

To whom it may concern,

If nothing else, we ask you to ask yourself these two questions and please consider your answers:

How does 'Helen and Claire being married' truly affect me?

Then ask yourself

How does 'Helen and Claire not being able to get married' affect them'?

We were both born and bred in Australia, a country built of mateship and hard work and a fair go for all. We have a Constitution that, as a document of federalism, allows marriage to be defined and controlled by the federal government. We have a doctrine of the separation of powers where power of the nation is divided into three separate arms and we have the understanding of the division of the church and the state. However the final understanding of our great country has been lost, we are now governed by the church in terms of its perceived morality derived from texts that even their own scholars cannot agree on. I find it hard to understand why a government is driven by an outdated notion of marriage between a man and a woman.

Marriage is protected under the Constitution as an act of Parliament, an activity of the government, not a church activity. The fact that the religious community calls a union they bless a marriage, should not interfere with a government setting the rules and limitations on it. Australia would not consider or prevent marriage between different religions just to please a religious body, however it is considering its continuation of active discrimination against gay and lesbian Australians by saying that they cannot get married and hence that their lives, relationships and families are less valid than those of other Australians. This assumption about "gays" is based on intolerance and (mis)interpretation of religious scripture.

What exactly is marriage?

Marriage is a union, of (usually two) individual people, which creates a bond, including social, legal, spiritual and often religious (Mahoney et al. 2003: 221; Oppenheimer 1988:564). It is an institution which creates or recognises a relationship which is acknowledged by the individuals, the families, as well as the state, a church or both, and it can create kinship between the families involved (Strong 1986:20). Marriage is still socially significant, as evidenced by the popularity of bridal industry events, royal and celebrity weddings and reports thereof, and wedding themes in popular novels, cinema, music, and television weddings (day-time and night-time drama and reality television) (Brook 2007:2; Prandy 2003:399, Bevacqua 2004:37)). It has also been described, tongue-in-cheek, as "Boy + Girl = Babies" by Graff (1999). Calhoun (2000) describes heterosexual marriage as a 'prepolitical institution, being the foundation of society, supporting other authors such as Bowman and O'Keefe (2004), in their calling 'same-sex marriage' an oxymoron.

There are many different reasons cited for the desire or need to get married, including emotional, social, legal and economic, as well as procreational (Musick 1995:260; Levine 1982:256). Marital status is part of a person's identity, particularly for women: to a degree-particularly in the past- it could be considered a woman's occupation (Brook 2007:2; Thoits 1991:110). Kinsey, who became famous in the 1940s for his research and subsequent books *Sexual Behavior in the Human Male* and *Sexual Behavior in the Human Female* was best known for his controversial finding that humans are not mainly exclusively heterosexual or exclusively homosexual, but on a seven-point continuum between the two. He controversially reported that same-sex behaviour "was a natural feature of human sexuality" and that up to 50% of men had had a same-sex experience (Weeks 2002:16). Importantly at that time, Kinsey also had a firm belief in 'marriage' and 'the family', knowing that they were crucial for the raising of children and the control of promiscuity. He was concerned about increasing divorce rates, Kinsey also believed that male dominance was waning, and that marriages were becoming more equal partnerships (Irvine 2002: 349). Significantly for this relatively early period, Kinsey, as well as other sex researchers Masters and Johnson, believed in the importance of a healthy sex life within a marriage, for the wife as well as the husband. (Irvine 2002:350).

There are different forms of marriage, and of other conjugal rites (Kandiyoti 1988:280; Scanzoni 1980:126-8). Commonly, there is monogamy: the union of two people- a couple; or polygamy: the

union of more than two people, which is or was common in some societies (Marks 1993:481-2; Silverstein 1993:260; Grubbs 1994:365; La Fontaine 1972:198). There are (traditional) heterosexual marriages, where one woman and one man are married and equal¹ marriages, where either two women or two men are united. There are also temporary forms of marriage, such as handfasting, performed in Celtic and pagan² rituals. Different cultures also have different requirements for ceremonies recognising or celebrating marriage: some require merely the two people being united to speak to each other, some require a witness, others require a state celebrant or officiant, while some require a religious celebrant (Kraler 2007:950, Karp 1988: 257). Some couples, increasing in number over time, cohabit, not seeking to have their relationship legally sanctioned by the state or the church: sometimes as a trial marriage; or because they cannot afford marriage; or because they do not believe in the institution of marriage; or because it would not be legal for them to marry. In some areas, this is allowed, and it accrues rights similar to that of marriage (for example, in Australia, where cohabitation is recognised on a state-by-state basis). There are increasing trends to unmarried cohabitation – including in Australia (Qu and Soriano 2004:3), Canada (Kiernan 2002:3), and the Netherlands (Kalmijn 2004).

