



## Gay Marriage: Whither Sex? Some Thoughts From Europe

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He was married and added five children to the population,

Which our Eugenist says was the right number for a parent of his generation,

And our teachers report that he never interfered with their education...

Was he free? Was he happy? The question is absurd:

Had anything been wrong, we should certainly have heard.

-W.H. Auden

W. H. Auden's (1979) poem, "The Unknown Citizen," begins with the line, "(To JS/07/M/378 This Marble Monument is Erected by the State)," (p. 85) and closes with the five-line excerpt above. The poem lists other virtues, in addition to marriage and procreation, that the citizen ought to possess, including being employed, the correct consumption habits, and patriotism when needed to fight wars. JS/07/M/378 had all of these virtues as well as that of being male. One thing is clear from the poem: Had he been gay, no marble monument bearing his number would have seen the light of day, because, apart from any other failings, he would most probably not have been married or had five children.

### Sexual Citizens

The institution of marriage contributes powerfully to creating fully-formed citizens, but it does so by constructing the unmarried as lacking this virtue. This invidious distinction follows closely, though not completely, that between heterosexuals and homosexuals. However, the work of marriage does not

stop at staking out a sexual category barred from its domain. It also cements gender relations that are rooted in and productive of a heteronormative regime. It controls sexuality by prescribing marriage as its proper place. Further, it confers social, economic, and cultural capital on the wedded couple. As a result, marriage, in its present form, is not good for queers, it is not good for unmarried heterosexuals, and it is often not good for heterosexual women.

Before going further, allow me very briefly to make my own position on marriage clear. I believe that marriage should no longer be an institution that serves as the basis for granting economic, social, and cultural privileges. Instead, I believe that those benefits which are today contingent in many countries upon the status of being married or entering a partnership should be made generally available through reforms in health care eligibility, tax and inheritance laws, immigration policies, and other economic and legal privileges currently associated with marriage. In short, marriage, as we know it in Euro-American societies, should cease to exist. This does not mean that we should dispense with all laws that regulate rights and benefits. Not everyone can inherit the parental house; the neighbors are not entitled to move in when grandma dies; and some regulations are needed to determine who gets custody of the children (if there are any), or who decides to turn off the life-support machine. It is important to recognize, however, that heteronormative marriage, or indeed any recognized relationship status, is not the only or even the desirable basis for dealing with these practical matters. Still, I do recognize that a world without marriage lies somewhere in the future, so let us return to the present.

Good citizens, like JS/07/M/378, marry and

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procreate as the state expects them to. They are the building blocks of the nation, and, as the nation's custodian, the state is deeply interested in the sexuality of citizens. If a decent citizen is by default a married heterosexual, then the nation too is heterosexual. Thus, the very idea of gay marriage carries considerable symbolic clout precisely because it acknowledges that queer sex is not incompatible with an institution charged with the task of national reproduction. Indeed, the nation itself might start to look a little queer. Therein lies the rub.

In several European states registered partnerships for same-sex couples—or, as in the Netherlands and France, registered partnerships which are available to all unmarried couples—have been introduced. In addition, marriage is available to all couples in two countries, the Netherlands and Belgium, regardless of the sex of the partners.<sup>1</sup> Heterosexuals in European countries like Denmark and Sweden also willingly acknowledge that queer relationships can be loving, caring, and worthy of respect, but they stop short of calling them “marriage” even though, in terms of rights and entitlements granted through registered partner laws, they are on a par, or virtually on a par, with marriage. And a French court in Bordeaux has recently ruled that same-sex marriage is unlawful (“France annuls first gay wedding,” 2004). The ruling is in keeping with the opinion of French President Jacques Chirac that marriage is only for heterosexuals. What is the basis for this residual resistance to same-sex marriage? Why pay lip-service to the equality and dignity of same-sex couples yet still deny them marriage? I would suggest that the stumbling block is sex, or the things queers do in bed together.

I do not mean to suggest that marriage as an institution is reducible to its role in the regulation of sexuality, but such regulation is an important function of marriage as it is currently enforced. A marriage that has never been sexually consummated may not be considered a true marriage and failure to enact this

sexual requirement can serve as a legitimate cause for divorce in many countries. Adultery has been described as not only a betrayal of a mate but also of the state (Kipnis, 1998, p. 300). The institution of marriage constitutes a framework—legal, social, economic, and cultural—within which sex takes place, and according to some, the only setting within which sex should take place.

