

Revd Emeritus Professor William R. G. Loader FAHA

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

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The Senate Inquiry into the Marriage Equality Amendment Bill 2010

Dear Secretary,

I thank you for the opportunity to make a submission to the Senate Inquiry.

I am an Emeritus Professor of New Testament at Murdoch University. From 2005-2010 I held an Australian Research Council Australian Professorial Fellowship to engage in research on attitudes towards sexuality in early Judaism and Christianity in the Hellenistic Greco-Roman era to the end of the first century CE. I have published extensively in the area.¹ Part of that research entailed investigating attitudes to same-sex relations as well as to marriage. My purpose was to provide people with a better understanding of how and why people thought the way they did then, not least because it can help inform current discussion especially recourse is had to such ancient views, as for instance is use the Bible in current debate.

I am also a Minister of the Uniting Church in Australia with experience both in working with people in preparation for marriage and in educating clergy, and on that basis offer contemporary observations. I am a marriage celebrant (W3099).

I am also a Caucasian heterosexual male, married since 1966. This means my observations concerning what it means to be gay or lesbian and what marriage might mean in that context are necessarily based on secondary knowledge.

My submission has two parts:

1. Major historical considerations which play a role directly and indirectly in contemporary discussion
2. Reflections on their significance for assessing the Bill before the Senate

¹ *The New Testament on Sexuality* (Grand Rapids: Eerdmans, 2012 forthcoming); *Philo, Josephus, and the Testaments on Sexuality: Attitudes towards Sexuality in the Writings of Philo, Josephus, and the Testaments of the Twelve Patriarchs* (Grand Rapids: Eerdmans, 2011); *The Pseudepigrapha on Sexuality: Attitudes towards Sexuality in Apocalypses, Testament, Legends, Wisdom, and Related Literature* (Grand Rapids: Eerdmans, 2011); *Sexuality in the New Testament: Understanding the Key Texts* (London: SPCK; Louisville: Westminster John Knox, 2010); *The Dead Sea Scrolls on Sexuality: Attitudes towards Sexuality in Sectarian and Related Literature at Qumran* (Grand Rapids: Eerdmans, 2009); *Enoch, Levi, and Jubilees on Sexuality: Attitudes Towards Sexuality in the Early Enoch Literature, the Aramaic Levi Document, and the Book of Jubilees* (Grand Rapids: Eerdmans, 2007); *Sexuality and the Jesus Tradition* (Grand Rapids: Eerdmans, 2005); *The Septuagint, Sexuality and the New Testament* (Grand Rapids: Eerdmans, 2004)

1. Major Historical Considerations

While for many the views held by people two millennia ago are deemed irrelevant, for others they play a major role because they continue to draw their values from such views (such as the Christian Bible) and even for those without such religious commitments there is recognition that Judeo-Christian and western tradition, such as remains dominant in Australia, was shaped in a major way by such views.

A submission of this nature cannot pursue detail, for which I offer reference in the footnote to my discussion of research. In what follows I seek to summarise what are now widely held understandings of both marriage and same-sex relations in the ancient world.

1.1 Marriage

Marriage was of fundamental importance in that world because survival and prosperity was dependent on households and their stability. There was little to no state or community welfare. That came from the household and those more wealthy households on whom it was dependent. In the Jewish world where Christianity began, marriage was within the extended family to ensure land and assets were not dissipated. Marriage, arranged by consulting parents, was meant to establish partnership, usually between a man around 30 and woman a little over half his age. That partnership was to manage the household, including its work and personnel, where it was rich enough to have slaves, with the husband managing external matters and the wife managing domestic affairs. It was also expected to produce children, especially important as future heirs and as providers for parents should they survive to old age.

Given this context, anything which could undermine it was a serious threat. That included adultery. For producing illegitimate children and especially uncertainty about heirs threatened everyone's security. For the same reason men were encouraged to marry only virgins, whose ability to remain chaste might be some guarantee that they would remain chaste in marriage. Lack of effective contraception exposed all illicit sexual relations to the possibility of illegitimate offspring. Concern with adultery extended also beyond utilitarian concerns with pregnancy and included as much anguish and hurt then as it still does today for most people.