People may balk at the idea of changing the definition of marriage (Black 2009). However marriage has already changed over the years, with the 'rules' of marriage constantly shifting to fit each culture and class, each era and economy (Witte 1997:2, Graf 1998:10; Josephson 2005:271). Marriage has been observed as being a "hardy" institution (Graf 1999:250) that has withstood major changes to its definition and ruling practices (Witte 1997:5). Laws that govern marriage follow rather than lead, trying to catch up with contemporary social realities (Witte 1997:10). Today changes to the concept of marriage can be seen through the divisive and passionate debates surrounding the re-definition of marriage to incorporate same-sex couples.

Marriage historically has been considered as a pact entered into for the advancement of several key aspects of life: the accumulation of money or valuable gifts; sex; child-bearing and child-rearing; families, social order; and love. The first recorded marriages occurred in Roman times: a couple were considered married if they lived with *affectio maritalis*, with "intention of being married", and acted like man and wife (Dixon 1992:62, Seller 1997:20, Hughes 1978:262). This was a private transaction that while affecting and accepted by society was not regulated by society or the state (Treggiari 1993:181, Goody: 1983:85). In the early Christian Era (until approximately 325 C.E), marriage was considered a private matter, with no ceremony or witnesses required. Christianity originally had no involvement with marriage (Goody 1983:5): marriage was not considered sacred (Witte 1997:16). The first written ruling on marriage by the Catholic Church was in 774, when Pope Adrian I handed Charlemagne a set of rules which defined legitimate marriage and condemned all deviations (New Advent 2009, Witte 1997:15). In 1215, the Catholic Church made marriage one of the sacraments (Witte 1997:16). At this point the Church introduced the concept of entering into marriage (and the sacrament) based on the couple's "free and equal consent" (Ekelund et al 2002:650; Goody 1983:86). This was seen as a radical idea at the time as the concept of the individual nature of humanity was not widely accepted (Mullet 1999:40). The Church's law on marriage continued to evolve including the introduction of irrevocable consent which required one of the most significant changes to marriage in requiring the couples' consent to marry as opposed to family agreements or contracts which had been the norm since Roman times (Witte 1997:101).

Until 1545, Christian marriages in Europe were conducted by mutual consent, a declaration of intent to marry, followed by the physical union of the couple. From the Middle Ages, a new function of the Church was to register marriages, although this was not obligatory. From 1545, the Council of Trent, as part of the Counter-Reformation, decreed that a marriage must be conducted by a priest and witnessed, and from 1566, the same Council created a catechism which defined marriage as "the conjugal union of a man and woman, contracted between two qualified persons, which obliges them to live together throughout life (Witte 1997:39-40; Graf 1998:195, Bossy 1970:55). This regulation of marriage was seen as part of the Church's attempt to reform society, from birth to death (Mullet 1999:29, Davidson Ekelund 1997:220).

¹ Also known as same-sex or gay marriages

² Pre-Christian and non-Christian religions

Following the late Middle Ages, in the early Modern period, Calvinists (Protestants) changed Christian marriage by forming the Marriage Ordinance of Geneva, with “The dual requirements of state registration and church consecration to constitute marriage” in order to be recognised (Witte 1997:91). State recognition of marriage in the United Kingdom began with Lord Hardwicke’s Marriage Act in 1753, which required a formal marriage ceremony, and the Marriage Act 1836, actioned in England and Wales in 1837. Civil marriages were also recognised in Germany from 1875 (Brown 1961:127).

The next major change occurred during the Enlightenment. Enlightenment thinkers saw marriage initially in the same way as the Church: as a contract, but replacing the contract with God by a contract with the State (Traer 1980:92) and in so doing, created the first civil marriage (Norkheimer et al 2002:59). During this time, philosophers such as Locke, argued that a husband’s power over his wife was not simply political, but to do with his ownership of her (Marshall 2006:250). This laid the foundation for Protestants to later evolve the concept of marriage from “companionable rule” to “mutual esteem, mutual friendship, mutual confidence”, most notably seen in the change of the vows (Brown 1982:410). This marital equality was seen as subversive to society and marriage, but became accepted by the nineteenth century (Goody 1983:92). In the twentieth century, as marriage continued as a function of both the state and the church, change continued to occur. In the United States in 1967, the landmark legal case of *Loving vs. Virginia* overturned the ban on inter-racial marriages (miscegenation) which were deemed by the Church and the State as illegal and immoral (Pascoe 1991:6-9).

