

LIBERAL ANDROGyny:
“GAY MARRIAGE” AND THE
MEANING OF SEXUALITY
IN OUR TIME

• David S. Crawford •

“The person as such has been
rendered androgynous.”

Why can't people just be tolerant of those with different sexual orientations? This basic question must be pondered by anyone who considers the issues swirling around the current “gay rights” movement. Indeed, the gist of this question was raised last year by the Deputy Prime Minister of Spain, when she wondered aloud why protesters of the new law allowing gay marriage and adoption rights should be so concerned. She observed that the new law “does not oblige anyone to do anything they do not want to do.” The new law does nothing more than open up existing rights to a new minority, she suggested. It does not detract from the rights already enjoyed by the majority.¹

¹“Gay Marriage Bill Draws Madrid Protest,” *The Washington Post* (Saturday, 18 June 2005), reported by Ciaran Giles. We find a similar statement from Congressman Barney Frank, in a response to Congressman Henry Hyde: “How does [same-sex marriage] demean your marriage? If other people are immoral, how does it demean your marriage?” (quoted in Michael Warner, *The Trouble With*

For many, perhaps most people, the argument latent in our opening question has an almost compelling force to it. What is this argument? It begins in the presupposition that any objection to “gay rights” generally—and to “gay marriage” in particular—must be based on a morality grounded in private opinion. Because each of us must determine for himself what sort of life would be best, the goal of society and of its juridical structures is to maximize the freedom of individuals to make this determination. Of course, limits on individual freedom would be necessary where the use of that freedom begins to harm someone else or society as a whole. But judgment about any harm to society cannot be grounded in “private morality.”

Once moral objections are shown to be grounded in a conflation of the public and private domains, the rest of the analysis falls into place along the lines of standard liberal analysis. “Homosexuals” constitute a particular group in society, whether by choice, immutable predisposition, or a combination of these. This group—again, once private morality is taken out of the equation—is not in any essential way different from other analogous minorities, such as racial or ethnic groups,² as far as legal and political considerations are concerned. If these minority groups are entitled to protections and the benefits of the majority, why shouldn’t “sexual minorities” also be so entitled?

Because this basic line of argument—by far the most influential in the current debate—clearly flows out of the liberal tradition of “rights,” I will refer to it as the “liberal model.”

Normal: Sex, Politics, and the Ethics of Queer Life [Cambridge, Mass.: Harvard University Press, 1999], 81).

²Both explicit and tacit comparisons of race and “sexual orientation” are ubiquitous in academic and popular literature, as well as in political and legal discourse (*Goodridge v. Department of Public Health*, 798 N.E. 2d 941, 965, 971 [Mass. 2003]). Legal arguments for gay marriage regularly draw on *Loving v. Virginia*, 388 U.S. 1 (1967), in which the Supreme Court struck down Virginia’s anti-miscegenation law. Reliance on *Loving* has nevertheless recently encountered resistance in the courts: cf. *Andersen v. King County*, Wash. S.C. slip op. 75934-1, at 58 (Wash., 26 July 2006); *Hernandez v. Robles*, N.Y. slip op. 5239, at 17–18 (2006), although the discussion typically continues to presuppose a framework in which heterosexuals and homosexuals are seen as alternative social categories or “types” and therefore as a “sexual majority” and a “sexual minority.”

Now it is my contention in this article that this liberal model, however much it has dominated the legal movement toward gay rights, both in America and elsewhere,³ is finally incoherent. In order to see this incoherency, the first part of this article will examine a couple of variations on the model, as well as the strong criticism leveled at it by more radical thinkers, such as Michel Foucault. The second part of the article will argue that the push for gay marriage presupposes the subordination of the masculine and the feminine to the polarity of alternate "orientations." In doing so, it fragments the integrity and interior relation of basic elements of the human being: the sexualized body, desire, freedom, and love. Finally, it will be concluded that the liberal push for gay marriage amounts to a re-grounding of society on an essentially gay (and therefore fragmentary) anthropology.

³The liberal model can be seen in the rapidly expanding list of countries that have, through various combinations of judicial and legislative action, allowed marriage or similar legal benefits for and recognition of marriage-like unions, as well as adoption, for homosexuals. Britain, Spain, and Canada are among the most recent of these. Other countries that have made similar legal reforms include: Belgium, which in 2003 legalized "homosexual marriage"; The Netherlands, which in 2000 authorized "homosexual marriage"; Denmark, which has allowed "registered partnerships" since 1989, a change that was then followed by Norway (1993), Sweden (1994), Iceland (1996), and Finland (2001). In 1999, France created the *pacte civil de solidarité* (or "PACS"); Germany allowed "registered partnerships" in 2001; New Zealand gave recognition to homosexual "unions," without changing the marriage statute, in 2004. Other states, such as the city state of Hong Kong, are currently attempting to sort these issues out precisely through the lens of a liberal notion of the possible "extension" of the same rights to a "sexual minority." The South African Constitutional Court ruled last December that the South African marriage laws "represented a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need of affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples." The court allowed Parliament one year to amend the marriage statute to eliminate its discriminatory character, after which time the court would itself construe the statute in "gender-neutral" terms. In America, only Massachusetts thus far provides for "gay marriage," although Vermont (through court mandate) and Connecticut (through legislative process) provide for civil unions. On the other hand, the highest courts of Washington State (in *Andersen v. King County*, supra) and New York (in *Hernandez v. Robles*, supra) recently handed down rulings rejecting arguments that limiting marriage to the union of a man and a woman violated their state constitutions. As we shall see more thoroughly below, however, the way in which the arguments are framed is nevertheless crucial. On this point, the Washington and New York rulings remain ambiguous.

I. Liberal and Radical Views on Gay Rights

1. The liberal model

a. *Marriage and life's mysteries*. Recall the famous statement of the United States Supreme Court in the 1992 abortion case, *Planned Parenthood v. Casey*:

At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.⁴

This passage, it seems to me, constitutes one of the most important modern statements of the basic liberal promise.⁵ As the statement makes clear, this promise is to provide and protect the liberty of individuals to adopt their own private understanding of the most profound elements—"the mystery"—of human life. The Court's later use of this passage makes it clear that a crucial part of these profound elements is the meaning and content of human sexuality and intimacy.⁶ Correspondingly, a primary goal of the liberal state is to maintain its own legal neutrality in the face of such acts of self-definition. In other words, it is precisely the most important questions in life that liberalism seeks to defer to individual liberty.⁷

When we consider the current debate regarding "gay marriage," we can see that the various positions are rooted in the most profound questions of the identity and destiny of the human

⁴*Planned Parenthood v. Casey*, 112 S.Ct. 2803, 2807 (1992).

