arrangements are constructed in a context where much of the discourse concerns the 'protection' of marriage.

Same-sex marriage turns on its head the biologicistic and 'natural' cultural assumptions surrounding reproduction and the family; it carries the potential to subvert and overthrow the historical conception and implications of marriage. By so doing, the ideology and romantic myth of marriage that has long been critiqued by feminists is uprooted from its traditions. We should have access to the same legal routes to protect our relationships and families as heterosexuals have, because the situation is otherwise deeply discriminatory and acts to support and maintain a patriarchal and heteronormative agenda.



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