The choice of a marriage partner has always been an important part of marriage, and although marriage began as two sets of parents consenting to join their families or businesses or both by consenting to the unions of their son and daughter respectively, by the eighteenth century, the offspring began to have the opportunity to choose their partner themselves. Although same-sex couples are not prevented from choosing each other, they are certainly prevented from marrying each other in most countries.

Despite some current opinion (“No Gay Marriage” 2005) believing that the concept of marriage has not changed over history, there have been different definitions, requirements, traditions and habits over the years. This includes many different beliefs regarding the rights and responsibilities of the two spouses- mainly rights of the husband, taking on ownership of his wife, her property, paying a bride price or dowry; and the bride being transferred as the property of her father to her husband, giving up her right to property, and providing sex to her husband and being responsible for the bearing and rearing of children (Kalmijn 2004: 245; Vann 1979:308). Graf (1999:x) firmly states that, following much research, she and other scholars find that “marriage and the family have been in violent flux throughout history, the rules constantly shifting to fit each culture and class, each era and economy”, and that “marriage is anything but traditional” (1999:xi).

Various marriage laws point out different rights and obligations for men and women, particularly throughout different religions (Brown 1961: 128). There is also a relationship between marriage, sex and procreation. Marriage can have religious requirements. Modern “traditional” requirements have looked at the ability of potential marriage participants to procreate: problems that arise in this situation might be: same-sex couples, older opposite-sex couples, and infertile opposite-sex couples (Adams 2004:1080). According to the Universal Declaration of Human Rights (ADCQ 2009), all people have the right to marry. However, there have always been restrictions on who can marry, often biological, but also according to age, gender and social status (Adams 2004:1081). The reasons have usually been to benefit children, for genetic purposes, to keep property concentrated, but also for reasons of prejudice or fear (Keirnan 2004:982). The degree of relationship between participants and (illegality of) polygamy are important considerations (Sorrentino 1990:51).

Marriage ceremonies can be state and religious. Some countries require a state ceremony before the religious one, for example the Netherlands and Belgium; some allow the religious ceremony to be held concomitantly with the state ceremony, for example the US, Canada and Australia. Marriage has a significant part in the lives of religious citizens. Anglicans and Catholics (Western tradition) say that marriage is a sacrament, where the couple are the ministers, and the priest is a witness who gives a blessing. In the Eastern (Orthodox) tradition, the priest is the minister. A marriage is also supposed to replicate the relationship between Christ and his church. Many faiths believe that one of the principles of marriage is procreation, for example Catholics, Muslims and Jews. However, or perhaps because of this, some churches allow same-sex marriage ceremonies: examples are the Unitarian Universalist

Church; Metropolitan Community Church; Quakers, United Church of Canada; United Church of Christ and Reform Jews (Brown 1961:139, Kiernan 2004:985).

Throughout history, marriage has been perceived differently in different civilisations and ages (ancient times, middle ages, modern, current), and the institution has undergone many changes, regarding customs and the places of men and women in the relationship. Women are now less often seen as belongings, and more as equal partners. Many and varied benefits of marriage have been perceived, historically and currently, including social (happiness, more physically and emotionally satisfying sex lives), psychological (emotional and mental health), legal (less incidence of domestic violence), welfare (better economic well-being) and medical (better physical health and longer life, better child health and child mental health) (Waite and Lehrer 2003). Marriage also provides financial security with regards to health care (for example with medical and pharmaceutical 'safety nets' in Australia).

Despite the enduring nature of marriage, there have been many authors from different schools of thought who have spoken out: some for, some against. Early opponents included liberals, such as JS and HT Mill, who believed in individual rights and in the 1860s, considered marriage as "fostering gender inequality (Bevacqua 2004:36) and first wave feminists in the late 19th and early 20th centuries who worked for equal opportunities for women. Anarchist Emma Goldman compared a married woman to either a parasite or a prostitute (Bevacqua 2004:36). Second wave feminists' fight for women's empowerment in the 1960s and 1970s coincided with civil rights action for African Americans and early 'gay liberation'. Third wave feminists from the 1990s spoke from the 'information age' and a time of globalisation and neoliberalism. Feminist authors such as Jackson and Scott (2004:151), Bevacqua (2004:36) and Auchmuty (2004:101) continue to argue against marriage as an antiquated institution, arguing against the oppressive gender relations involved in 'traditional' heterosexual marriage. One of Brook's major issues regarding marriage appears to be as much with the "organization of gendered power relations", whether a woman is married to a man, or merely lives with the man: it is the issue of women's subordination (2007: 3).