Marriage is the ultimate state-supported accolade a relationship can receive. It not only bestows rights and privileges unavailable to those excluded from the charmed circle it creates but also acknowledges that the sexuality which is expected to occur within marriage is in the national interest. Marriage for queers implies not only a tolerance of same-sex sexuality, but an endorsement of it. What infuriates the opponents of same-sex marriage is the state's (and by implication, the nation's) approval, among other things, of fellatio and anal intercourse between males, and of cunnilingus and use of dildos by women. While it may annoy some supporters of gay marriage to be reminded of these sexual behaviors, their opponents are absolutely right: allowing gay marriage (and also partnership) does involve state support for *homo-sexuality*.

Surprisingly, then, sex is often absent from debates on both sides of the North Atlantic surrounding the rightness of gay marriage. Instead, the emphasis is placed on loving relationships, caring, respect for gays and lesbians, economic benefits, and rights of various kinds. I would like to see more discussion of sex in marriage, not because respect for gay relationships, economic inequalities, and sexual rights is unimportant, but because to avoid sexuality is to side-step the erotophobia that has characterized much of the public discussion of gay marriage. But why, one may ask, do we need more attention to sex? We are after all discussing marriage, which, while it encourages and regulates forms of sexuality, is also frequently portrayed as a very effective device for killing the libido. The once a week ritual performed on a Friday night (at best, and probably under the influence of alcohol as well) is a staple of comedy. One might even argue that if queers want marriage, then they had better be prepared to cut back on their sex. Indeed, opponents of gay marriage from within the ranks of the lgbt population worry that legalization of

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1. For an overview of the situation in Europe, see ILGA-Europe. (2003). *Families, partners, children and the European Union*. Brussels, Belgium: ILGA-Europe; and Wintemute, R., & Andenas, M. (Eds.). (2000). *Legal recognition of same-sex partnerships-A study of national, European and international law*. Oxford, England: Hart Publishing.

same-sex marriage will “normalize” gay sex and blunt the challenge they believe queer sex ought to present to heteronormative behaviors (e.g., Warner, 1999). In addition, there is, of course, another more serious reason why discussions of queer sex and gay marriage should be kept separate to the extent that this is possible: Queer sex is still a controversial topic, while the image of loving same-sex relationships is less contentious. Thus, there are good strategic reasons for avoiding an emphasis on what queers do in bed, married or not.

The vacillation and squeamishness surrounding queer sex reflect a real dilemma: Being reduced to one’s sexuality is limiting and offensive, but seeing it denied is equally if not more offensive. Acknowledging sexuality is unavoidable and necessary for queer politics. How is it possible to tackle homophobia in particular and erotophobia in general without addressing sexuality directly? Nonetheless, highlighting sex runs the risk of reducing everything to it and of alienating those who find the subject problematic to discuss. Sex, and more specifically queer sex, is the absent presence that haunts the debates. It seems that it is as unwelcome as Banquo’s ghost in Shakespeare’s *Macbeth*, and as difficult to be rid of.

### Sex in the European Union

The European Union (EU) does not base its definition of citizenship primarily on sex or marital status. Citizens of the EU are defined in policy first and foremost as economic actors who enjoy core rights derived from all of the four freedoms of the Union: freedoms of establishment and movement of services, and of movement of persons, goods, and capital. Thus, freedom of movement has been a major issue in campaigns for lgbt rights within the Union. Campaigns to improve lgbt rights by, for example, the International Lesbian and Gay Association of Europe (ILGA-Europe), have pointed out that these basic freedoms are compromised by discrimination, but also by heteronormative bias. Discrimination, lgbt activists argue, impedes the free movement of gays and lesbians, restricts business competition, and squanders resources. Heteronormative definitions of the family, even if not necessarily intended to do so, hamper the

mobility of queers and deny equal rights to their dependents. Some gains have been made with respect to free movement such as the European Parliament’s support for a wider definition of the family that is not confined to married heterosexual couples. Ultimately, it may be the European courts that will decide if these rights are to be extended to same-sex couples. Whatever the decisions may be, a bias in favor of coupledness—derived from the heteronormative example of marriage—will remain largely intact, leaving access to benefits and rights dependent on being part of a legally recognized union. Much effort has been put into lobbying for the recognition of same-sex partnerships throughout the Union, but far less attention has been paid to asking why so many benefits and privileges must accrue to couples in the first place.