⁵Its importance can be seen in its obvious influence on other landmark decisions: e.g., *Lawrence v. Texas*, 123 S. Ct. 2472, 2481 (2003); *Goodridge*, at 948.

⁶*Ibid.*

⁷Cf., for example, *Lemon v. Kurtzman*, 403 U.S. 602 (1971), involving public funding of Catholic schools, where Chief Justice Burger, writing for the Court, tells us: "Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. The potential divisiveness of such conflict is a threat to the normal political process" (at 622, citations omitted).

person. Indeed, marriage is among those issues that quickly turn on basic assumptions concerning the meaning and purpose, the "mystery," of human life. As the Massachusetts Supreme Court put it, marriage is "among life's momentous acts of self-definition."⁸ This is precisely the reason liberalism seems to recommend itself to many people as the best way to deal with a cultural issue as divisive as "gay marriage."⁹

Now, as already noted, liberal arguments in favor of gay marriage regard homosexuals as a "sexual minority" analogous to other types of minorities, such as those defined by race. As in previous civil rights battles, what is sought is assimilation into *existing* structures and institutions. But this goal in turn presupposes that it is possible to extend the same rights and benefits to homosexuals, and this in turn suggests that it is possible to do so without threatening their fundamental meaning in any substantial or socially-culturally critical ways.

This presupposition would seem to be implicit in the plea for tolerance with which we began. It is also implicit in the arguments posed by the somewhat conservative gay rights advocate Andrew Sullivan: "Why would accepting that [homosexuals] exist, encouraging them to live virtuous lives [by means of marriage], incorporating their differences into society as a whole, necessarily devalue the traditional family? . . . [Homosexuals] are not sending any social signals that heterosexual family life should be denigrated."¹⁰ We see similar assurances in the landmark court decision requiring legal recognition of "same-sex marriage" in Massachusetts, *Goodridge v. Department of Public Health* (2003):

[T]he plaintiffs seek only to be married, not to undermine the institution of marriage. They do not want marriage abolished. They do not attack the binary nature of marriage, the consanguinity provisions, or any of the other gate-keeping provisions of the marriage licensing law. Recognizing the right of an individual to marry a person of the same sex will not diminish the

⁸Goodridge, 955.

⁹As Andrew Sullivan tells us, "When the subject of homosexuality emerges, it is always subject to emotive passion, and affects matters of religious conscience. These are areas liberalism was invented to avoid . . ." (*Virtually Normal: An Argument About Homosexuality* [New York: Vintage Books, 1995], 158).

¹⁰*Ibid.*, 111.

validity or dignity of opposite-sex marriage, any more than recognizing the right of an individual to marry a person of a different race devalues the marriage of a person who marries someone of her own race. If anything, extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities.¹¹

Crucially, these assurances of the benign effects of assimilation into the existing institution of marriage are typically bolstered by an important subsidiary argument: “same-sex” couples are often depicted as essentially the same as “opposite-sex” couples, but for the lack of biological sex difference of the “partners.” The Massachusetts court, for example, emphasized the long-lasting relationships of the plaintiffs and that many of these couples had children, either by an earlier heterosexual relationship or through the use of “reproductive technologies” or by adoption.¹² They are “our neighbors and coworkers.” They pay taxes and participate in all aspects of the civil community. The court emphasized the respected and unimpeachable character of the plaintiffs, their position within the civic community, and the ways in which it conformed to the “normal,” even middle-class character of many “opposite-sex” marriages. The plaintiff couples are not, the court suggests, nonconformists living on the margins of society. Rather, “same-sex couples” are in all pertinent matters the same as “opposite-sex couples”; the only real difference is one of “orientation” (the biological sex of their partners). Thus, “heterosexuality” and “homosexuality” are nothing other than “alternate,” but nevertheless essentially equivalent “orientations,” and are therefore similarly situated with respect to the question of the civil institution of marriage.

In emphasizing this basic likeness, the court felt it could resolve the constitutional issues raised by Massachusetts’s marriage laws by merely employing the word “persons,” rather than gender-specific terms such as husband and wife or man and woman, in its

¹¹Goodridge, 965.

¹²Joint adoption by gay couples was made available by statutory interpretation in Massachusetts in *Adoption of Tammy*, 619 N.E. 315 (Mass. 1993). Here also the court emphasizes the upstanding, middle-class character of the lesbian couple in question, their position in the local civic and professional communities (including their faculty positions at Harvard), their psychological health (as supported through the testimony of a Harvard psychologist), and their active participation in the local Catholic Church (and the approval of several nuns and their pastor) (at 317).

revised definition of marriage: "the voluntary union of two persons as spouses, to the exclusion of all others."¹³

Now the difficulty with declaring this alikeness in relation to marriage is that it would appear to require a prior positive claim with respect to the nature of marriage itself, which, as we have said, very much seems to turn on a view of life's ultimates. For example, the Massachusetts court declared that the "'marriage is procreation' argument singles out the one unbridgeable difference between same-sex and opposite-sex couples, and transforms that difference into the essence of legal marriage."¹⁴ Having thus dismissed procreation's inherent relationship to marriage, the Court then feels justified in proposing an alternative essence:

While it is certainly true that many, perhaps most, married couples have children together (assisted or unassisted), it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the sine qua non of civil marriage.¹⁵

Consider the similar argument of Andrew Sullivan:

[T]he center of the public [marriage] contract is an emotional, financial, and psychological bond between two people; in this respect, heterosexuals and homosexuals are identical. The heterosexuality of marriage is intrinsic only if it is understood to be intrinsically procreative; but that definition has long been abandoned in Western society. No civil marriage license is granted on the condition that the couple bear children; and the marriage is no less legal and no less defensible if it remains childless. In the contemporary West, marriage has become a way in which the state recognizes an emotional commitment by two people to each other for life. And within that definition, there is no public way, if one believes in equal rights under the law, in which it should legally be denied to homosexuals.¹⁶

A positive and decisive step has clearly been taken by both Sullivan and the *Goodridge* court: each has determined that marriage is most

¹³*Goodridge*, 969.