Bevacqua, as a feminist, rails against social institutions "built upon inequality and exclusion, which function as tools of male dominance", but as a lesbian, she argues that gays and lesbians should fight for the right to marry, to avoid, in her words "second-class citizenship" (2004:36). Auchmuty (2004) reminds us that gays and lesbians could be considered 'free' of the ties of matrimony, but still points out that marriage is afforded the "highest social status and approval" (2004:102). Bevacqua lists feminist writers such as Ettelbrick (1989), Warner (2000), and Pierce (1995), who describe gays and lesbians who succumb to marriage as unliberated and "bland and colorless against a heterosexual landscape" (2004:37). Auchmuty believes that Civil Unions may be a better option than marriages for gays and lesbians, but also warns the reader that civil unions and civil partnerships have different definitions in different locations, and that this could lead to confusion in legal, social, professional and family situations (2004:102).

A strong argument made by Auchmuty is that, although marriage has traditionally been considered with suspicion by feminists, gays and lesbians, "same-sex relationships demonstrate the possibility of more egalitarian relationships" (2004:123). This is not due to the specific nature of the two people involved, but because both of them are of the same gender and they do not bring the same gender relationship baggage' which could interfere with a heterosexual relationship. Echoed by Kitzinger and Wilkinson (2004:127), this is a powerful statement, which could 'win over' gays and lesbians suspicious of marrying, but these same gays and lesbians could have an equally equitable de facto relationship (or civil union in the UK). But Auchmuty stresses that same-sex couples may not have the traditional pressures to marry which heterosexuals have, and may also therefore not have the same legal issues upon the dissolution of a relationship as heterosexual couples do (2004:123). Donovan (2004:24) is completely against same-sex marriage on the grounds that it imitates heterosexual marriage, which is therefore glorified as the pinnacle of relationships, creating an inequality and a hierarchy which she feels is not deserved. Donovan recommends Waaldijk's individualization (1994), which is self-explanatory, and can allow the necessary legal and financial arrangements to be organised, as well as coping appropriately with family relationships. (2004:25).

Although Donovan does not desire same-sex marriage, she understands others' needs and desires for it, for equal rights, visibility, not being discriminated against. She also learned, via a comprehensive qualitative study in Britain in 1996 that, although many gays and lesbians did not necessarily want to marry, they were accepting of other gays and lesbians marrying if they so desired

(2004:25). It will be interesting to read further whether Auchmuty's, Kitzinger's and Wilkinson's argument that marriages do not have to be hierarchical could be reconciled with Donovan's assurance that they are. Many of these papers seem as personal as they are academic, and echo lost loves and shattered lives, if not those of the authors, then those of their friends or families- or families of choice. Kitzinger and Wilkinson (2004:127) also yearned for freedom and autonomy, and felt that marriage oppressed women, gays and lesbians. However, they experienced an atypical relationship, where they did not live together, and could not prove their relationship- in this case, a marriage or civil union certificate could have solved some of their legal problems. Kitzinger and Wilkinson raised the 'human rights' element of allowing gays and lesbians³ to marry, as the right to marry is a universal human right (UN), and exclusion from this or any right is a form of oppression (2004:132). They argue strongly, like Auchmuty (2004:102), that official relationships which are not marriages have different definitions in different locations, and do not carry the same status and weight as marriage- they wish for the equality of marriage for same-sex couples, rather than the "similar but not equal" status of Civil Unions. Brook also sees the dichotomy of opinion regarding same-sex marriage: on the one hand, allowing gays and lesbians to marry could play a part in "subvert[ing] the heterosexual history of matrimony, while on the other hand, it could stamp gays and lesbians with and "institutionally heterosexual imprint" (2007:3). She also looks upon the historical inability of gays and lesbians to marry from another perspective: "many ... have found ways to live outside of marriage" (2007:177), and that if society did not want gays and lesbians to 'join' them in marriage, then maybe marriage was not as desirable as they think? Colloquially, the conceptual position of gays and lesbians here, from Brook's point of view, seems reminiscent of Groucho Marx not wanting to belong to any club which would have him as a member.

Weeks also echoes the phrase 'families of choice', because "family is something you do, rather than something you belong to". He then describes the significance of those emotional relationships which are built around friendship, and which he also describes as innovative "life experiments" (2004:159). Weeks reiterates the importance of couple relationships, but also individualization, as per Waaldijk above. He also describes the equality of women and men and the implications for the family ("shakiness"- is the actual word which Weeks uses), which same-sex couples experience in their own way in their relationships. Weeks reinforces the somewhat innovative nature of same-sex relationships with the "normative assumptions which are largely absent among same-sex couples" (2004:160). He desires "more democratic relationships", but recognises that practical situations, such as illness, parenting and death, can interfere (2004:162). He seems to want 'the best of both worlds'- a personal private commitment, but public recognition and acceptance, and suggests that these demands will continue to grow (2004:162-163). Yip's study reiterated the crux of a relationship-commitment- with legal recognition of it, on the basis of social justice and citizenship- but his respondents were very split on their opinions regarding marriage. Some, particularly women, found the term marriage troubling, with 'dysfunctional' connotations. Those most comfortable with the term marriage either saw marriage as "a symbol of love and devotion" or "an inclusive term for all Christian coupled relationships" (Yip 2004:178).

