

# A more perfect union: Reservations about gay marriage

by [George Dennis O'Brien](#) in the [January 27, 2004](#) issue

We have a bumper sticker on our car: "Keep Vermont Civil." The sticker is a bit tattered, since it goes back to the controversy about "civil unions"—the Vermont law passed in 2000 establishing various legal equivalencies to marital rights for gay and lesbian couples. The legislature had been forced to take action following the 1999 ruling of the Vermont Supreme Court holding that denial of marital rights to such unions violated the Vermont constitution's "common benefits" clause.

In a neat bit of Solomonic judgment, the court both rejected the gay and lesbian plaintiffs' claim that they were entitled to marriage licenses and declared that they were entitled to the benefits "incident on the marital relation." The court ruled that those benefits could be established by granting a marriage license, but that there might be other legislative means to assure proper benefits. The matter of specific statute was handed over to the legislature. The result was "civil unions."

A ruling in November 2003 by the Supreme Judicial Court of Massachusetts similarly affirmed "marital" rights for gay and lesbian couples and handed the matter on to the legislature of the Commonwealth. The tone of the 4-3 decision of the Massachusetts Court appears, however, to push toward an unequivocal affirmation of "gay marriage." That would seem to be the hope and expectation of gay activists. Perhaps "gay marriage" will finally emerge as the statutory provision as it has in Canada and in various European jurisdictions. The heavens will not fall, the republic will not totter if that is the direction of public policy, but I am not enthusiastic about such a result. I prefer the "civil unions" approach.

Anyone who writes on this topic must do so with something akin to despair. Rationality is not on broad display in our discussion about sexuality, from homosexuality to abortion rights and back again. Advocates on all sides misstate their opponents' views and overstate their own to the point where careful discourse disappears. Nevertheless, I think it is worth trying to explicate some of the central

claims and key issues that swirl around the discussion of gay marriage. I choose four topics: nature, education, culture and law as relevant to framing moral concerns and public policy.

First, *nature*: One of the dominant views both within and without the gay community is that sexual orientation is a given, a natural determinant—perhaps the expression of a “gay gene.” In his judicious exposition of the arguments for gay marriage, Bruce Bawer states the point succinctly:

One can approve or disapprove of somebody’s actions or opinions, beliefs; but it is meaningless to speak of approving or disapproving of another’s innate characteristics. To say that someone approves or disapproves of somebody’s homosexuality is like saying that one approves or disapproves of somebody’s baldness or tallness.

I think that the gay community puts all too much weight on the notion of natural sexual orientation. In the first place, it just may not be true. If one were to assess sexual orientation by behavior rather than biology, one would be more inclined to Freud’s view that our sexuality is polymorphous: heterosexual and homosexual and what all, through a fascinating range of fact and fantasy. Unipolar sexuality may be a strange outlier, not the rule.

The second problem with the idea of a “gay gene” is that it simply bypasses the value of homosexuality. How do we decide that the gay gene is not a defective gene like the gene for sickle cell anemia? Given access to abortion or gene therapy, the decision could be made to eliminate this fault of nature. Indian villagers have traditionally sought abortions for female fetuses; perhaps parents and societies will seek to abort fetuses with a gay gene. Gene therapy may lead to “designer children” who are handsomely tall, definitely not bald—and certainly not gay! If one believes, as I certainly do, that it is immoral to abort gay and female fetuses, that must be because there is some value in the expression of such a sexuality or such a gender. It would be much better for the gay community to argue that homosexuality enriches the range of human values in a way that being bald does not.

The third problem with resting the case on natural sexual orientation is that it needs a middle term to justify sexual behavior. This is as true of heterosexual behavior as of homosexual. The human gene pool is full of behavioral urges that may or may not be worthy of expression. Priests who choose celibacy or couples who choose an

active sexual life claim that certain values are being expressed in their abstention from or participation in sexuality.