¹⁴*Ibid.*, 962.

¹⁵*Ibid.*, 961.

¹⁶Sullivan, *Virtually Normal*, 179–180.

fundamentally an enduring emotional commitment to which childbearing possesses an attenuated and uncertain relationship. This is the crucial starting point that allows both Sullivan and the Massachusetts court to argue that the two “orientations”—heterosexuality and homosexuality—are essentially equivalent and similarly situated.

While Sullivan and the court’s intention is clearly to maximize liberty for a new minority, doesn’t this starting point in fact imply a resolution by means of the state’s juridical structures of one of those very “myster[ies] of human life” it is the purpose of liberalism to leave unresolved? That marriage centers on the commitment of two people, rather than on the union of a man and woman and the procreative implications of their love, is certainly not a negligible consideration for most people’s lives as a whole. If the decision to marry is “among life’s momentous acts of self-definition,” the definition and form given to the institution itself would seem to dictate its human content and therefore to shape that “self-determination” in a rather substantial way. After all, isn’t something different—even radically different—mediated to the culture by these two ways of configuring civil marriage? Indeed, the ease with which liberals glide over this point is rather breathtaking. In the end, this reconfiguration of marriage represents a very fundamental shift, the shift toward the conception of a humanity composed of alternative but essentially equivalent “orientations.” And this has momentous implications for the philosophical (and theological) understanding of the human person driving culture. As we shall see more thoroughly in a moment, it implies grounding society and culture on an essentially gay anthropology.

b. *“Thick” and “thin” liberalisms.* It should first be granted, however, that there are different types of liberalism. Sullivan’s conservative version would appear to be especially vulnerable to the foregoing critique. Sullivan stresses that the state should not attempt to “inculcate virtue,” “promote one way of living over another,” or “celebrate one set of ‘values’ over another.” The state is not even intended to promote the liberal values of “understanding or compassion or tolerance.”¹⁷ Thus, liberalism entails “the right to freedom even if that freedom is abused, so long as that abuse does not harm the fundamental right of any other individual to abuse his

¹⁷Ibid., 139.

freedom as well."¹⁸ "Liberalism is designed to deal with means, not ends, its concern is with liberty, not a better society."¹⁹

Hence, at least with respect to the issues surrounding "gay rights," Sullivan rejects the tendency of some versions of liberalism to criminalize hate, since this amounts to a form of the very type of "thought control" liberalism is supposed to reject. Likewise, Sullivan opposes state intervention in private forms of discrimination, for example, in employment and housing, since these tend to undermine the very freedom of contract and property classical liberalism sought to protect. To end intolerance, private discrimination, and hate, it is better to work through cultural and social means other than law, he argues.

Thus, the liberal promise is to be realized through a purely formal and juridical sense of liberty. It is on this basis that Sullivan argues for legal equality: "all *public* (as opposed to private) discrimination against homosexuals [must] be ended and . . . every right and responsibility that heterosexuals enjoy as public citizens [must] be extended to those who grow up and find themselves emotionally different."²⁰

This brand of liberalism fits easily into the prescription discussed above: the state is to stay out of private lives and thereby maximize individual space for self-determination. But when it comes to the question of marriage, as we have seen, the state is called on to take the positive step of giving juridical form to "an emotional commitment." According to Jason Pierceson, it is precisely at this point that Sullivan's argument becomes inconsistent. While Pierceson applauds the "rich" development of personhood in Sullivan's discussion of same-sex marriage, he doubts that Sullivan's strictly negative account of liberty can support it. As an alternative, Pierceson proposes a "thicker" version of liberalism, promoting a positive recognition of human needs and flourishing. This thicker liberalism would understand that antidiscrimination laws are

not illegitimate attempts by the state to intrude into the private sphere, but attempts to guarantee that all individuals have equal access to society's benefits. Hate crime laws, then are not attempts at thought control but attempts to ensure that individuals can

¹⁸Ibid., 140.

¹⁹Ibid., 159.

²⁰Ibid., 171.

express their identities without fear of violence based on these identities.²¹

Here we have a liberalism that seeks to use the mechanisms of the state to educate and enforce a vision of society. Pierceson calls for a focus on “full personhood” and attention to “the ways in which dominant principles can inhibit the fullest development of each individual in a polity.”²² We can see that the basis for Pierceson’s greater willingness to intervene is the fuller realization of liberalism’s basic promise. Positive intervention by the state is necessary precisely so that a wider range of people will be able in practice to achieve that promise. Positive intervention, in short, helps to maximize liberty. The role of the state is not simply to step out of the way; rather, its role is to promote human flourishing, “the fullest development” of the individual.

This answer nevertheless continues to raise issues. Doesn’t the promotion of human flourishing require some concept of its meaning and content? Certainly, state policy makers must have a particular concept of flourishing, of what constitutes “development,” before they can begin to promote it.

The conundrum is only magnified when Pierceson raises the issue of gay marriage. He tells us that “same-sex marriage” “allows individuals the emotional stability and support that comes from a committed relationship, as well as all of the legal benefits that sustain economic prosperity.”²³ But, again, marriage involves the establishment of a civil institution with a juridical structure, benefits and duties. How can any liberalism, however “thick” or “thin,” consistently recognize and institutionalize one particular theory of the content of marriage without at the same time institutionalizing a particular theory of the good and of human destiny? Of course, there are many types of enduring emotional commitments that might or might not be personally enriching. How can even Pierceson’s liberal state select among these? Wasn’t it the starting point of liberalism that questions regarding the good and human destiny can have no public answer?

²¹Jason Pierceson, *Courts, Liberalism, and Rights: Gay Law and Politics in the United States and Canada* (Philadelphia: Temple University Press, 2005), 60.

²²*Ibid.*, 61.

²³*Ibid.*, 60.