In considering the feminists and gays and lesbians who do not support same-sex marriage, they are found in contrast to, but strangely on the same 'side' as, conservative citizens and religious citizens, who object to equal marriage for an entirely different reason- that of preserving the traditional family, or preserving their religion or belief system (Australian religious right groups (unbelief.org)⁴, American Family Association 2009). Devout Catholics, particularly in Spain, the Netherlands and Canada (Fox News 2006), Evangelical Christians (see above), Muslims (Islam Uncovered 2009), and Orthodox Jews are not supportive of homosexuality, hence are not supportive of same-sex marriage. Some religious organisations, including those related to the Hillsong and Assemblies of God Church have anti-gay ministries, where they believe that, with prayer and Christian counselling, gays and lesbians can become heterosexual and healthy (Mercy Ministries Australia 2009; Mercy Ministries America

³ Kitzinger and Wilkinson specify 'gays, lesbians, bisexuals and transgendered people' (LGBT), but in the context of this paper, 'gays and lesbians' makes the point sufficiently.

⁴ Unbelief.org lists and describes many Australian anti-gay religious right groups such as: Australian Christian Lobby; Australian Family Association, Australian Federation for the Family; Australian Festival of Light; Catch the Fire Ministries; Creation Ministries International Australia; Exclusive Brethren, Family First Party.

2009). Another international Christian outreach program, Focus on the Family (Australia and US 2009), have similar programs based on denying that gays can be Christian (or Christians gay) and that gays should be cured. MacInnes (in Altman 2001:43) reiterates the fact that “modernity systematically undermines patriarchy”, and this could be used to explain and support two modern trends: feminists and lesbians not wishing to marry in this ‘modern’ day, but when such independent action is so comparatively easy, as well as the rebellion of young gays from religious families, when ordered to undergo anti-gay therapy.

It is important to note that some nations, such as the United Kingdom, introduced Civil Unions, with all of the rights and responsibilities of marriage, but without the title ‘marriage’, as a religious and public backlash was expected, as marriage is so closely perceived as a heterosexual and religious union. After this was instituted in 2004, Australia rejected Civil Unions for the very reason that they ‘mimicked marriage’, and both were banned by the Marriage Amendment Act 2004, to the Marriage Act 1961. This amendment was proposed by the governing Liberal Party and coalition partner the National Party, with support from the overtly religious Family First and Christian Democratic Parties, and had bipartisan support from the Opposition Labor Party, but it was opposed by the Democrats and Greens (ABC 2004) Australian Capital Territory efforts to register Territory Civil unions were rejected by the Coalition Federal Attorney-General of the time (Stanhope 2006), as the Federal Government not only has power over territories that it does not have over states, but it has power over marriage legislation (Cth 2004).

Gays and lesbians have also had positions on the value of the struggle for same-sex marriage. Some gays and lesbians wish for equality, in the form of recognition of their relationship being as valid as those of straight people’s relationships. There are arguments against gay marriage: some gays do not want to replicate a heteronormative institution, and some lesbians do not wish to replicate a heteronormative patriarchal institution (Auchmuty 2004). Some gays and lesbians want something ‘equal but different’ (Auchmuty 2004), which may take the form of the Civil Unions which some countries offer, while others decry civil unions as inferior (AME 2009). Australian Marriage Equality (AME 2009) is explicit in their description of the difficulty that an extra tier of relationship entails, especially on a practical, day-to-day basis. In the broader society, there are arguments against the development of same-sex relationship recognition from figures of authority: from the legislature (Johnson 2007:195), fear of political backlash, precedent, religious influence, political party ideological bias or response from financial backers; the judiciary (ideological bias, precedent or no precedent); the churches (historical religious thought and prejudice) and society (fear of the unknown, the ‘devaluing’ of their own heterosexual marriage’).