Marriage patterns were broadly similar across Jewish and Greco-Roman society and marriage was held in high regard for the same reasons. There were harsh penalties for adultery. It required divorce. Augustus sought to reinforce such laws by providing that a man who refused to divorce his wife after adultery should be prosecuted. Adultery was normally understood as theft of what belonged to another man. Men owned households. That included sexual access to wives and slaves, but never incestuous relations. Men decided with other men whom their daughters would marry and so "gave them away", a tradition which still survives at least in ceremony in many wedding liturgies.

Statements about marriage within the religious framework of early Judaism and Christianity are to be understood in this context. Thus the patriarchs of Genesis slept not only with their wives, but also with their slaves, but never with the wife of another. Their practice of polygamy (strictly polygyny – many "wives") survived, especially among the wealthy, though it succumbed in time to the Greco-Roman rule of monogamy (monogyny). The ten

commandments forbid adultery and coveting another man's wife or house or ox, reflecting the notion of ownership.

Jewish and Christian values about marriage were strongly shaped by the ancient myths of creation found in the opening chapters of Genesis. The first version of creation speaks of God creating humankind, male and female, and commanding them to be fruitful and multiply. Producing progeny was a paramount concern. The second creation story focuses on the man being alone and on the need for companionship, to which God is depicted as responding by taking a rib from the male to form a second being, a female. They are to be companions. That includes sexual companionship, which is explained as the two parts coming back together in union. This was understood as the basis for marriage in Jewish writings of the period and also by Jesus. The latter's citation of the Genesis texts in affirming such oneness and insisting it should be permanent became fundamental to Christian understandings of marriage.

The widespread assumption was that, contrary to not infrequent practice, sexual relations belonged in marriage. That made eminent sense, not least because of the chaos caused then by unwanted pregnancies. At least in Jewish and Christian contexts sexual union expressing intimacy was seen as something positive. Later writings in the New Testament supplement these principles with instruction that households should reflect the best insights of current society and their faith by maintaining order in which wives obeyed husband; slaves, masters; and children, fathers.

In this period some Hellenistic philosophers, so-called Neo-Pythagoreans especially, advocated denial of the passions including sexual passion and taught that sex in marriage should be purely utilitarian: for the purpose of reproduction. Some Stoics reflect the same position, but most at least insist that while pleasure and passion may be allowed, sexual intercourse must be for procreation, not solely for pleasure. This viewpoint strongly influenced Jewish writers versed in Greco-Roman culture, such as the prolific authors, Philo of Alexandria and Josephus. Accordingly sex must be only for procreation. This position became very influential and informs stances which are still advocated, including those that forbid contraception and obviously any sex which is non-procreative, such as between two men is also anathema.

In summary, Jewish and early Christian understandings of marriage, as in many of the surrounding cultures, affirmed marriage as absolutely fundamental for society's well-being and rejected anything which undermined it. Two major strands came together behind this belief in marriage, which inform understanding of its role: affirmation of intimacy and reproduction of children. In an age without our understandings of human reproduction and without effective contraception, both strands were clearly inseparable, though one finds sometimes the one and sometimes the other being given emphasis.

1.2 Same-Sex Marriage

I have found no evidence in the material surveyed of the notion of marriage being applied to people of the same sex. Classical Greece knew of practices, especially at Sparta, in which mentoring of boys by men might include sexual relations. By the period I investigated that was less the pattern, but rather sexual relations between men took a range of forms, including sexual exploitation of minors and slaves (but only one's own), male prostitution, and the general promiscuities that were associated with wild drunken parties. Mostly those involved in the latter indiscriminately engaged in sex with the men and women available.

There was strong criticism of the abuses. Plato playfully depicts Aristophanes the writer of comedy explaining same-sex desire through a myth: human beings were once male, female and bisexual but Zeus in a fit of rage at their insolence cut each in half, as a result of which they have ever since sought their other halves; women, women; men, men, and men, women. Plato, in contrast, argued strongly against same-sex relations between men on the basis that it wasted semen and was unnatural with no parallel in the animal kingdom, as he (incorrectly) saw it. It was also widely seen as disgraceful for a man ever to lower himself to act as a woman and such behaviour was deemed an aberration brought about by excessive and uncontrolled passion. Sexual relations between women was almost universally condemned.

