

Same-Sex Marriage? A View from across the Atlantic

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IN *Pride and Prejudice* (1813) Jane Austen has one of the characters receive a letter in which her sister writes: “I am going to Gretna Green.” The expression required no further elaboration, for its meaning was immediate: the writer had eloped to be married in Scotland. Gretna was the first village across the border on the old coach route, and from the middle of the eighteenth century, when a more restrictive marriage law was introduced in England, it became the destination for teenage lovers seeking to be married without parental consent. Today, sentiment rather than necessity explains the five thousand or so weddings held in Gretna every year, but it could again become a location for those looking for more accommodating marriage law.

As the battle over same-sex marriage continues to flare in various U.S. states, with the prospect of its eventually going to the Supreme Court, in Britain matters are moving more rapidly to a uniform conclusion. In 2005 the Civil Partnership Act was passed, granting same-sex couples in the U.K. the same rights and responsibilities as those in marriage. At the time the Tony Blair government drew a distinction between civil partnership and marriage, largely with regard to legal wording, but the rights to conduct partnership ceremonies in churches, or to incorporate religious elements into them, were withheld. Recently, however, David Cameron’s Conservative/Liberal Democrat coalition administration passed an amendment allowing that, as of December 2011, same-sex ceremonies can be held in places of worship.

This is an extended version of an essay that first appeared in *First Things* in April 2012 under the title “Against Erotic Entitlements”: www.firstthings.com/article/2012/04/against-erotic-entitlement.

The presumption is that this is an intermediate step towards replacing civil partnership with full same-sex marriage, which Cameron favors. Meanwhile in Scotland, the devolved administration has indicated that it is “minded” to legalize homosexual and transgendered marriage in 2012 but is currently holding a public consultation. Thus far, opposition to the plan has come principally from the Roman Catholic Bishops of Scotland, led by Cardinal O’Brien of St. Andrews and Edinburgh, Archbishop Conti of Glasgow, and Bishop Tartaglia of Paisley, who is widely regarded as the coming leader of Scottish Catholicism.

Senior members of the Episcopal Church have spoken in favor of gay marriage, while the Church of Scotland is divided but through its Legal Questions Committee has opposed a change of law without further consultation. The traditionally more orthodox, Calvinist and evangelical, Free Church of Scotland expressed its “deep dismay” and “implore[d] the Scottish Government to reverse proposals to introduce same sex marriage and return to Scotland’s greatest, tried and tested historic qualities which are rooted in the Bible.” That was no great surprise, but what astonished those who had knowledge of the historical antipathy of the Presbyterian Free Church for Roman Catholicism was the concluding sentence: “In this respect the Free Church Commission wishes also to applaud the courage of the Roman Catholic Archdiocese of Glasgow and support their clear statements in opposition to same sex marriage.”

Within an hour the Catholic Church had reciprocated with an official statement: “The supportive comments offered by the Free Church, in regards to the importance of defending marriage from arbitrary redefinition and the seriousness of family as the bedrock of society, are greatly welcomed and appreciated by the Catholic Church.” This exchange is likely to have significance long into the future. Traditionally, Scottish Presbyterians have regarded the Church of Rome as the Anti-Christ. My grandfather, half in jest, used to tell me as a young child that the reason the Pope “wore long dresses was to cover his cloven hooves” (I was being educated by the Jesuits at the time). With the Church of Scotland in visible collapse, and the Episcopal Church a tiny element (50,000 members) at the liberal edge of Anglicanism, there is a real prospect of a realignment of practicing Christians around orthodoxy in matters of faith and morals, bringing together Presbyterian evangelicals and Roman Catholics. Lest this seem an altogether unimagined alliance, consider the following from a letter sent in 1791 by the great Scottish philosopher, and Kirk Minister, Thomas Reid to a Roman Catholic priest: “I give you the right hand of Fellowship. Among the Wonders of our Day, let the pure Wine of Rome & Geneva mix, leaving the dregs behind!”

Returning to the present, there is consensus among the leadership of the main political parties in England and in Scotland on the desirability of introducing same-sex marriage. Far from the Conservative party offering resistance, it has become a principal advocate. Addressing his annual Party Conference, Prime Minister David Cameron said: "I don't support gay marriage despite being a Conservative. I support gay marriage because I'm a Conservative." Then the following month, Ruth Davidson, his preferred candidate, was elected to the leadership of the Scottish Conservatives, notwithstanding that she has less than six months experience as an elected politician. Davidson, who is an ex-territorial army member, a former BBC journalist and producer, and a member of the Church of Scotland, is openly lesbian.