Some authors see a parallel between gay rights and other minority rights. Will Kymlicka speaks for multicultural equality, especially for indigenous cultural groups (who are born in the country in question, such as the Australian Aborigines, New Zealand Maoris and the Canadian Quebecois) and hence require equal rights, but also special rights for their special place within our culture. Other ethnic immigrant groups, however, also deserve equal rights, but not special rights, as they chose to emigrate, and should be expected to assimilate (Kymlicka). Some authors believe that this distinction can be extrapolated to gay and lesbian rights. A possible line of argument here is if gay people were born gay: geneticists are attempting to isolate a ‘gay gene’. Gays and lesbians at least deserve liberal equal rights: as a group, or as individuals. This notion will be investigated further in this thesis. Feminism looks to also addressing inequalities perceived toward women in society, and Haig specifies that one method used is the pursuit of non-hierarchical relationships (1997 in Punch 1998:142-143). The existence of non-hierarchical relationships between same-sex couples may be perceived as a privilege, unlike the privileges traditionally afforded to males over females in opposite-sex couples in many societies.

Equally, while some gay and lesbian activists frame their activism in ‘human rights’ terms, promoting human dignity and condemning human wrongs, some gay and lesbian activists refuse to do so. Traditional human rights perspectives have included the right to “freedom from torture (forcible gay cures)”, freedom from discrimination and the freedom of sexuality (Mertus 2007: 1038-1039, Joseph 1994:396). However, Mertus (2007: 1063) argues that gay and lesbian activism is in the realm of ‘civil rights’, and has most successfully followed assimilation and the civil rights model in the United States. This line of reasoning may assist the argument for the continued struggle toward assimilation that Equal Marriage plainly is.

Now what about "GAY"?

There is evidence, as early as the Stone Age (17 000 BC) (Rawson 1973:46, Omel'Chenko 1996:111) via rock art and sculpture, and reports from the Biblical era of male homosexual activity, including temple prostitution (Nissinen 2004:89). In the main, male homosexuality was not stigmatised, as long as it conformed to norms regarding gender, age relationships and status relationships (Pugh 2004:61, Stehling 1983:157, Greenberg 1988:182). Historically, lesbian behaviour is not as well documented as male homosexual behaviour (Auanger 2002:213), but it is posited that large secluded groups of women (such as harems (Brooten 1998:52)) may have resorted to lesbianism (Auanger 2002:218-220), but many societies have refused to publicly acknowledge the existence of female homosexual behaviour (Greenberg 1998:306, PBS 2009).

In the war-based culture of medieval Europe, particularly in the German and Old Norse cultures, the position of the male bachelor warrior was elevated (Rawson 1973:48, Schutz 1983:30-31, LaBaree 1984:13-14), women's status began to decline (1988:249, Onians 1951:209), hence effeminacy, receptive and even active homosexuality (Greenberg 1988:250), were "scorned and repressed, following the conversion of the Germans and Scandinavians to Christianity". In the eighth century, in Roman Catholic Spain legislation had already been introduced which provided for castration and excommunication for either participant in homosexual acts (Nissen 2004: 150, Greenberg 1988:250-251).

With the decline of feudalism, the modern era began with traditional Christian teachings continuing to dominate sexual ideology in the Western world describing homosexuality as a sin or contrary to nature (Garton 2004:52, Boswell 1981:146), with some major European countries continuing to torture and kill male homosexuals. Early modern England, by contrast, barely prosecuted sodomy (male, female) or bestiality, until King Henry VIII's break with the Roman Catholic Church, when the sin became punishable by hanging in 1533 (Greenberg 1988:303). Lesbianism, however, was not mentioned in Henry VIII's legislation (Greenberg 1988:304). Similar legislation followed suit in the New World (Greenberg 1988:304)).

The Protestant leaders of the Reformation ended celibacy for priests, as they believed that this encouraged homosexuality rather than celibacy (Phipps 2006:152, Greenberg 1988:312). At court in France in the late sixteenth and early seventeenth centuries, male and female homosexuality were quite common, if not public knowledge (Murphy 2000:227; Duberman, Vicinus and Chauncey 1989:503; Bray 1995:164; Dynes and Donaldson 1992:48). In the eighteenth century, homosexuality among the German, Russian and French nobility became fashionable, if discreet (Duberman, Vicinus and Chauncey 1989:590; Dynes and Donaldson 1992: 52; Greenberg 1998:318). By the early 1700s, Parisian cafes for homosexuals flourished, as did the first urban lesbian subculture (Higgs 1999:95; Crompton 2006: 201; Duberman, Vicinus, Chauncey 1989: 400). In France, under Louis XIII and Louis XIV, there was a more repressive policy, but secular arguments in favour of liberalism were beginning to appear, and flourished in the eighteenth century, reflecting the Enlightenment (Greenberg 1988:321).

