

Chapter 6.10 Gay Marriage

This chapter explains what the state should do about marriage, in particular whether the state should recognize gay marriage equally with straight marriage. I think the state should recognize only civil unions for any people, gay or straight. If the state insists on recognizing marriage, then it should recognize gay marriage. This chapter is not about the morality of homosexuality, heterosexuality, or any sexuality, or about the morality of any kind of marriage. Some readers will think I am dodging the issue, so I give a lot of explanation. I do not like the word "gay" but here I go along with public usage. I use the term "gay-ness" to refer to the attitude and to the sexual orientation. I use the terms for men and women. I know of no accepted term like "gay" for transsexuals and trans-gendered people. Current usage sometimes extends "gay" incorrectly (I think) to them. They too should not be restricted by the state, so the argument here applies to them although they are not explicitly mentioned.

Core Points.

If we focus on the attitude of the state, and keep in mind the arguments of previous chapters, the situation is clearer than what we see in the media:

Gay people rarely hurt anybody. Gay people add to the sum total of human happiness when they enjoy themselves together and when they fall in love, just like straight people. There is little point in suppressing an activity that does little harm and sometimes does a lot of good. There is no point in committing the power of the state to controlling activities that do little harm and do some people a lot of good.

There is no strong case that homosexuality is immoral. As with straight sex, I think gay sex is morally neutral in general. I do not believe homosexuality is immoral in general. (Some gay acts might be immoral just as some straight acts are immoral; but that is not at issue here.) It is not up to defenders of gay-ness to prove that it is morally neutral. It is up to people who condemn gay-ness to prove that it is immoral.

Even more, if people who condemn gay-ness assert that it is immoral, it is up to them to prove it is so immoral that the state should get involved. The state allows many kinds of immorality because it is not up to the state to commit its power to controlling all kinds of immorality. The state does not control all kinds of lying. The state should only commit to controlling some kinds of immorality. Even if gay activity is immoral, gay activity is not one of the immoralities with which the state need bother.

God would only collectively punish the United States for being tolerant of homosexuality if homosexuality was immoral. I see no evidence it is. God will not collectively punish the United States for not suppressing gay people. God will not collectively punish the United States for allowing gay people most of the same rights as straight people. It is not up to people who accept gays to prove God will not punish the nation for tolerating gays. It is up to people who think gay-ness is sternly against God's will to prove that God will punish a nation for tolerating it.

Even if people who condemn gay-ness can make a case that homosexuality is immoral, they still have to prove homosexuality is the kind of immorality for which God would punish a nation collectively. God does not punish a nation for all badness; God does not punish a nation for excessive drunkenness. God does not even punish the United States for allowing atheism and other religions, that is, for idolatry, the worst sin in the Tanakh. God does not punish the United States for violating the Sabbath.

Even if homosexuality was the kind of immorality over which God was seriously piqued, the people who condemn gay-ness have to show why a secular state should commit its power to controlling a behavior that annoys God. Even if people who condemn gay-ness could show that God did not like homosexuality, it is not clear what the nation should do.

In summary: Homosexuality can add to overall happiness by allowing the happiness of some people. Homosexuality is not hurtful and not immoral, and God will not punish the United States for allowing gay people to lead a normal life. There is no case for using the power of the state to control gay people, and a good case for the state not being involved at all.

Ideally, the state should have nothing to do with marriage. The state should establish civil unions, especially when children are involved. Gay and straight people both should have equal access to civil unions and be covered equally by the rules of civil unions.

If the state does have to get involved in marriage, and sanctions straight marriage, then the state should sanction gay marriage as well.

Religious people should think of better ways to spend their religious zeal, and to be good decent citizens, than to go after gay people.

In More Depth.

The state should not serve as the instrument of any morality except when the morality is needed to preserve general order, basic morality, and common decency. The state should not serve as the instrument of the morality of any particular religious, ethnic, or gender group. When the state gets involved in one moral dispute, then it gets involved in other disputes, gets too involved, and acts as the partisan for one group. It is better to make the mistake of too little involvement than to make the mistakes of too much. I think a lot of people are morally horrible but I do not want the state to be the instrument of carrying out my moral judgment.

Marriage of any kind is no business of the modern state. The state gains nothing from recognizing marriage in general or any particular kind of marriage. The state should stop recognizing marriage in general or any kind of marriage. Instead, the state should substitute voluntary registration of consenting adults in partner relations, now called "civil unions".

In the past, various states have recognized various marriage patterns because it was in the interests of the state to do so. Jewish, Roman, and European states all recognized their versions of marriage based on their needs. Polygamy has been recognized when useful. The recognition that the present American state gives to marriage is a holdover from the past, molded somewhat to fit present state needs. Just

because states in the past recognized marriage to suit their needs then does not mean recognizing marriage suits needs now, recognizing marriage suits needs better than registering civil unions, or we should recognize marriage even if recognizing it does suit some needs.