While the definition of a family and the status of registered partnerships compared with marriage remain unresolved within the EU, progress has been made in the area of discrimination against lgbt persons. As of August 1, 2003, with the adoption of a new penal code in Armenia, the last law in a European country outlawing sexual relationships between consenting adults of the same sex was eliminated. (Armenia is not geographically European, but is a member of the European Council.) Under Article 13 of the 1999 Treaty of Amsterdam (Treaty of Amsterdam, 1997), the European Union is empowered to combat discrimination on a number of grounds, including sexual orientation. The Equal Treatment Directive in Employment (Council Directive, 2000) prohibits discrimination on the grounds of sexual orientation. The Article must be adopted by member states. Article 21 of the European Charter of Fundamental Rights (European Charter, 2000) also prohibits discrimination on the grounds of sexual orientation. Finally, the European Court of Justice (*P. v. S. and Cornwall County Council*, 1996) found that discrimination against transgender persons at the workplace represents gender discrimination, and is therefore illegal under the Union’s Equal Treatment Directive.

The progress made by the EU is certainly significant, even if there is still work to be done before Europe’s lgbt population has full equality, but I am still somewhat uneasy about the way in which same-sex

partnerships and marriage has been discussed in these documents. By not mentioning sex, the central plank of homophobia, fear and hatred of queer sexuality remains unaddressed. In fact, this absence leaves the cultural basis for homophobia largely intact. Debates surrounding gay marriage have focused attention on relationships and commitment, which in itself is certainly laudable given how “gay” and “commitment” have often been seen as antithetical terms, but through this approach they do not challenge the underlying foundations of homophobia as much as many proponents of gay marriage seem to assume. Take, for example, the cases of Sweden, with its registered partnership law, and France with its PaCS (*Pactes Civil de Solidarité*) act. Both countries have recently witnessed increased levels of homophobic violence. The French government has just given its support to a law proposal which will make homophobic comments punishable by a fine of 45,000 euro or one year in prison. In Sweden, neo-Nazis attacked Stockholm’s gay pride parade in 2003. The legal reforms that have taken place in the EU have obviously not dug deep enough to pierce the reservoirs of homophobia, which underlie such defamation and violence in these member states.

As mentioned earlier, the fact that several European countries, while willing to share the benefits of marriage-like arrangements with queers, are still not willing to share the actual word “marriage” with queer couples points to a continuing problem. One vitally important reason for this refusal is that marriage remains gendered to the core. Gender helps create the idea of two sexes, the complementarity of male and female, and the appropriate sexual relations between them—or heterosexuality (Butler, 1990). Marriage reinforces gender by creating the duo of “husband and wife.” No other combination really qualifies as true marriage in the eyes of a majority of heterosexuals. To tamper with marriage is not therefore only to chip away at the gendering of society, but also to question a fundamental part of heterosexual identity. It is scarcely surprising, then, that many people feel threatened by the prospect.

Debates surrounding adoption by married and registered same-sex couples are also telling with respect to gender and sexuality. Denmark, the

Netherlands, and Sweden allow adoption by registered partners. In Sweden, the legislation permitting this was passed despite a majority public opinion against it. On the downside, the Swedish National Health Service does not allow a woman to receive assisted conception without the consent of a husband, thereby preventing single women from any access to such services. The reason for this legislation was to prevent lesbians from having children outside of a heterosexual relationship and to strengthen the sanctity of heterosexual marriage (“Socialstyrelsen Näger nej Till Homoadoption,” 2001). Therefore, both public opinion and the law regard the heterosexual married couple as the privileged locus for the reproduction of persons, and more precisely of citizens. However, not just any kind of person can provide this function.

The rationale for these restrictions is the widespread belief that queer families lack the clear gender differences that are believed to be essential for correct gender development and sexuality (Weeks, Heaphy, & Donovan, 2001, pp. 156-160). According to this belief, the children of queer parents might suffer from gender dysfunction and, even worse, turn out queer themselves. Naive advocates of gay adoption rights—gay and non-gay—hurry to assure anxious heterosexuals that these outcomes will never happen, as though gender dysfunction occurs solely as a result of the gender pairing of parents and creating heterosexuals must always be the desirable outcome of normal development. The need for reassurance points to the deep-seated loathing of queer sexuality among many heterosexuals even, as is so often the case, when it is buried under layers of apparent liberal tolerance. Perhaps even more disturbing is the agreement with such positions by many gay people that points to a similar self-loathing among gays themselves.