The standard Catholic position on homosexuality does not condemn homosexual orientation; it does condemn homosexual behavior. Thomas Aquinas is correct, I think, when he says that all human acts are moral acts. Sexual acts and behavior are distinctly human acts in that we can choose to engage in them or not. Not engaging in them may be difficult, but so is checking my anger and all too many other urges. We do not act sexually by automation as animals do when biologically triggered. The gay community has been so exercised to deny that homosexual orientation is chosen that it runs the danger of draining homosexual behavior of its human dimension as a chosen act or life.

The real issues about sexuality are choice, life style and cultural value. On the basis of genes or Freudian polymorphous sex, sexuality in many forms is a fact. The question is, How should society assess and shape various sexual expressions? Is America now more morally sensitive, more well structured in its laws and practices insofar as it accepts publicly avowed homosexual behavior; constructs laws that protect homosexuals from the criminal penalties formally attached to homosexual acts; and allows for civil unions or even gay marriages? On the whole, I am inclined to say that getting gay sex out of the closet and legally protected is a moral and political advance. But that is not because homosexuality is natural but because something of value emerges from it.

*Education:* If one holds that sexual orientation may be polymorphous, one should then face the problem of the sexual education of children and young adults. Admittedly, educating for sexual direction is somewhere between unclear and utter mystery, but to whatever extent parents and educators can give advice and cues for sexual orientation and behavior, one must ask: Are some kinds of sexual lives to be preferred?

Having worked with late adolescents most of my career, I am inclined to think that sexual confusion is as much a fact of life as sexual determination. One of the reasons to be concerned with the notion of natural, genetically determined sexual orientation is that it assumes that inclination is destiny. If a young person flirts with homosexuality, sexual-orientation-by-nature confirms gay identity. Maybe not.

What then should a parent, educator or society in general say to a young person caught in a mixed stew of sexual inclinations? Would it be proper to advise a confused teenager that heterosexuality is a preferred sexual life? And if so, what are the grounds for such advice? Difficult and complex as assessing various sexual lives may be, I want to resist the notion that it is a matter of indifference. "I don't care. Any sexual life—heterosexual, homosexual, bisexual—is OK. It's all the same. You choose whatever you want."

I am not denying that there can be deep determinations toward differing sexual lives. Though I am skeptical that sexual orientation is genetic, it certainly can emerge as "second nature": a pattern of desire, circumstance and culture that is virtually ineradicable. And so I am equally skeptical about the possibility (or morality) of persuading or treating mature homosexuals in order to change their sexual direction.

The issue is not with the mature, stable homosexual (or heterosexual); it is with the immature, whose sexual orientation may well be relatively open. Is it legitimate morally, politically or spiritually to commend one or the other sexual orientation? I don't necessarily want to prejudice the question toward heterosexuality; I can imagine a sensitive male homosexual commending the unusually close bonding and intense sexuality of that relationship as the preferred life choice. The educational problem I want to raise is whether any conversation commending this or that sexual life pattern is legitimate.

*Culture:* One of the confusions in the sexual polemics of the day is the blurring of the line between natural orientation and chosen behavior. If you have the orientation, then of course behavior should follow and is fully morally legitimate. Sexual libertarians argue that the repression of sexual urges of whatever sort is psychologically disastrous and culturally stultifying. I like this argument because it shifts to issues of moral choice and social values. Repression is bad for you and your society!

Just how far should the value of nonrepression be taken? One of the byproducts of the sexual revolution has been the emergence of bisexuality—presumably a natural given. Advocates of marriage, heterosexual or gay, would both have to agree that bisexual orientation must be repressed in the interests of marital fidelity. One cannot be faithful to a sexual partner if one is having sex with someone of a different sex. Gay marriage advocates are, as they often say, conservatives on the

issue of sexual fidelity.

Returning to my sexually confused adolescent: If I am in favor of the spiritual and moral value of sexual fidelity, then I am going to commend traditional marriage. A bisexual life or an “open” marriage is judged as an unacceptable choice, natural inclination to the contrary notwithstanding.