Jewish writers exposed to such influence combined these arguments with their own religious tradition which expressly forbade lying with a man as with a woman. Belief in creation of male and female reinforced the belief that anyone engaging in such activity was engaged in a perversion of their sexuality, usually as a result of failure to control passion. Such is the argument of Paul, who touches on the topic incidentally as something he assumed all would condemn. Jews and early Christians give no indication of entertaining the idea that some people might be naturally oriented to others of the same sex. Philo, who cites Aristophanes' myth, for instance, does so in ridicule.

The understanding of same-sex desire as perversion made any contemplation of same-sex marriage impossible. It is consistent with such presuppositions that those who seek to conform to the values of biblical writers on the topic would see same-sex marriage as the institutionalisation of sin, whatever other grounds they may have for opposing it.

2 Reflections on the Current Debate and the Bill

Over the last two millennia there have been major changes in the understanding of marriage. Reflecting on Australian society I note following:

- a) marriage today is mostly by assent between the marrying parties, not by arrangement between parents
- b) effective contraception has unentwined the two inseparable strands of ancient marriage: sexual intimacy and procreation, so that despite the persistence of the Catholic tradition in opposing contraception, most today acknowledge the legitimacy of marrying just for companionship or of making careful decisions about when their sexual engagement should also serve responsible procreation. Marriage for procreation and the bringing up of children, on the one hand, and marriage for intimacy and companionship, are now able to be seen as two different and acceptable patterns of marriage, though for most they still coincide and when so, with intent and control.
- c) marriage and household no longer plays the same pivotal role in welfare which it did in the ancient world, since we live in a welfare state, but marriage is still widely recognised as the best context in which to give birth and nurture to children and as vital for all concerned, not least for the health and well-being of society.

- d) there is increasing recognition that the assumption that all people are either male or female in their sexual orientation is not accurate, so that these assumptions which underlie the judgements of the past need revision, just as the ancient world's assumptions about women and slaves and much else needed revision. Among people looking to the Bible for inspiration for ethical decisions there is a divide between those who insist that all such instructions must be upheld without question and those who argue that the Bible embodies principles of compassion and flexibility which demand adjustment. Much of the opposition to same-sex marriage will derive from the former group. Our community as a whole now broadly recognises the integrity of people called gay and lesbian and rejects their condemnation.

Given the acceptance in our society that marriage may be legitimately entered only for companionship and intimacy, and not (also) for the reproduction, there would seem to be no ground for excluding people of same-sex orientation from such marriage. As long as we reject enshrining in law that people entering marriage must undertake to procreate, it would appear to be an act of discrimination to exclude same-sex couples from marriage.

In reality, many same-sex couples who seek marriage do so with a view to making the nurture of children part of their companionship. That does raise the question whether children are best served by having a parent of each sex. This is, however, hardly a basis for legislating that this not be allowed or, more accurately, that the relationship in which it occurs, not be allowed to be called Marriage – since such parenting can occur without that designation.

The state is not in the business of measuring the worthiness of the range of situations in which children are nurtured these days by what they may be called (marriage or not): single parent families, blended families, same-sex (unmarried) families. All of these are the community's concern. Forbidding to call such same-sex relations marriage, when they are entered into just as responsibly as heterosexual marriages, such as is the current state of affairs, seems anomalous. There is insufficient evidence to deem upbringing by a same-sex couple as more deleterious than being brought up by a single parent. We all know of heterosexual marriages which produce very unhealthy environments for children. In other words, the issue of good upbringing should not be confused with the issues of the status given serious same-sex relations.

Conclusion

In short, in the ancient world, whose views still shape the views of many in the present, marriage had to be sacrosanct as a partnership between a man and a woman through whom children would be born and brought up. The advent of effective contraception has created a situation where many can enter marriages not for procreation. There appears to be no sound reason to exclude same-sex couples from the latter option and so not to call their similarly committed unions 'marriage'. This is all the more so since social attitudes have changed for the better in recognising that understanding all people of same sex orientation as necessarily engaged in wilful perversion or pathology, as the ancient saw it, is a genuine misapprehension at best, and at worst, a gross injustice.