The biological and social reproduction of citizens within queer families and the nation’s blessing of queer unions remain controversial matters in most European Union countries. At some deep level, nation and queer are still mutually exclusive terms for many people, even if they might not phrase their unease in exactly this way. It is this deep *hetero-nationalism*—aided and abetted by the many churches which resolutely refuse to bless same-sex unions—that is a significant part of the problem, even among people who are genuinely

appalled by homophobic violence and the virulent preaching against queer people by religious figures of whatever faith.

It is perhaps not so surprising that the European Union has shown itself to be more lgbt friendly in its policy making and legal decisions, particularly in the field of anti-discrimination, than many of the member states that comprise it. Since its inception, the EU has been obliged to take account of the considerable diversity—political, social, economic, cultural, and increasingly sexual—within its borders. To do this it must navigate the many national, regional, and local traditions present within the Union, not only when formulating EU-wide directives, but also when attempting to instill support for and identification with the European project. Legal recognition, and to some extent respect for sexual diversity are enshrined in the legislation referred to previously. The Union has also committed itself to social inclusion and to what Section 1, Article 6 of the Treaty of Amsterdam calls an “Area of Freedom, Security and Justice,” which is meant to emphasize the general principles underlying the Union, liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. In effect, this blocks any new homophobic measures at a policy level. These principles have clearly not eradicated expressions of homophobia within individual nations that have attempted to derail advances for Europe’s lgbt citizens. But when obliged to reconcile such national positions with the EU’s legal position, such homophobia has been toned down, not least because admission to the EU is contingent upon acceptance of the Union’s anti-discrimination directives.

I do not want to paint an overly rosy picture of the EU however. Economic gain, rather than genuine acceptance of lgbt people, is not an ideal foundation on which to build lgbt rights and win respect for queer citizens. There is no cause for complacency about the situation. As of May 1, 2004, the admission of ten new member states has increased Union membership to twenty-five countries. Among the new members, the Polish government distinguished itself during its accession negotiations by trying to opt out of the obligations to extend lgbt citizens legal protection in accordance with EU treaty obligations (“Polish Opt-Out,” 2003). The June 2004 elections to the European

Parliament also saw the arrival of more nationalistic Members of the European Parliament (MEPs) as well as Euroskeptics, who resist the pull toward a single European entity and culture. These individuals are by no means all homophobic, in some cases quite the opposite. What unites them is their dislike of the centralizing tendencies of the Union, and the handing down of rules to member states from EU headquarters in Brussels. In the case of the anti-discrimination directives, the EU has done just that. The situation is the reverse on the issue of gay marriage and partnerships. Here the EU still has to catch up with developments in some of its member states. ILGA-Europe (Bell, 2004) concludes that:

In the medium term, change seems to be moving from the national level upwards. As an increasing number of states reform their national laws in order to introduce legal recognition for same-sex and unmarried couples, the consequences for these families when they move within the Union will inevitably return to the EU policy agenda. (p. 5)

It remains to be seen whether the new, skeptical MEPs and the more homophobic attitudes of some of the new member states will significantly slow down progress in this area.

In the United States, the decisions and actions of individual states and municipalities have spurred on the federal government to defend traditional marriage. There is much to suggest that the EU will not take the same route. To begin with, the EU tends to work toward harmonizing legislation so that what is accepted in one country, such as gay marriage and partnerships, is accepted in other member states. The EU is not in the business of eradicating new policy developments unless they conflict with basic principles found in the Union’s Articles and Directives, and legalization of gay marriage does not do so. Moreover, there is a strong sense in many EU countries that they should occupy the moral high ground vis-à-vis other less gay-friendly member states and other parts of the world, including the U.S. Thus, for the most part, the EU believes in standing up for lgbt rights, not denying them. Furthermore, there is definitely a feeling among some members of the EU, especially the Scandinavian countries and the Netherlands, that they are more

advanced because of their adoption of progressive legislation on gay marriage and partnership (for discussion of the Danish case, see Bech, 1992). It is these countries that have shaped much of the agenda in the area of policies of relevance for LGBT citizens.

Another important factor behind LGBT advances is the fact that the Union is not a nation. While efforts have been made to create something approaching a European identity, this has made only very modest progress compared to the support that national identities continue to enjoy. There is nothing comparable to the U.S.'s "God Bless America" in Europe. Apple pie may be a metonym for wholesome American values, but camembert, Yorkshire pudding, or sauerkraut will never express the essence of being European. Neither is there the same kind of link between sexuality and the national character that often surfaces in the U.S., because no such national character exists at the European level. It is therefore hard to imagine the EU passing a Defense of Marriage Act as marriage cannot play the role of national institution and guarantee the nation's vigor in a supra-national context.