What is to be made of all of this? And how is the case for traditional marriage being argued? As for the former, readers may judge for themselves; regarding the latter, I would say the case has been very badly presented. Opposition to same-sex marriage is standardly characterized as "homophobic." That description is lazy, and it commits the genetic fallacy, by shifting from the rational *grounds* to the purported non-rational *causes* and *motives* for opposition. Even so, I think that critics of homosexual unions overlook the extent to which our societies are addicted to sexualization and sentimentality and are inclined to excuse these factors in the case of heterosexuals.

There is a general form of reasoning, to which I shall give the name *argumentum ad consummationem*, which runs as follows. *Major premise*: Sexual attraction and love are determinants of human happiness and should be consummated where sincerely felt. *Minor premise*: You cannot choose to whom you are sexually attracted, and you cannot choose with whom you fall in love. *Conclusion*: Whether or not they are chosen, attraction and love should be consummated where sincerely felt. This simplistic syllogism (uncritical in its use of choice, love, sentiment, and sincerity) constitutes the rational foundation for a culture of unrestrained, promiscuous, and unfaithful, yet indulgently sentimental coupling.

To speak out of and into such a culture, directing one's attention solely upon gays, lesbians, the transgendered, hermaphrodites, and whichever other poor souls fail to be straightforwardly heterosexual, and calling them to a standard of chastity that has long since been generally abandoned, is ridiculous and callous. It is not altogether uncommon to find those who condemn gays for their sexual immorality also overlooking or excusing heterosexual promiscuity, especially when it is validated by serial "marriage" among the rich and the "conservative." Yet the very foundation of popular sexual mores invites extension to the homosexual case;

and that application is now being made aplenty, leaving opponents open to the charge of hypocritical homophobia.

How then might one press the case against changes to the ancient legal and cultural institution of marriage? The debate on whether to change the meaning of marriage to include same-sex couples has mostly been cast either in terms of citizens' rights and equality, or in terms of religious values and principles. The problem with the latter in post-Faith societies (such as Britain) is evident, since religious denunciation and celebration sound equally remote from most people's concerns. Let me turn, therefore, to philosophy and to talk of equality and rights. This is a distinctively modern way of approaching issues of morality and politics. Indeed, the approach has come to prominence with the rise of liberal individualism and its recent focus on entitlement. Opposition to such thinking comes from those traditional conservatives who favor social duties over social claims, and from those traditional socialists who see links between the culture of rights and that of consumerism, each being stridently insistent on entitlement, recognition, and self-fulfillment.

Indeed, the critique of liberalism as an expression of bourgeois privilege may be moving from theory to confirmation, as the common habit of demanding more meets its consequences in credit collapse, rising unemployment, and declining state provision. Happily, there is another way of thinking about society, one that shaped the founding cultures of Greece and Rome: namely, the morality and politics of the common good. In this perspective, institutions such as education, law, and marriage are grounded in human nature and focused on shared life. They are rooted in what joins humans in natural communities, not what separates them into sectional interest groups.

The case for education and law is not that children have an entitlement to schooling, or citizens a claim to personal rights. Rather, education is a necessity for society and a benefit to be shared within it. Likewise, law is a form of ordered protection of natural human goods and of the means of developing them. Similarly, marriage exists for the sake of making and maintaining family life, the roots of which lie in natural complementarities: in male and female of the species joining together one-to-one, with the intention of creating another. That other, or others, born of the fusion of their parents' diverse identities thereby extend a union of two, to a community of several.

Marriage recognizes, celebrates, and protects this basic source of human society. It is not a commodity to be bought or an entitlement to be claimed, and its meaning and value were understood long before the idea of rights was ever conceived of, and the escalatory contest over them

was ever begun. It is one thing, having created legal rights, to extend them to all citizens, as was the rationale for civil partnerships. It is quite another to redefine marriage. Once marriage is disconnected from the union of one male and one female, there remains no principled reason to restrict it to couples. If same-sex, what of multi-partner marriage in hetero-, homo-, or bi-sexual combinations? And what of the emerging claims of incestuous siblings for marriage rights?