Pierceson does not raise or respond to these problems. Nevertheless, the implications of his proposal are that concepts such as "full personhood" and personal "development" are in fact equivalent to liberty itself. This would seem to be the only way to avoid having to give an account of human flourishing's objective content outside of liberty. For state purposes, therefore, liberty *is* human flourishing, or, to put it another way, the human flourishing Pierceson wants the state and its juridical institutions to buttress and support is in fact liberty's perpetual reaffirmation. Hence, for all of his talk of "positive liberty," Pierceson's concept of liberty remains—at its deepest level—simply empty and formal. The "positive" steps to inculcate liberalism's ethical first principle and cardinal virtue—tolerance—are nothing more than a requirement of the implementation of this formal freedom. In the end, Pierceson's so-called "positive freedom" seems remarkably like Sullivan's "purely negative" freedom.

Hence, Pierceson's "thick" liberalism would seem to beg the same question as Sullivan's "thin" version. Both liberalisms are faced with the problem of how to give juridical form to an institution without effectively pronouncing on its human content. The only consistent answer would be the complete privatization of marriage. But this would amount to an annihilation of civil marriage itself, which as we have seen is something liberal supporters of "gay marriage" repeatedly and stridently insist they are not attempting to accomplish. Our basic question, then, is whether liberalism *can* keep its promise.

2. The radical critique

To address this issue more fully, we should consider the important critique of liberalism offered by writers and thinkers who would like to dismantle the concepts of gender and sexuality altogether. These thinkers argue that founding the "gay rights" movement on existing rights, such as the right to marry or adopt children, does not escape the social paradigm of "heterosexuality" as normative. Rather, the entire liberal conception of sexuality is radically contingent on particular social and historical constructions. "Sexuality . . . is a uniquely modern phenomenon and idea, constituted by a historically specific, institutionalized practice and

ideology.”²⁴ Thus, it is meaningless to search for empirical evidence that homosexuality is an “immutable” personal characteristic or that it possesses a genetic component.

Michel Foucault’s historical work on sexuality is an especially important source in the development of this position. There he warns us against reading our own categories back into different social and cultural situations. He tells us, for example, that the distinction between “homosexual” and “heterosexual” as “kinds” or “types” of persons or “orientations” is an alien concept to other times and places.²⁵ Rather, these dual figures are of recent provenance, deriving from nineteenth-century attempts to define normal and perverse sexual behavior. He argues that such categories simply mask “deployments” and “strategies” of domination; they serve public authority and control by setting up the ground rules and meaning of pleasure.

What we see as natural and outside history is therefore in reality simply another function and use of that most worldly and mundane reality: power. Even where sexual preference is seen as a matter of private choice, Foucault shows us that our choices themselves are packaged and defined for us. Thus, what we think of as our most intimate relations, as that which is most thoroughly private, is in reality only a condition of the historical and political. As Foucault puts it, “Power is everywhere.”²⁶ Thus, what we think is the content of our freedom, our own choices and preferences in intimate matters, is in fact only the appearance of freedom.

To speak of a “nature” of sexuality is therefore simply a veiled way of talking about the perpetual and savage struggle for dominance that underlies all social conventions and all philosophical and moral truths. When social groups and institutions can tell others who and what they are, they wield vast power. The control of language is the first and most important weapon in this veiled struggle. Liberation therefore entails above all else the disclosure of the vast lie contained in categories, types, and natures.

This connection between sexuality and power is expressed in an even more politically strident way by lesbian thinker Adrienne

²⁴Jonathan Ned Katz, *The Invention of Heterosexuality* (New York: Penguin, 1993), 172.

²⁵Michel Foucault, *The History of Sexuality II* (Vintage, 1990), 187.

²⁶Michel Foucault, *The History of Sexuality I* (Vintage, 1990), 93.

Rich. For Rich, "heterosexuality" should "be recognized and studied as a *political institution*."²⁷ Along with a number of other writers, she speaks of a "compulsory heterosexuality" that accompanies the heterosexual ideology. The phrase "compulsory heterosexuality" does not simply refer to laws criminalizing sodomy or even to the non-recognition of same-sex marriage. Rather, it sums up the seemingly infinite ways in which society directs girls toward oppressive, male-dominant relationships and causes women to cater to male prerogatives. The solution is radically to challenge the dominant "heterosexist" institutions of society, beginning most especially with marriage. Because the idea of "consent" evaporates under society's conceptualization of heterosexuality as normative and of lesbianism as perverse—because of the way the institutions shape this "consent" into a practical inevitability—marriage itself constitutes a form of slavery or even institutionalized rape. She derides the "ideology of heterosexual romance, beamed at [women] from childhood . . ." This "ideology" is mediated through every type of social communication, including "fairy tales" and the idea of "wedding pageantry."²⁸

The answer is lesbianism, not as an alternate "orientation," but as the full realization of womanhood, according to which women's relationships would be primary, rather than relativized and subordinated to the man-woman relationship. Countering the Freudian position that homosexuality is the result of psychological immaturity, Rich argues that *heterosexuality* is a "condition of *arrested sexual development*." It is the condition under which women have not been allowed to develop beyond mere acquiescence to male interests.

Thus, Rich thoroughly opposes the liberal quest for "gay rights." She opposes "[a]ny theory or cultural/political creation" that treats lesbianism as a "mere 'sexual preference,' or as the mirror image of either heterosexual or male homosexual relations" or "as an 'alternative life-style.'"²⁹

²⁷Adrienne Rich, "Compulsory Heterosexuality and Lesbian Existence," *Signs* 5, no. 4 (Summer, 1980): 631–660; 637.

²⁸*Ibid.*, 645.

²⁹*Ibid.*, 632.

Thus, if liberalism seeks to establish a fundamental likeness and equivalency between “different-sex” and “same-sex” couples, the radicals reject such parallelism. As Paula Ettelbrick puts it:

In arguing for the right to legal marriage, lesbians and gay men would be forced to claim that we are just like heterosexual couples, have the same goals and purposes, and vow to structure our lives similarly. . . . We must keep our eyes on the goals of providing true alternatives to marriage, and of a radical reordering of society’s view of reality.³⁰

This statement captures very nicely the point of distinction between the liberal and radical views. If the former seeks integration into an essentially unchanged set of social and cultural institutions, the latter recognizes that the question of the meaning of “sexuality” (or “sexualities”) necessarily requires a “radical reordering of society’s view of reality.”