The state needs to keep track of who is responsible for children. The state needs to keep track of some personal relations, such as for purposes of inheritance, insurance, liability, pensions, and medical care. A common human relation is coupling, and the state can recognize a coupling relation for the purpose of taking care of children and other needs. Recognizing a coupling relation does not amount to recognizing marriage. Couples are sometimes called "partners".

People may declare as a partner whoever they wish for whatever reasons they wish. The declaration should not be unilateral or against the will of anybody. Usually it should be mutual. The state can recognize a mutual declaration between consenting adults when consenting adults register with the state.

If people wish to get married, they can go to a religious institution. The institution would decide who was eligible or not eligible. The policy of the religious institution would be no business of the state. Getting married in a religious institution would not automatically lead the state to consider two people to be a couple (partners). The people would have to register separately with the state.

Ordinarily if a person got married, he-she would register the marital partner as his-her legal partner as well. Even though a person ordinarily registers his-her marital partner as his-her legal partner, the two events are logically and legally separate. One does not entail the other.

A person could marry one person but recognize another as his-her partner. That would be rather odd, probably callous, and maybe immoral, but it would not be the business of the state. The state would be concerned only with the legal registration.

Two registered people would have legal obligations to each other, such as for support. I do not know if the legal obligations would be symmetrical but probably so. Two married people that were not also registered would not have any legal obligations. Anybody that got married but did not also register would accept a certain risk.

The state should recognize partner registration (civil unions) in foreign countries and should recognize marriages in foreign countries as equivalent to partner registration here, especially if foreign countries do not have partner registration.

If we had universal health care and universal retirement, a person would not have to get married to obtain support, and getting married would not necessarily confer any better support than not being married. A person would not have to register in a union to obtain support, and registering in a union would not necessarily confer any better support than being registered. Universal health care and retirement would make registration a much clearer and more egalitarian relation than current marriage. People would register, and stay registered, because they wanted to, not because they had to. Universal health care and retirement would lessen a lot of other social problems.

Biblical Point of View.

Traditional Jewish culture, and original Christian culture, clearly disliked male homosexuality, especially male transvestite homosexuals. It is not clear what Jewish culture felt about male transvestites who were not homosexual – the most common case of “cross dressing”. I suspect Jewish culture would have disliked but not condemned. We cannot avoid accepting that Jewish culture disliked male homosexuality, although we can find voices of tolerance in the Bible amid the general disapproval. It is not clear what traditional Jewish culture and early Christian culture thought of female homosexuals and transvestites, but likely they disapproved. The Bible appears more concerned with regulating particular acts than with sexual orientation apart from acts. Contrary to popular opinion, Biblical texts on gay-ness are sparse, are not conclusively against it, and are not harsh in the recommended punishment except for one text that recommends death for gay men who have sex wherein at least one partner acts like a woman.

The Bible (Tanakh) called for death for many “crimes” that we let slide nowadays, such as neglecting burnt offerings, improper burnt offerings, disrespecting parents, working on the Sabbath, collecting interest, and adultery by women. We select acts from the Tanakh that we want to abhor. We pick the acts we abhor to use as tools in disputes with other groups and as tools to get the state to be our agent of power. The Bible did not single out gay behavior as one of the acts that we have to worry much about now. Likely Jewish culture did not worry about the problem nearly as much as do modern Christian anti-gay activists. Many Christians, Jews, and Muslims work on the Sabbath, make employees work, or work at a firm that is open on the Sabbath even if they do not work on the Sabbath themselves. Many Christians, Jews, and Muslims still collect interest not only from other religious groups but from their own people. Many of them work for banks that collect interest without regard to religious group. The Tanakh condemns breaking the Sabbath and collecting interest far more harshly than it does homosexuality. If we were consistent with all Biblical texts, then many upright standard Christians, Jews, and Muslims, who oppose homosexuality, should be stoned to death right now in front of their own congregations. We need a theory of what texts to be strict about and what texts to let slide that is not based on self-interest.

