

## Two or Three Covenants in Place of Marriage

### I.

Across the western world there has been a torrent of controversy about same-sex marriage and associated rights to adopt children or, in some cases, to sanction artificial procreation on behalf of same-sex couples. For all the passion and outrage on either side, little light has been thrown on the essential issue, which is that of the purpose, or rather purposes, of marriage. Once we call to mind some fairly obvious distinctions, things fall in place.

Marriage is a special kind of personal contract, but it is also a social institution. You might marry in near secrecy, but part of the essence of marriage is that the union is recognised publicly. This is the recognition that same-sex couples have craved and that traditionalists have wished to deny them. It is a separate matter to arrangements for procreating or bringing up children.

The heat of the debate has left one issue cold, which is the desirability of universal coupledness, or indeed whether this is seriously even conceivable. This failure is exemplified by the unfortunate slogan propagated in France of *mariage pour tous* (= *marriage for all*), which may sound more like a menace than a promise. As one kind of exclusion is ended, at least in terms of state recognition, so another kind appears with all attention being focussed on the institution of coupledness (whether with or without a marriage license), as though this must be the universal norm. Those who live differently, whether by conviction or circumstance, are left outside. In point of fact, coupledness often comes at the expense of friendship, which is governed by loyalty rather than an exclusive – i.e. excluding – contract.

## II.

One purpose of marriage is to provide a robust institutional setting for bringing up children. It will not be disputed that children thrive better when there is constancy and continuity of attention from more than one adult. Two parents are better than one. It is argued below that two parents are not enough.

A robust institutional setting for bringing up children must mean that those involved have rights and duties with regard to the child. The qualification “institutional” means that their involvement cannot be terminated on a whim. Outsiders – neutral, unknown and maybe anonymous – must give their blessing to any change.

A separate set of purposes essential to marriage is the provision of emotional security and material solidarity between the members of the couple. In short, a covenant to maintain a joint household.

Marriage cruelly conflates these two sets of purposes, and this failure to differentiate leads to no end of conflict, confusion and, of course, misery. It is for this reason that here the proposal is made to speak of covenants. Covenants are like contracts, but they are less legalistic and, above all, give formal recognition to the role of the emotions and the virtue of loyalty.

One covenant that may be made is to bring up a child jointly. Much of the time, this will involve running a joint household. Normally, when the child has reached adulthood and independence, the covenant will have achieved its purpose and so have come to maturity, its commitments having been fulfilled. Although long, it is temporary in nature.

A separate covenant that may be made is to share a household until “death us do part”. This is not a flat-share or a business partnership. It is best exemplified by the rare but poignant cases where two sisters or two brothers live a lifetime together in a single household, presumably without any sexual relationship between them, although this is of no concern to anyone outside.

The household here to be shared in permanence also stands for solidarity, as “in sickness and in health”, or indeed “for richer or poorer”, while legal recognition involves rights and duties in cases of one of the couple is incapacitated.

A problem may arise when one of the couple dies, but only because of the onerous nature of inheritance tax in most jurisdictions. (The revenue authorities may *de facto* confiscate the jointly held home, leaving the remaining person destitute.) That is, the problem would seem to arise solely from a heavy-handed, non-discretionary tax bureaucracy interfering with common-law property rights. (The non-discretionary aspect is associated with the contemporary prioritisation of equality; strict equality being an unobtainable goal and so always at odds with discretion, but that is another subject for another day.)

A household covenant might more usually be equivalent to a marriage as commonly understood when no children can come naturally and no adoptions are planned.

Obviously two people might resolve to enter into both covenants, though this might be rash since one cannot in early adulthood (i.e. when most fertile) know the person one will be, much less so the person the other will become, a score of years later. This would be more like entering a convent than a covenant.

Indeed, in public reflection about the institution of marriage, much light might come from considering in parallel the institution of celibacy such as is exemplified when someone takes a vow of celibacy, which is not only a promise not to marry, but also a vow of chastity. Would it be possible to go to a government office to register this vow? And if, subsequently, one broke it, would there be legal recourse for the breach of vow to be punished? Or would one be able, legally, to register a revocation?

These reflections demonstrate that marriage is first & foremost a religious sacrament. One does not have to be religious to acknowledge this. A marriage – proper – takes place in the eyes of God. So an atheist cannot marry. An atheist may, however, very well enter into a solemn promise – a binding agreement – to care jointly with another adult for a child, or else to share a household until “death us do part”.

Hence it is impossible for the state to conduct marriage ceremonies, between whomsoever. And consequently impossible for the state to regulate marriage. The tasks of the state here are, rather, to sanction (i.e. acknowledge & anchor) covenants for the upbringing of a child or the maintenance of a life-long household. Much would be gained if the state were to distinguish these two tasks and make proper and separate provision for them.

### III.

There is a third – rather obvious – purpose of traditional marriage, and that is to provide the spouses mutually with a permanent sexual partner. The Enlightenment philosopher Immanuel Kant maintained – notoriously – that marriage is a contract for the use of the sexual organs of the other. Presumably, in view of the times he lived in, he meant the exclusive use. A more realistic and liberal version for the contemporary world would be that it involves a promise of availability, or a granting of priority.

In France there was a case recently of a wife being awarded compensation because her husband had failed to fulfill his conjugal duties. Although in the reported case the husband's neglect seems to have been a matter of his indifference, in other cases the withholding of sex is used as an instrument of power in the dynamics of a couple. On the other hand, progressive opinion has led to legal recognition of the possibility of rape within marriage, a possibility that some traditionalists contest.

It will be obvious that no brief treatment of these conflicting perspectives can begin to do justice to the enormous range of situations that can occur. The question arises, therefore, whether, in this regard, marriage can be given any kind of state recognition. Again, it would seem that marriage is a religious sacrament, or covenant, which the adherents to the faith must define and police on their own, independently of any legal sanction.

There is, however, another institution that has been hitherto religious, or rather Christian, and whose recognition and oversight by the state could be universally beneficial.

#### **IV. Godparenthood: Re-weaving the social fabric**

Granted it is better that a child should have more than one adult to bond to, some of the invective against parenthood in a same-sex marriage would seem vindictive. It would amount to depriving some children of a good. But if we presume, to be conventionally on the safe side, that it is best for a growing child to have adults of both sexes to bond to, there is a simple solution, which may be seen either as a compromise or an ideal. It may also present a safety valve against gross mistreatment.

There is an ancient institution to provide additional assurance that children are cared for, roughly, as they should be, and that is godparenthood. All we need do is give this institution legal recognition, such that parents and especially any single parent be urged to nominate two or three godparents, who would have legally enforceable rights and obligations. That is, a godmother and a godfather (not necessarily in any liaison) would be expected and empowered to visit their godchild regularly, for example once a fortnight, and held partly responsible (with sanctions) if the child came to serious harm.

They might be grandparents, or aunts & uncles, but ideally they would, as originally in medieval Christendom, be unrelated persons who lived nearby. This mechanism could work wonders in establishing or reinforcing social cohesion. It would also encourage the institution of long-term friendship, which suffers grievously when everywhere all emotional eggs are invested in the excluding relationship of marriage.

Such a rejuvenated and legally enforceable institution of godparenthood would calm the passions in the contentious debate about gay adoption. If two men, or two women, are bringing up a child jointly, then let them appoint godparents of the opposite sex to provide some gender balance in their child's growing perception of the human world, it being understood that we understand gender imperfectly, and should err on the side of balance.

Although originally an ecclesiastical institution, there is no need for godparenthood to have religious undertones.