Radical historian Jonathan Ned Katz, on the other hand, seems somewhat more open to liberal gains in the quest for gay rights. Like Foucault, he argues that the development of the category of “homosexuality” was necessary to offer bourgeois society and marriage their position of dominance. However, Katz criticizes Foucault for not focusing more resolutely on heterosexuality itself, a category that Katz stresses was “invented.” The division between the “homosexual” and the “heterosexual,” according to Katz, arose as a result of changing sexual mores, particularly during the nineteenth century. In puritan America, Katz argues, sexual normativity depended on its procreative character. Perversity was related to non-procreative sexual acts. Thus, adultery and fornication were suppressed by criminal sanction because they occur outside the procreative context and corresponding stability of marriage. Similarly, masturbation and sodomy were criminally suppressed because they also are non-procreative. As Katz puts it, they were considered a waste of precious resources for a fledgling society in hostile circumstances, where long-term survival was hardly guaranteed. Thus, homosexual sodomy was forbidden not so much as psychologically and emotionally aberrant, but simply because it was non-procreative.

³⁰“Since When Is Marriage a Path to Liberation?” quoted at <http://www.narth.com/docs/unrights.html>.

During the nineteenth century, however, the prevailing sexual ethic changed from one dominated by procreation to one based on pleasure. But such a new ethic requires a way to define what is normative and what is deviant. It is at this point that the categories "homosexual" and "homosexuality" emerge in the developing field of psychoanalysis. They describe the "alien" and perverse "other," over and against which "normal" sexual desires and pleasure can distinguish themselves. To say what is psychologically normal and morally permissible, it is first necessary to say what is abnormal and forbidden. "Heterosexuality" and "homosexuality" are therefore simply two types of pleasure, one normal and good and the other perverse and immoral. Thus, heterosexuality is "invented" as a category that stands as normatively distinct from homosexual perversity. Heterosexuality, in other words, depends for its normative status on the concept of homosexuality. We can equally as well say, however, that each concept depends on the other, since each needs an "other" against which it can define itself.

Whatever we may think of the quality and completeness of Katz's historical analysis, the conceptual point is unavoidable. Heterosexuality and homosexuality each imply the other as an alternative and essentially parallel type. Once these opposing "types" are established as part of the social construction of sexuality, they take on a kind of "ontological" weight or come to represent eternal or essential values. As in the thesis of Foucault, these categories are used to dominate and control. Thus, they must be criticized and unmasked.

Significantly, however, Katz argues that the dual figures of the hetero- and homosexual are quickly vanishing by virtue of their own internal logic. The strict division between what is heterosexual and what is homosexual becomes increasingly artificial as heterosexual patterns of behavior begin to resemble those of homosexuals. In part, this is due to the almost universal acceptance and use of birth control ("pleasure enhancers," as Katz calls them). But it is due also to the underlying systemization of pleasure on which the duality is based. As Katz astutely observes,

The commercial stimulation of eroticism lifts the veil off the old sex mysteries. The marketing of pleasure-sex to all comers with cash helps to demolish old rationales for heterosexual supremacy—even old rationales for the hetero-homo difference. For, as pleasure pursuits, heterosexuality and homosexuality have little to

distinguish them. Heterosexuals are more and more like homosexuals, except for the sex of their partners.³¹

Thus, Katz refers to the “growing legitimacy of recreational heterosexuality” as the “homosexualization of America.”³² “Heterosexual ways of life,” Katz tells us, “no longer differ essentially from gay and lesbian life modes.” Thus, Katz presciently draws our attention to the emergence of a crucially important and “paradoxical” trend: the “homogenization of heterosexual and homosexual” and the resultant “declining significance of ‘sexual orientation.’”³³

The meaning of sexuality is now rooted solidly in the pleasure ethic, Katz observes. The repressive legal and social regime of “heterosexuality,” based on the now defunct concept of homosexuality as perversion, persists only through the lingering energy of prejudice. Katz concludes that “[a]s we struggle to create a society less productive of pain, more productive of pleasure, we invent the sexuality of tomorrow.”³⁴

II. Some Anthropological Implications

1. Radical insights

The radical argument challenges us to sort out various issues raised by the liberal push for gay marriage.

First, because the liberal model can speak only in terms of procedural and formal-judicial liberty, it necessarily fails to arrive at (and indeed rules out of the discussion) the underlying issues for society entailed in the question of sexuality generally and “gay marriage” in particular. But this is precisely what is at issue. The radicals help us to see the consequences of this fact. In seeking only the extension of existing rights, the liberal model implies that very little is at stake for society as a whole, although a great deal is at stake

³¹Katz, *Invention of Heterosexuality*, 186–187.

³²*Ibid.*, 187 (quoting Dennis Altman, *The Homosexualization of America, The Americanization of the Homosexual* [New York: St. Martin’s Press, 1981]).

³³*Ibid.*

³⁴*Ibid.*, 189.

for individuals for whom the extension of rights is supposed to enhance personal fulfillment and grant dignity. The radicals, on the other hand, highlight for us the ways in which the very structures of society are deeply implicated by sexual categories. They see the question of sexuality and its meaning as *fundamentally* important—not only for individual choice and fulfillment—but for the entire structure of society itself as it packages reality for its members.

Second, the radicals point out the problematic character of the conventional terms of the debate over gay marriage. Of course, radicals would like to "deconstruct" gender and sexuality altogether, and they reject a nature of sexuality. Certainly in the background is their broader rejection of natures as such, a rejection that belies a rather banal nihilism. But the radicals nevertheless point to a fundamental truth about liberalism. While categories such as "homosexuality," "heterosexuality," and "orientations" normally seem so indispensable and transparent to us, they are in fact historically contingent means of shaping reality—"producing sexualities," as Foucault would put it—which *do* imply an invisible assertion of power through a system of seemingly timeless natures and truths. As the radicals like to point out, liberalism trades on the invisibility of this use of power.