Jesus' view, the view of original Christians, and the view of traditional Jewish culture, were not necessarily all the same. We cannot know for sure what Jesus thought of gay people. Likely, he would not have approved of some acts such as when one man behaved like a woman but he would not have condemned harshly either. I do not know if he would allow acts in which people did not behave like the other gender. Remember, Jesus was celibate. Jesus thought the world would soon change drastically, and people would not have the usual marital and sexual relations. Many Christians became celibate while waiting the imminent arrival of the Kingdom. Some Christians became celibate because they disapproved of sex in general, contrary to Jewish culture and the apparent views of Jesus. Jesus probably would have told gay people to suppress their actions until the Kingdom of God arrived, and then God would sort it out. He might have allowed them consensual sex if no man acted like a woman. I do not know what Jesus would have told men transvestites who were basically heterosexual. What God would allow, nobody knows. The term “eunuch” could mean a castrated man or a gay man, and Jesus said that eunuchs should be allowed into the Kingdom of God. Until it became apparent that the Kingdom of God would not soon arrive, that decision about eunuchs is what early Christians first told homosexuals, thereby implying that homosexuals could enter the Kingdom. After it was apparent the Kingdom of God was not imminent, statements in early Christian literature against gay men seem to have gotten harsher. I do not know if there is a link, or why. Nobody knows what Jesus would have said if he knew the

Kingdom of God would not arrive soon. I think he would allow consensual non-hurtful sexuality that was done discretely, but my judgment might reflect my liberal bias.

Just as most Christians do not agree with Jesus on violence, we do not have to agree fully with Jesus on homosexuality. If Jesus followed Jewish tradition and looked down on men who participated in sex acts as if they were women, we can disagree with Jesus. If Jesus disallowed any homosexual conduct regardless of what role the actors took, we can disagree with Jesus. If Jesus would have allowed homosexual acts if they men did not act like women, but Jesus was silent otherwise, we can agree with him. We can allow all consensual acts wherein nobody is hurt. We just have to be honest about where we stand, and why. We have to be honest if we think we disagree with Jesus but want to go ahead with our opinion anyway, and why.

It is easy to use the Bible to argue incompatible positions:

(1) All homosexual feelings and all homosexual acts are immoral and so should be totally suppressed. In the strong form of this argument: homosexual people should be killed.

(2) Homosexual acts between men are sometimes permissible as long as neither one acts or dresses as a woman. Perhaps homosexual acts between women are sometimes permissible as long as neither of the women acts like a man, although the texts on women are sparse and unclear.

(3) Regardless of the writings of early Christians, the spirit of Jesus' teachings would have us accept gay people and allow them to be themselves, to be gay, as long as they do not hurt anybody. Since they are not likely to hurt anybody, no special provision for gay people is necessary.

(4) Gay people cannot change how they feel but they should suppress acting gay even if gay acts do not hurt consenting adults. They should not have homosexual sex and should not dress as the opposite gender. I think this is the position of the Roman Catholic Church, the Eastern Orthodox Church, and of some other major Christian churches.

None of these four arguments can prevail on the basis of Biblical proof texts. So we have to decide for ourselves using other criteria as well. I do not like making people suppress behavior that does not hurt anybody else, and I do not find gay acts immoral, so I opt for argument (3) even without being sure Jesus would go along. Jesus will not condemn me to hell if I disagree with him on this. There is a lot worse immorality to be worried about.

Accepting gay people freely without requiring them to give up gay-ness might be a stretch of original Christian ideals of acceptance but other changes that we do not think about now were probably bigger stretches in their time, such as Christians in the military or the police, or Christian politicians. To early Christians, the modern Christian warrior might seem more immoral than the gay man worshipping quietly in the back pew, and the modern Christian politician might seem a lot more disruptive to Church order and general social order.

Regardless of how I feel or anybody feels, the real question is what the modern state should do about it. On that, see above.

Current Culture Fighting.

The fuss over gay-ness and over gay marriage is a lot more fuss than the issue deserves. The easy and obvious thing to do is treat gay people as much like anybody else as possible, and most people know that. The fuss is not really about whether gay people are real human beings like everybody else or about whether conservatives are real human beings like everybody else. The fuss is not about abstract issues such as big government or small government, the idea of consenting adults as a moral principle or as a political principle, the role of traditional religious texts in morality, the spirit of Jesus' teachings versus the letter of early Christian writings, or the spirit of Jesus' teachings versus the letter of the Old Testament (Tanakh). The fuss is not about preserving the idealized nuclear family against moral erosion, about greater diversity, or even about any morality. The fuss is really about the "culture wars" and about power; but to explain would require another book. Our society has split into two groups, locked in combat. The groups are not content to let the large majority of decent people carry on with their lives but seem intent on winning. They use issues as ploys to sort people into sides. Even if they care a bit about the issues, the content is less important than using the issues for litmus tests. Both deniers of gay freedom and advocates of gay freedom are too often foot soldiers and cannon fodder in the culture-and-power wars. Problems over gayness are a ruse to let people fight for power behind the scenes. Many of us are disgusted and we do not want to be pawns in somebody else's war. We have a way out if we want it through refusing to let either side use the state as a moral agent. To keep the culture warriors from using the state as a moral agent, we do not let anybody use the state as a moral agent; we minimize the role of the state as anybody's moral agent. Just say "No" to the culture wars. This way out not only settles the issue but also reinforces the proper role of the state in general.