Of course, one can then go on and question the value of sexual fidelity both for partners and the social good. The least negative comment I would make here about “open” sexuality is that while it may be compatible with a large range of other social goods like justice and friendship, it is not clearly conducive to those broader social values. ( I credit the distinction to the late Victor Preller.)

Can one go any farther in advising the young about sexual life choices? If there is genuine sexual polyvalence and confusion, I would be inclined to commend heterosexuality. Why? Given the drift of this essay, it would have to be because the moral and spiritual values that can be realized in heterosexual life are either impossible or difficult to realize or sustain in homosexual life. At this point, any gay friend will ask how I know about the values of gay life since I haven’t lived it!

To be sure. I grant the argument and reinforce it. I suspect that there are deep values that can emerge in certain homosexual lives which are unique to that life and which cannot be replicated in content or depth in heterosexual life. A commitment to heterosexuality obviously attenuates male-male relations from the wilder, deeper passions and revelations of mutual sexuality. That is the price one pays for heterosexual life choice.

Any argument for heterosexuality as a preferred sexual choice does not rest on how this or that heterosexual life works out. Heterosexual marriage can be a human disaster—the divorce statistics attest to that! Homosexual bonding may be deeply valuable and, as noted, reach ranges of the human heart that heterosexuality cannot. Any argument for heterosexuality must deal with broad cultural and spiritual realities.

Having said that, it is obvious that constructing the case for heterosexuality must be as complex and nuanced as the cultural and spiritual trajectories of the human spirit. To short-circuit that long argument, I would say that it comes down to the ancient belief that men and women are different. Luce Irigaray puts it well in *An Ethics of Sexual Difference*: “man and woman, woman and man are always meeting as

though for the first time because they cannot be substituted for one another.”

Why heterosexuality? Because the human spirit can expand as it moves toward the different. It can; it may not. Certainly some homosexual (or celibate) life choices arise from a fear of the different in women (or men). On the other hand, in a society that devalues heterosexuality and marriage through a mix of sentimentality and sexual titillation, the choice of homosexuality may be the choice of the different which is revelatory. So be it. But the final fact is that the bodily, biological difference between men and women is the ur-text of the heterosexual narrative. Writing that sexual script is inherently difficult—that is the reason that sentimentality and fantasy are so popular: they conceal the pain of difference and the lessons of loving across that pain.

*Law:* One might well conclude that commending heterosexuality as a preferred sexual life is educationally legitimate, and then ask: But what about the law? Just because one may commend one life choice over another —being a social worker over being a stock broker—does not mean the preference needs to be legally enforced (there is no law against being a stock broker). Perhaps the issue of gay or heterosexual direction should be left to the subtleties of parental or church guidance. Whether that is the final conclusion or not will depend on how one views the role of law.

For classical philosophers law had an educational function; it was set up to structure individual and communal life in order to produce certain human virtues. In Aristotle's work, *The Nichomachean Ethics* and the *Politics* are mutually supporting. One needs certain virtues like courage, temperance and justice in order to realize human good, but those virtues are also necessary to be a good citizen. The state, in turn, is bound through the enactment and enforcement of proper laws to educate for virtue both for its own sake and for human prospering.

The educational role of law is at best recessive in the American understanding of law. We tend to view law not as aimed at creating individual or common good but as a means of mediating dispute and keeping civil peace. In so far as that is the dominant view of law in America, “gay marriage” says nothing about the morality of homosexuality one way or the other, it simply guarantees that all “domestic partnerships” (an alternative term considered for “civil unions”) are treated equally. All well and good. But I am not certain that one can ever completely erase the educational effect of law.

The law may not deliberately create culture, but it certainly becomes a sign within the culture. Giving legal status to gay marriage does appear to suggest that the difference between gay and heterosexual partnerships is a matter of irrelevance. It will surely make it more difficult for parents or the churches to argue a preference for heterosexual marriage (which I hope they will wish to do). Thus I remain in favor of "civil union" as a concept more in keeping with our restrained sense of law and less tilted toward the equating of gay and heterosexual unions.