Third, the radicals point out for us that such categories are therefore far from innocent and that it is important to uncover their implications. As we saw, liberalism centers its push for gay marriage on the idea of the distinctness coincident with sameness of homosexuality and heterosexuality. Conceptually they stand over and against each other as alternative possibilities for human desire. However much we may or may not qualify those alternatives morally, the fact remains that their parallelism implies a basic equivalency. As Katz's argument suggests, the adoption of this duality to sort out and understand sexuality already implies an acceptance of the common foundation of the pair—and therefore of sexuality itself—in a pleasure-centered ethic and in a new sexuality. Indeed, it signals a fatal shift: from a sexuality grounded in the male-female polarity to one grounded in the idea of alternate "orientations." Thus, both liberals and radicals finally arrive at a basic sameness underlying all "sexualities," albeit somewhat differently.

Finally, this last point suggests a deeper one: liberalism and radicalism tend toward a convergence as implicit and explicit manifestations of an essentially gay anthropology. The radicals therefore only make the underlying anthropological implications of

the liberal model explicit, implications which remain submerged in the liberal discussion of formal equality and rights. Radicals such as Foucault reject the meaningfulness of the sexual difference inscribed in the human body; they deny that the polarity of masculine and feminine can offer us an identity or truth about who we are. This suggests a radical androgyny. But, as we shall see more thoroughly in a moment, this androgyny is also implicit in liberalism's shift from the primacy of the masculine-feminine polarity to that of the juridical-formal categories "heterosexual," "homosexual," and "orientation." The radicals have simply drawn out more completely the implications of the radical loss of a sense of the body as intrinsic to the person (*corpore et anima unus*³⁵). Zarathustra-like, they have simply proclaimed what is only half-realized in liberal gay activism.

2. *A fragmentary anthropology*

Let us consider this last point more thoroughly. The liberal argument for gay marriage begins with a fundamental shift, as we have seen. The identity of the person is no longer grounded in his masculinity or her femininity; it is grounded in his or her "orientation." This shift effectively demotes the meaning of sexual difference—the inescapable correspondence of the male and female bodies as such—to a sub-personal and purely material significance. The natural correlation between the masculine and the feminine is no longer central to sexuality. A person's sexual desire and freedom therefore possess a fundamentally indifferent relationship to his or her body's natural correlation to the opposite sex. The relation between "orientation" and the sexual polarity inscribed in the body is therefore external and arbitrary.

As a result, orientation has been made radically primary, and sexual difference has been reduced to the material conditions and circumstances for sexual acts. Even if an individual desires and relates sexually to persons of the opposite sex, it is not due to the natural correspondence of the masculine and feminine; it is due to his or her "orientation," which only happens to be "heterosexual" rather than "homosexual."

³⁵*Veritatis splendor*, 48 (1993).

Because the idea of alternative orientations has tacitly reduced the sexually differentiated body to the material conditions and circumstances of sexual acts, it has also reduced the body to a merely material and therefore sub-personal level of reality. In effect, it has placed the body outside of the person as such. In this way, the sexualized body has been drained of its intrinsic meaning and relationship to the person him- or herself. The person as such has been rendered essentially androgynous. Indeed, the sexualized body is only brought into the personal realm of desire, freedom, and love extrinsically by means of the fixing of an "orientation"—either through choice, immutable predisposition, or some mixture of these—but here again, only as the external and material conditions or circumstances necessary for the particular sexual activity of the orientation.

This raises a basic paradox. Sexual acts in fact rely on the sexualized body for their very possibility. But the body is only sexual insofar as it is a male body or a female body. Moreover, the fact that a body is either male or female depends on the correlation of the male and female. After all, the structures of the male body would make little sense were it not for the concrete reality of the female body, and vice versa. The odd result is that, under the liberal shift to orientations, sexual acts rely for their very being on that from which fully human and personal meaning has been drained by liberal androgyny. This paradox is particularly clear with regard to homosexual acts, which both depend on the fact of the body's sexual polarity for their very possibility and also effectively deny any deep anthropological significance of that polarity. This paradox suggests that homosexual acts and desire are in fact only parasitic on the bodily correspondence of the masculine and the feminine. But the paradox also underlies "heterosexual" acts, given everything that has been said up to now. This is because "heterosexuality" in fact shares the basic anthropological starting point of "homosexuality." Thus, sexual acts between a man and a woman, when considered as merely a variant within the liberal system of orientations, also both rely on and deny the anthropological significance of the sexualized body.

This suggests a fragmentary view of the human person. This fragmentation is first intuitive: no one experiences his or her sexuality as an androgynous use of a sexualized body.

The consequences of this fragmentation become clearer, however, when we consider the implications for the meaning and integrity of desire. Liberal gay activism would seem to affirm the

importance of sexual desire as ingredient in personal identity. Indeed, much modern thought—from that of Freud to that of John Paul II—would as a general matter concur in this affirmation. Moreover, we experience desire generally, and sexual desire in particular, as arising from our most intimate personal life. *I* desire, not a sub-personal or purely material part of me. But sexual desire is clearly rooted in and lived out in the sexualized body, which, as we have just seen, depends on the correspondence of masculinity and femininity.

This means that desire is simultaneously dependent on the sexualized body, and yet oddly enough, separated from it. Androgyny leaves us no way to integrate desire into the whole person; indeed, it *disintegrates* desire. To the extent desire is rooted in the sexualized body, it is reduced to a material impulse of the organism. On the other hand, since according to the ideology of orientations desire can run contrary to the sexual ordination of the body just as reasonably as it can run in accordance with it, we might believe that sexual desire is separate from the body, that desire is a purely spiritual reality that merely uses the body. But then it is difficult to see how desire can ever be specifically *sexual* desire. How, then, can liberal androgyny give an account of desire as both fully sexual and fully human?

This fragmentary view also takes its toll on freedom. Desire has been rendered arbitrary, either by virtue of its submersion in a merely materialized body or by its detachment from the sexualized body altogether. In fact, however, freedom depends on desire. It cannot be actualized without the impetus of desire; it is only desire that allows freedom to begin to move. But then freedom appears arbitrary in exactly the same ways as desire.

On the one hand, we might place sexual desire prior to choice. Liberal arguments often stress homosexuality's immutable and involuntary character, thus buttressing the claim for traditional minority status. To the extent desire is specifically sexual, as we have seen, it must arise from the sexualized body. But since the body has been reduced to the material conditions and circumstances for the person as such, sexual desire represents a loss of freedom to what is ultimately an arbitrary materialistic order. Or perhaps freedom is moved by a general and androgynous desire separate from the body; but then how is it directed to the specifically sexual or to a particular orientation? How does the sexual ever become attractive to it?