Many small rural English towns lost residents to London and other industrial cities: hiding behaviour from family and neighbours, as homosexuality was still a felony. Homosexual networks began to develop in the larger towns, particularly in London, with a growing population, economy and infrastructure (Rueda 1982:280; Norton 2006: 350; Hitchcock 1997: 59; Greenberg 1988:330), and "molly-houses" served as meeting-spots for men (Hitchcock 1997:59; Higgs 1999:95; Greenberg 1998:331). However, attitudes to homosexuality changed negatively at Oxford University from the early eighteenth to late eighteenth century: public displays of affection stopped and students were ostracised (Greenberg 1988:340). The shift in attitudes was explained by the bourgeoisification of the aristocracy as the middle classes grew (Greenberg 1988:341): middle-class values were imposed on the upper classes, and by the late eighteenth century, the upper classes began to conform to middle-class standards in public, as the "Victorian" era emerged (Foster 2007:115; Fone 2001:201). There were increased charges of attempted sodomy, even in consensual cases, and emotional as well as sexual intimacy was frowned upon in England.

In the Americas, both the smaller population in the New World, and the Puritanism which placed immigrant unmarried young men with families, prevented "sin and iniquity" (Foster 2007:102; Katz 1983:31; Katz 1975:18; Greenberg 1988:344). This was based on the Colony's Christian beliefs that

all men are sinners, and that one sodomite could corrupt others. Punishment was along legal lines: if anal penetration was proven, the defendant was convicted of sodomy, which was made a capital offence in 1637 (Greenberg 1988:345). The class which had accepted homosexuality most readily in England was the upper class, but most immigrants to America were middle-class, with its restrictive sexual morality, as well as felons, slaves and servants: none were the libertines who had accepted the 'goings-on' in London (Higgs 1999:170; Greenberg 1988:345).

Due to the difficulties of frontier life, lack of wealth or obvious displays of immorality in the first century in America, and lack of homosexual networks in the new country, colonials did not seem anxious about morality. The few accusations of sodomy were not prosecuted, because neighbours did not want to prosecute neighbours (Greenberg 1988:345). There are no reports of a homosexual subculture in seventeenth or eighteenth century America, despite the fact that most colonists came from England, where these subcultures were widely known in large towns. This has been attributed to the size of the towns and establishments, which could not provide anonymity as London could, rather than disparities in the criminal code or selective immigration (Katz 1976:54; Katz 1983:35; Greenberg 1988:346).

In ethnographic studies of native, primitive societies, dating from the 1800s and 1900s, some results may be tainted due to the influence of Western religious missionaries, teachers or traders, who would denigrate natives' homosexual, transvestite or transgender behaviour, hence the incidence became under-reported; giving the researchers the response they wanted to hear (Greenberg 1988:78-80). By the late nineteenth century, medicine and psychiatry as well as religion and the law began to debate sexuality. Consequently, discourse about homosexuality expanded from 'sin and crime' to 'pathology': this change was generally considered 'progressive' as a sick person was perceived as less to blame than a sinner or criminal (Duberman, Vicinus and Chauncey 1989: 451). Following years of independent psychological testing, along with changing social values and an increasingly visible and active gay community in the United States, the American Psychiatric Association decided that homosexuality should be removed from the *Diagnostic and Statistical Manual of Mental Disorders* in 1973 (Herek 2009). This was seen as an influential decision.

It is important to note that in former times, homosexuality, or rather sodomy (categorised as non-procreative, improper sex, whether with a partner of the same sex, opposite sex, or oneself (Greenberg 1988:277)), was perceived only as behaviour, not an inclination: "The category was defined by the act, not the person" (Greenberg 1988:278). This distinction lies at the heart of historical homosexual behaviour contrasted with contemporary identification as a same-sex attracted person.

Although it is currently believed that until the nineteenth century, sexual acts were unconnected to sexual identity, Winkler (1980 in Halperin 2002:32-33) describes ancient Greeks and Romans called *kinaidos*, who were considered sexually-deviant and gender-deviant males, who behaved in an effeminate manner and took the receptive role in sex. *Kinaidos* were a "scare-image", and were disgraced (Halperin 2002:34), representing deviant sexual morphology (Halperin 2002:38). Halperin also reports a story (or erotic fable) told in Boccaccio's *Decameron* in the fourteenth century, from an original tale by Apuleius in the second century. The tale reports that upon returning home early to his wife, he finds her with a young man, but rather than killing the youth, the man penetrates him sexually and lets him leave (2002:38). The second story from Boccaccio is similar, in that a baker, Pietro, finds that his wife has taken a very young male lover, and as he has no interest in his wife and married her merely for a show of decency, has sex with the youth, then has him whipped and divorces his wife (Halperin 2002:38-40). Halperin stresses that the second man appears outwardly normal, unlike the *kinaidos*, hence does not have an incorrect sexual morphology, but an incorrect sexual subjectivity or sexual deviance (Halperin 2002:40-41). Although it might seem, at first, that Halperin is attempting to display modern homosexuality in the fourteenth century sodomites, he then explains that the *kinaidos* were an example of an alternative sexual identity (sexual morphology), while the second man had an alternative sexual orientation (sexual subjectivity) and that "popular notions of homosexual identity and homosexual orientation today tend to insist on the conjunction of sexual morphology and sexual subjectivity"...a combination of "deviant personal style and deviant erotic desire" (Halperin 2002:42).