While a European nation or a European sexuality may not exist, homophobia is still present in Europe. Increased formal legal equality for LGBT citizens can and does co-exist with homophobia in one guise or another. Marriage, partnerships, civil unions, common law arrangements, contracts, and the like are not a cure for homophobia in society, because homophobia does not denigrate the unmarried, even if it may give rise to sexual suspicions about them. No, it denigrates and reviles queer sex. It draws its nourishment from the massive cultural and social opprobrium that demonizes both same-sex sexuality and the infringement of the gender order such sexuality is seen to entail. Moreover, homophobia permeates institutions, the content of social relations, and the cultural sphere, not only the laws of the land. Legal reform is important, extremely important, but it is only part of the answer.

The solution to homophobia is not, as I have already argued, to hide same-sex sexuality behind talk of love and commitment in the context of marriage. While playing down sex might in some contexts be a sensible move when working to gain basic legal protections for gay men and lesbians (many of which

have already been won in the EU), once the gains have been made it is time to talk sex again. Demolishing heteronormative regimes means dethroning heterosexuality from its pedestal as the only true and natural form of human sexuality. I fail to see how this can be done by ignoring sexuality in debates over an institution that is so clearly involved in regulating it and maintaining the privileged position of heterosexuality.

### Sex Talk

Sexuality is complicated. We can all agree on that point. One simple conclusion flows from this truth: namely, that a broad range of measures and strategies is needed to change how we understand and deal with sexuality. Its complicated nature also suggests that we should use caution when choosing some strategies over others for accomplishing change. With respect to gay marriage and partnerships, although they are problematic because, among other things, they reinforce coupledness and domesticate sex by making it invisible, though not necessarily normal, it is not possible for anyone to say with certainty what the effects of legalization of gay marriage will be (see Badgett, 2004, this issue). Nonetheless, at the present juncture, outright rejection of gay marriage strikes me as equally hasty as unconditional support for it. What debates surrounding gay marriage ought not to do, but have often done, as critics point out (Pendleton, 1996; Warner, 1999), is to obscure forms of relationships other than traditional, long-term couples and to marginalize queer sexuality and the variety of relationships that can be built around it.

Discussing queer sexuality in the open puts it on the political agenda, assuming anyone notices and pays attention. The risk is that sex talk also opens sexuality up to further intervention without any guarantee that this will take a desirable form. This is a basic Foucauldian point (Foucault, 1978). By sex "talk" I mean more than telling stories about sex. I also mean heightening the social and cultural visibility of sexuality, exploring the options, interrogating the pleasures, anxieties and inequalities sexuality gives rise to, and examining how inequalities associated with age, race, gender, and other characteristics are implicated in

sex. Failing to talk sex in such a manner will leave lgbt citizens' representational and cultural rights to be seen and heard unrealized (cf. Pakulski, 1997) and will serve to maintain the cultural props of homophobia. Propriety in matters of sex is not the enemy of homophobia; it is its ally.

But where should all this talk take place? For many citizens of European countries, the EU and its courts have provided a better setting for such talk than their own legislatures and judiciaries. But again the problem is that this sex talk is often not talk about sexuality as such but talk about rights. But what happens on the glorious day when all the rights have been won? What happens, let us say, when all the gays are married? Will the queer baiting continue? To me the answer is obvious: Homophobia does not result from the presence or absence of gay marriage, or from any other single status or characteristic, and therefore it cannot be eliminated by altering it. It is remarkably protean and like a weed can pop up anywhere. It is rhizomatic in character, a term that has been used in a positive sense to refer to new forms of identity and politics that are not fixed and tethered to place and rigid hegemonic structures but can also apply just as easily to less desirable developments. Responses to homophobia need to be just as varied and rhizomatic in their turn and not limited to a single issue, such as the right for gays to marry.

The diversity of Europe presents the threat of the development of multiple, rhizomatic homophobias, as well as the promise of as many responses to them played out in a context increasingly free of legal barriers for lgbt citizens. And perhaps because of this greater freedom, there may be more opportunity for exploring the cultural and social underpinnings of sexuality of all types, including whatever passes for queer variants at the time. However, I believe that the stage available for these reworkings is too large to be monopolized by gay marriage and that instead, the European Union ought to serve as a crucible for generating some very queer unions of its own. ♦

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