Marriage.

Originally Jews and Christians did not get married in a temple or church, and marriage was not a sacrament. How it became a sacrament that takes place in religious holy setting is a separate story.

Whether a church (or Jewish congregation) will marry gay people is up to the church. If one church will not marry a gay couple, the couple can always join another church. If a gay couple insists on getting married but will not join a church, then too bad for them. The same is true for straight people. On the whole, I would rather see gay people get married, pretty much like straight people. From what I have seen, they love each other about as much as straights, intend to care for each other about as much, and make about the same mistakes; so there is no big reason for most churches not to let them marry.

I do have one reservation, and this reservation will bring down PC ire, so I better preface it with a story. A black panther is actually a variation of a regular leopard. It has spots too but its fur is so dark that you cannot see the spots unless you look closely. A black panther is still a natural kind in itself, but we should see a black panther in terms of the regular leopard, not see a regular leopard in terms of a black panther, and not see a black panther wholly apart from a regular leopard. I have a blood condition that is like a mild version of sickle cell anemia. To understand my blood, it is best to see my blood as a variation of common normal blood. My blood is useful in its own right in some settings but my blood would be a puzzle if we did not know first how normal blood works. Some things in nature really are

prior, and really do form the basic mold for later things, even if later things have an identity in their own right and are interesting in their own right.

In the same way, we can see most gay sex and gay emotional relations as based on straight sex and straight emotional relations. The basic mold is heterosexual sex and emotional relations. The basic pattern is male and female, with natural variants. This does not mean that only heterosexual love and sex is moral and that everything else is necessarily immoral. This does not mean gay sex is deviant, perverted, degenerate, not a thing in itself, or necessarily immoral, any more than a black panther is. It does not mean a gay man is really a woman or a gay woman is really a man. It does not mean there are really only two sexes (genders), and we have to see everything narrowly in terms of our stereotypes of two sexes. It means gay sex and gay relations are naturally recurring variants on an underlying pattern, naturally recurring variants with status, identity, and persistence of their own – natural kinds. Gay sex and gay relations are a natural type that is a variation on another natural type. The real situation is more complex and interesting than any stereotypes, including those gay people have of themselves. Gay people are what they are, like black panthers. Gay people are likely a variant that necessarily recurs in the normal operation of human sexuality. They are like the green eyes or hazel eyes that occur in a mixed population of blue eyes and brown eyes. They are like the pink roses that are normal in maintaining red roses and white roses, and that we could not eliminate. They are like the various shades of skin color that naturally recur in a temperate land where both light and dark skin are useful in their own ways yet neither pure variation can stand on its own. Thus they are as much a part of normal sexuality as stereotypical men and women. As with any naturally recurring variant, they have been part of the normal genetic relations that lead to the recurrence of all variants. They have, or had, uses in our evolutionary past that we now do not see clearly because we are removed from our origins and our minds are clouded by ulterior motives. Kurt Vonnegut understood this idea in his novels when his alien heroes saw half-a-dozen genders among humans, several of which were necessary for reproduction, including gay men.

The problem with recognizing gay marriage is that to do so de-stresses the importance of straight marriage. This is part of the conservative objection. Even though gay people are a recurring variant with an identity of their own, straight people are still the common and underlying pattern – like normal blood is to my blood. Straight people are still the usual way to make children; straight people are still needed as “breeders”, at least so far. In fact, many gay relations are modeled after modern straight liberal middle class liberal “sensitive” stereotypes. Many gay families are modeled after idealized relations of modern middle class liberal “sensitive” straight families, perhaps mostly among lesbians with children; see “The Kids are Alright” and/or follow on TV any gay male celebrity couple that adopts children. Straight sex life and emotional life are difficult. Gay sex life and emotional life are not easy. Gay people have their share of jealousy and confusion. But gay people do not have to work across genders. Straight life is basic and hard. Even when we recognize gay marriage, there ought to be some way to additionally recognize the basic-ness, special role, and difficulty of straight marriage.

Unfortunately, I cannot see any way to give straight marriage a special role without also making everything else third class, including gay marriage. It is better to recognize gay marriage and to risk under-appreciating straight marriage than to doom gay people to third-class citizenship so as to extol idealized straight marriage. I do not have a good solution to this problem.

Many gay people are sensitive to this problem, probably more so than straight people are sensitive to how gay people feel. I doubt most gay people want to impose their will just for the sake of imposing their will (except when they fight as foot soldiers for the power blocs in the culture wars). They want to be treated like full human beings, and are sorry they cannot give straight people due recognition too because they know what it feels like not to get due recognition. If any gay people could have come up with a good solution that gives full due to all kinds of people and marriage, they probably would have done so by now. In the meantime, allow gay marriage.