Halperin argues that, homosexuality is still a modern construction, because although same-sex acts had occurred prior, it was not until 1869 that the word "homosexuality" first appeared in print, and that there was no understanding or discourse of what desires and behaviours actually entailed homosexuality. (2002:106). He also describes a strategy for describing the history of sexuality, and

particularly male homosexuality (Halperin 2002:106). Halperin also displays concern that the writings of Foucault are misunderstood and not correctly engaged with (2002:25), and a particular concern echoes the above-mentioned tales, regarding the difference between the act and the identity (2002:27).

Given the stance that many say marriage is an institution that cannot change without ruining society and that gay is not natural and a cult that will try to recruit new members through gay marriage this short history shows otherwise. Australia has not collapsed nor has society suffered since the decriminalization of same sex sex, nor the provision of more rights for gays . And countries like the Netherlands and Canada which do not distinguish a couples worth based on their girl and bys bits are both finding the allowing both differently sex and same sex couples to marry is actually strengthening the institution of marriage in their countries with decline divorce rates and increase in family units.

I am still to find an opponent to gay marriage who can outline a coherent argument as to how Helen and I being married affects, devalues or disestablishes society.

My wife and I have been together for 10 year now, happy and healthy in a loving relationship. It was sad that when my mother was dying she could not see us get married, instead we had to settle for a small ceremony that provided us with no rights or protection that any other couple in Australia would have, in fact it was nor more than a birthday party in the eyes of the law and society.

When civil unions became legal in the UK, we went to the consulate and because of dual citizen had a small ceremony there, it was nice. However knowing that as soon as we stepped outside their doors and returned to Australia any rights or protection we had vanished in thin air was upsetting.

We then took our savings and went for a trip to Canada, because of our civil union in Britain we could enter as a married couple, it felt so good to be able to put married on the custom declaration. While in Canada we got married, actually married. And if you don't think there is a difference there is. We went the the register office, no fuss at all the clerk smiled, gave us our paperwork, took our money gave us our certificate, wish us good luck and good life. We left there waited the night and the next day headed into the suburbs of Vancouver, a little house with the celebrant and her husband, despite no family, no fancy clothes or fan fair, that ceremony meant more to us than anything else, we were finally married. It is impossible in words to describe the difference, but for those of you who have been married the feeling of the ring on your finger and knowing you are married (finally in our case) is the happiest moment of your life. However when we come back to the country we love, we are single and it is a devastating realization that your own government sees you as not as valid, worthwhile, complete or legitimate as the couple sitting across the plain from you because they like the opposite sex and we like the same sex. Which is so many ways is such a tiny part of the individual.

Nothing short of equal marriage will provide all Australians with equal rights to love and live. The introduction of registers at a state level, DOES make gay Australians as second class citizens, and calling it something else does make it different and makes us unequal in front of the law and society. Even if you say it doesn't it does. When I call Helen wife in Australia, I get bazaar looks, raised eyebrows but when we were in Canada and I called her my wife, they did not flinch it was normal, ordinary, unremarkable and the only difference is in Canada she is my wife and I am her wife , only marriage can offer us this.

I urge you to read the submissions that are sent to you, to understand the feeling of those who are isolated and discriminated against and to look at the nature of Australia, to look at Australia's desire for human rights, equality and a fair go. We hope your recommendation is for marriage that is open to all Australian no matter what they like in the bedroom. And that you reclaim marriage as a government function and not allow the religious who seek their own aim to continue their domination on government through well funded and organized pressure groups which do have unfair representation thanks to long held fears of the rational choice motivated politician.

If nothing else, we ask you to ask yourself these two questions and please consider your answers:

How does 'Helen and Claire being married' truly affect me?

Then ask yourself

How does 'Helen and Claire not being able to get married' affect them'?

Yours Sincerely

Dr Helen and Mrs Claire Pomery