On the other hand, as we have seen, sexual desire may arise from freedom itself. Radicals often speak as if this is true or as if it could be an outcome of the dismantling of gender (one might not have to scratch too far beneath the surface of even Foucault to find the implied image of an ideal—paradisiacal?, eschatological?—world in which such liberty would hold true),³⁶ but liberals also speak at times of "orientation" as choice. But if desire is choice, then whatever desires there may be at the genesis of human action, they must be entirely dominated by freedom's perpetual reaffirmation. If I am to be free, I must have the ability either to desire or not to desire: to desire in a certain way or to desire in another way. It is only in this way that freedom can be free from a pre-determining and materialistic desire. But if desire is the product of choice, then what starts freedom moving in the first place?

Here then is the dilemma. Freedom as "pure" spontaneity, undirected internally by truth, nature, or desire, denies freedom an intrinsic end other than itself. But this results in an impossible infinite regression.³⁷ Alternatively, freedom could surrender to what has been reduced by liberal androgyny to the pure facticity of material reality or to inclinations and desires which grow out of that pure facticity in the sub-personal realm of matter, biology, and evolution. But if this is true, freedom unravels into what has been reduced to sub-personal, organic dynamisms. Either way, the effect is the substantial draining, not only of the body and sexual difference, but also of freedom and human desire themselves of their meaning.

In sum, the primacy of the category of "sexual orientation" implies a fundamentally extrinsic relationship between a purely material body and a correspondingly purely spiritualized person. Ironically, once this starting point has been accepted, sexual desire is left without a real home. It must oscillate between the materially sexual and the spiritually androgynous, but it cannot fit comfortably

³⁶At this point, would-be radical Michael Warner inserts an eminently liberal principle into the mix: "Shouldn't it be possible to allow everyone sexual autonomy, in a way consistent with everyone else's sexual autonomy? As simple as this ethical principle sounds, we have not come close to putting it into practice" (Warner, *The Trouble with Normal*, 1).

³⁷Cf. D. C. Schindler, "Freedom Beyond Our Choosing: Augustine on the Will and Its Objects," *Communio: International Catholic Review* 29 (Winter, 2002): 618–653.

in either. And therefore it cannot really be the basis of personal identity, as liberals would like it to be. Moreover, the shared liberal and radical goals of maximizing freedom cannot be realized. Such a “maximization” of freedom can only be a pyrrhic victory, because it will either lock freedom into an impotent reference to itself or it will slavishly subordinate it to what is ultimately sub-personal and material.

Such an anthropology is hardly the way to promote “the fullest development of each individual in a polity.” Nevertheless, it is precisely on the concept of alternative “sexual orientations” that the liberal model attempts to build the possibility of personal and social identity.

3. *Sexual difference as an anthropology*

a. Heterosexuality and the personal body. As we have seen, the meaning of heterosexuality is closely bound up with homosexuality. Because the two types are ultimately grounded in an androgynous anthropology based on the concept of alternative orientations and abstracted from the foundational relations of marriage and family, they converge at a deep level. In this sense, “heterosexuality” is fatally twinned with “homosexuality.”

How then can we recuperate an authentic human sexuality? As we saw, the reduction of the body to sub-personal matter results in an anthropological fragmentation. Ruled out from the beginning by this fragmentation is that desire could represent an inherent (given) truth or meaning or vocation that is built into the sexually differentiated body. Without the interior relation of the body, desire, and freedom, it is impossible to arrive at an integrated vision of the human person.

On the other hand, where the body is treated as fully personal, sexuality—and its sexual differentiation into male and female—is also seen as fully personal. The body does not threaten freedom as an alien and sub-personal force; rather it *interiorly* informs and gives meaning and direction to freedom. Thus, desire can be rooted in the body’s sexual polarity without being reduced to sub-personal materiality. Likewise, freedom receives the motive force of desire, without being reduced either to sub-personal dynamisms or to an impossible pure spontaneity.

The sexual correspondence of the masculine and feminine refers to precisely the truth muted by gay anthropology with its system of "orientations" and its implicit androgyny, viz. that the male and female bodies manifest the primordial human vocation to love. This means that the inescapable correlation between the male and female bodies is an ordination not only of material reality—the product of a mindless biological necessity or chance—but of the person him- or herself. It is an interior and organic symbol and orientation for what freedom, desire, and love mean. It gives an ordination or interior structure (form, *gestalt*) to the anthropologically fundamental elements of personal existence. Love, freedom, desire are not, therefore, arbitrary or indifferent realities.

b. Sexual difference as open-endedness. Now the vocation built into sexual difference, and therefore into the personal body itself, involves the individual person in the unfolding of history and the generations. Precisely because it is fecund, therefore, the sexual polarity of man and woman is not closed in on itself. Rather, it overflows the finite world of the single couple. John Paul II tells us that the other familial loves derive their inner meaning and form from the marital, sexual love of the parents.³⁸ We can understand this when we consider that the parents' marital love gives the child a "prehistory" necessary to see his life—whatever difficulties and frustrations he may begin to experience as he matures—as primitively "good" and even destined to exceed the finite bounds of his original family. Marital love therefore offers the proper context for the other familial loves (paternal, filial, and fraternal). Without this beginning in marital love, these other loves—however real they may be—will always labor under a certain lack of rootedness.

This rootedness requires the sexual difference of the parents. Already implied in the sexual love of man and woman is the child. In experiencing his place within the sexual difference of the parents, the child understands that his or her existence, with all of its unique attributes and personal history, was already written into their love and destined from within it, with its confluence of the sexually differentiated body, desire, and freedom. Indeed, it is *only* this kind of love that carries within itself the implication of procreative fruitfulness. Moreover it is only here that the child can sense that his existence does not depend on some additional and finally extrinsic

³⁸*Familiaris consortio*, 18 (1982).

choice and procedure. In this way the child is able to sense the goodness of his being precisely because it began as an organic part of love. Built into the very idea of sexual difference and fruitfulness is the structure of love, rather than that of technique and production.