Same-sex advocates are inclined to treat the latter questions as rhetorical absurdities, but grounds for posing them are not hard to find and they generally conform to the *argumentum ad consummationem* pattern. The *Canadian Polyamory Advocacy Association* states that it “promotes legal, social, government, and institutional acceptance and support of polyamory, and advances the interests of the Canadian polyamorous community generally,” adding, “We’re here because we have a right to live with the people we love.” Meanwhile, on the other side of the Atlantic, Ian Stewart “Convener, Atheist Scotland” has recently criticized the acceptance in current debates of marriage as the union of two people:

If Scotland is to be considered as a modern country which values diversity, then alternative forms of marriage, such as polygamy, should also be granted legal recognition. Polygamous marriages are illegal in Scotland and England, but those entered into overseas are not only recognised in Britain, but the social security system makes provision for their maintenance. This is traditional British hypocrisy at its worst. Polygamy should be brought into the mainstream with all people in Britain free to engage in polygamous marriage with the same legal recognition and social esteem as heterosexual, and soon to be, gay marriage. Women who wish to engage in polyandry should also be free to enter into polyandrous marriage with the same parity of esteem and legal recognition as other forms of marriage” (*The Scotsman*, 5 December 2011).

There is also the creeping advocacy of sibling marriage, particularly in northern European countries and in North America, where it is an increasingly common topic of online discussion within the GSA (genetic sexual attraction) movement. More prominently, however, incest is beginning to be sympathetically discussed in mainstream publications. The two main British liberal newspapers are the *Guardian* and the *Independent*. The latter is a more recent and financially less secure institution, and perhaps for these reasons it has been especially keen to nurture new generation journalists. Its principal writer in that category has been an opinion columnist, Johann Hari. Homosexual, wildly self-promotional, and self-confessedly depressive, Hari delighted the *bien pensant liberati* with endless

denunciations of the hypocrisy of social conservatives. In that vein he was awarded the 2008 [George] Orwell prize for journalism, which, to quote its own rubric, “is Britain’s most prestigious prize for political writing . . . which comes closest to George Orwell’s ambition ‘to make political writing into an art.’”

Unfortunately it transpired that Hari’s contribution, like much else in his oeuvre, was an exercise in the arts of fabrication and plagiarism, and the prize was withdrawn. Hari’s response to his exposure was long delayed and failed to engage all the charges against him, but in response to an investigation by his newspaper, the *Independent*, he announced that he was going to take an unpaid leave of absence until 2012, and at his own expense undertake a program of journalism training. Meanwhile he has continued to publish in other outlets, including the *Huffington Post*. In 2002 Hari had published an article in the *Guardian* headed “Forbidden Love” and subtitled “Can sex between close relatives ever be acceptable?” that was subsequently reproduced on his blog (johannhari.com/2002/01/09/forbidden-love). Hari’s answer is at best uncertain, and the article ends with what appears to be a rhetorical question:

In any case, we must acknowledge that, with the rise of contraception, we have succeeded in separating sex from reproduction. Another unashamed participant in incest discovered in a chatroom, “daddysgirl”, insisted: “We would never have a baby, it would be all screwed up and wrong. I use the coil.” So has a window opened for “safe” incest? And if so, is our visceral disgust just a remnant from a vanishing age?

So far, so narrowly heterosexual, perhaps because Hari is cognizant of the fact that his liberal readership might not yet be ready for homosexuality plus incest. In the investigation of Hari’s plagiaristic and other journalistic felonies, however, it emerged that he had been operating on the internet under the pseudonym “David Rose,” using an email address incorporating this identity. From that address in 2006 a narrative was sent by “David Rose” with the subject-heading “How my little brother learned to be a Whore” in which one black teenager sodomizes and pimps his younger brother. Hari was forced to acknowledge using the pseudonym and has never countered the allegation that he authors gay incest porn. As noted, however, much lauded for his liberal progressivism, Hari, writing in a national newspaper, had also been inviting readers to consider whether incest might be morally acceptable. And if desire and love can take a man to his brother, or a woman to her sister, etc, then *argumentum ad consummationem* sets the foundation for incestuous marriage, as it does for polyamorous unions.

In the marketplace of sentimental and erotic entitlement, choice is sovereign and is no respecter of nature or custom. The best case against same-sex matrimony is the positive argument for marriage as the cultural formulation of a natural union, a formulation that needs to be protected from the twin distortions of shallow sentimentalism and animal lust. This is an argument from natural law and so connects to significant strands of both Scottish and American legal theory. As Viscount Stair, Scotland's greatest jurist, wrote in the *Institutions of the Laws of Scotland* (1681): "Obligations arising from voluntary engagement take their rule and substance from the will of man and may be framed and composed at his pleasure; but [not so] marriage, wherein it is not in the power of the parties, though of common consent to alter any substantial. . . . Marriage arises from the law of nature and it is given as the very example of the Natural law." It is an irony, therefore, that Gretna Green stands only eighty miles to the east of where Stair composed the *Institutions*, for it is in Gretna that we may see the first wave of same-sex marriages in Britain, kilts-a-swirling to the accompaniment of the bagpipes playing that old uplifting favorite, "A Highland Wedding." N V