Often paired with the “marriage-is-not-procreation” argument (and hence “same-sex couples” possess an essential equivalency and parallelism to “opposite-sex couples”) is the conventional argument that “same-sex couples” after all have children *too* (and hence, even if the first argument fails and marriage *is* intrinsically linked to procreation, “same-” and “opposite-sex couples” *are still* essentially equivalent and parallel). But this argument for sameness presupposes that sexual difference is extrinsic to parenthood.

This article has already suggested ways in which this extrinsic view of the person and his or her body offers a fragmentary view of the human person which, in the end, cannot be sustained. The radical primacy of the masculine and feminine and their correspondence becomes evident when we realize that even modern biotechnological practices can nevertheless only start off with the basic materials (for example, the utilization of somatic cells for cloning) consequent upon and containing the continuing life energy of the sexual union of man and woman, materials which can be manipulated but which cannot themselves be manufactured in the laboratory. Thus, if homosexual desire both depends on and discounts the meaning of the sexual polarity inscribed in the body, the attempts by some gay and lesbian couples to have children through “reproductive technologies” are likewise parasitic on the irreducible originality of the masculine and feminine polarity. Nevertheless such technologies abstract the coming to be of the human person from the open-ended love of the man and woman, uprooting the child from the historical flow and organic movement of the vocation of sexual love.³⁹

To highlight this closed structure of the homosexual relationship is not to doubt that homosexual activists seek the transformation of society through law reform in good faith according

³⁹Adoption, on the other hand, is an attempt to remedy a situation that is not ideal: a child who is orphaned, abandoned, or “given up” for any number of reasons; or a husband and wife who are unable to conceive or bear a child. In any case, the family created by adoption, for all of the reasons suggested above, needs to offer the basic configuration of this rootedness in sexual difference.

to a certain worldview. Nor is it to say that there cannot be genuine love between homosexuals, just as there can be love between any two people of the same sex. Homosexuals can certainly will each other's good; they can certainly sacrifice for each other. But they cannot do so insofar as they regard each other as an object of sexual desire for precisely the reasons set forth in this article: to do so implies a disintegrative view of the human person, including the concrete human persons of such a relationship. The other's good and the sacrificial character of love are not achieved in a homosexual act because such sexual acts cannot entail the precise kind of good and sacrifice sexuality implies, viz. an openness to the loss of self in union with another who is (potentially) in and through this union joined to me as the mother or father of my child. The Christian tradition has referred to this union as "one flesh"; for *Humanae vitae* it was the common basis for the "unitive" and "procreative" aspects of conjugal love.

c. Sexual difference as social/cultural vocation. John Paul II offers us sage advice concerning the meaning of culture, a meaning that is partially obscured by liberalism. He states that "[d]ifferent cultures are basically different ways of facing the question of the meaning of personal existence." A given culture may be characterized by the position it takes with respect to "the fundamental events of life, such as birth, love, work and death."⁴⁰ It is the family that both embodies and guarantees the continuation of culture in history. The family not only offers the physical beings who will constitute the broader society and who will live in the culture. It is the family—beginning with the sexual difference of the parents—that teaches the child what it is to be human, what it is to love, and what it is to belong to a society and to live in a culture. It is in the family that the child learns that he is part of something larger than himself, both in terms of the number of people in a vast society and in terms of the duration of a given culture. It is also in the family that the child learns that the meaning of his existence is more than a set of pleasures and experiences, but is historically grounded in the traditions and continuity of a culture through the generations. Thus, a culture whose juridical institutions sever sexuality from its procreative significance has a subliminal death wish.

⁴⁰*Centesimus annus*, 24 (1993).

Conclusion

Can the liberal promise be kept? As I said at the outset, the simple argument presented in the plea for tolerance possesses a kind of compelling elegance. It seems at first glance to be a potentially stable cultural and legal compromise. Why not, in keeping with the West's liberal traditions, relegate explosive moral and religious arguments to the private realm? What, in any case, is wrong with allowing people to live as they wish? How can one couple's "same-sex marriage" have any adverse effect on someone else's "traditional marriage"? While this solution may seem tempting, the argument thus far suggests that the so-called liberal compromise is not, in fact, a compromise at all.

Consider the basic question with which we began: is "same-sex marriage" possible as a mere granting of access to the *same* civil institution traditionally available to the majority, or is "same-sex marriage" indicative of a more fundamental shift—an architectonic shift—in a cultural understanding of human nature and sexual difference? Will it necessarily entail an anthropology which, at its heart, is remarkably similar to the view of the human person implied by radical thinkers such as Foucault, Rich, and Katz?

As we have seen, the liberal model effectively shifts the ground of society away from the sexual correspondence of man and woman (and all that their sexual difference implies) and toward a system of "alternative orientations." But the anthropological dualism implied by this shift, as well as the reduction of "sexual orientation" to indifferent alternatives, belies the fact that the liberal model entails a basically "gay" (and disintegrative) anthropology. It merely grafts the possibility for "heterosexuality" onto this anthropology as one of its variations. Thus, the anthropologically fundamental starting point of the sexual otherness of man and woman is in fact no longer available; it is replaced by one of the possible "orientations"—so-called "heterosexual marriage" or "opposite-sex marriage," which has at its core the very amorphous concept of "emotional commitment."

The liberal movement for an extension of the right to marry to "same-sex partners" is therefore a tacit step toward the anthropological nullification of sexuality and gender altogether. Whatever the new right to marriage would be, the one thing it cannot be is a mere extension of the same right. Thus, the liberal model is inherently unstable because it contains an internal contradiction: first, it asks for

assimilation into the existing institution of civil marriage, but, second, its basic anthropology radically subverts or evacuates the meaning of that institution.

Sexual relations are thereby abstracted in principle from their deepest meaning and significance, and the human person is considered essentially androgynous. Because the implied anthropology is androgynous, it does not encompass the intrinsic *otherness* of sexual difference. Hence, all relations—including the man-woman relationship—are in fact at the deepest level *homosexual*. They *all* become in this sense essentially "gay."

If radicals criticize current society as institutionalizing a "compulsory *heterosexuality*," the vision of society proposed as its replacement may therefore be characterized just as accurately as a form of "compulsory *homosexuality*."

Thus, the statement of Spain's Deputy Prime Minister that the new law "does not oblige anyone to do anything they do not want to do" is not, strictly speaking, true. Indeed, "power is everywhere." □

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