

SAME-SEX WHAT? MARRIAGE? UNION? LEGALLY, NOTHING?

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GBH/PBS Emily Rooney (interviews) Program tonight (with repeats at 11pm & tomorrow 6am) was 15" (only 15 minutes!) on the upcoming Vt. legislature vote on same-sex marriage/union--the panelists being, in addition to me, two professors from the U. of Vt. School of Law (both favoring, I opposing, the proposed legislation). The brief discussion was preceded by a pro-gay sob-story video of two old Vt. gals who've been living together for 26 years &, before either dies, want the "piece of paper" certifying that their relationship has been & is, coram legis (in the eyes of the law), of standing & status equal to (heterosexual) marriage. (Both of the Vt. lawyers are homosexuals, the younger Greg & the older Peter.)

1 Greg thinks the proper venue is the Vt. Supreme Court, as this is a case of civil rights requiring (he averred) no legislation additional to the present federal- & state civil-rights legislation. "Extending 'marriage' to include homosexual couples is a simple expansion of the word to fit a new circumstance."....I countered that any legal expansion or contraction of a term raises the possibility that the purpose of the size-change is not so much the expansion of justice as the evasion of a statute's specific original intent; & that changing a statute's intent is a matter not for the courts but for the legislature.

2 Peter disagrees with Greg: the proper venue for this issue is not the courts but the legislature, "where the people speak to affirm or change the people's prior decisions." "But if Willis & I were in the legislature, 'we would vote on opposite sides of this bill.'" Peter agreed with Greg that it's unfair & unjust to discriminate, in couples' standing & rights, against gay/lesbian couples; & that there should be no significant obstacle put in the way of moving toward this fairness/justice....I asked why, if there's no significant obstacle, all 50 states have laws limiting "marriage" to heterosexual couples, Hawaii & Alaska just recently having blocked a move for the legalization of same-sex marriage? "Something profounder than prejudice must be at stake."

3 The moderator asked me what. I expounded along two lines, the first procedural & the second structural:

(1) Procedural:

As our society has become more complex & more litigants are having recourse to law on more issues, The Founders' wisdom in the First Amendment is becoming ever more apparent. The two-part religion clause of that amendment expresses the **dual-negative principle** that government (in this case, the federal government) shall be & remain both nonpromotive (of religion) & noninterventionist ([noninterfering] in religion). In 1973, the U.S. Supreme Court extended this principle to an issue of which in all probability the electorate will never agree, viz, abortion: no federal promotion of abortion, no federal efforts to restrict, curtail, or eliminate abortion (Roe v. Wade striking down anti-abortion statutes in a number of states). Now (I say) the principle should be applied to the same-sex-union issue in Vt. (& the USA): no promotion of same-sex-union by legal recognition, no interference with law-abiding same-sex couples' cohabiting.

The law of all states in the USA, & all governments abroad, does promote (by favoring, granting special recognition & rights to, "marriage" [heterosexual unions with prospect of procreation/parenting]). Why the preferential treatment (claimed, by homosexuals, to be unequal & therefore unfair & unjust)? Because the government believes that only this husband-wife-child sexual arrangement, among all possible sexual arrangements, promotes the best interests of the state now (in socio-sexual stability) & in the future (by giving children the best chance of growing up into human maturity & civil responsibility). (What may, I fear, doom this preferential treatment is the prevailing mindless egalitarianism which Toqueville listed as one of America's two greatest strengths/weaknesses, the other being libertarianism.)

But how would legal recognition promote same-sex unions? What is specifically recognized is thereby promoted, & the recognition is itself tantamount to granting such equal status with heterosexual marriage if (1) either "marriage" or "union" is legally expanded* to include the former & (2) the rights & advantages of the latter are applied to the former.)

(2) Structural:

The cabbie who drove me from Cape Cod to Boston this afternoon said I was the first passenger he'd had in a long time who wasn't "stressed out of shape." Said I, "What shape were they in before they got stressed out of it?" He

* Various: word-creep, meaning-creep, category-creep, bracket-creep, word-inflation.

blurted "The shape God gave them!" Now, our American society today has been stretched out of shape. Moral words have been stretched to cover unethical purposes. Sex flows in the channels not of commitment but of feelings, & the resulting chaotic "families" (oh, how that word has been stretched!) are inherently child-abusive. In contrast to this chaos, there are discernible **structures of reality & of society** to which we theologians point as lawyers point to the legal structures which are crafted & continually re-crafted to serve the fundamental structures of society which are to some extent (never perfectly) expressive of the underlying fundaments of reality.

For our purpose in this discussion, think of the laws as within an equilateral **triangle** whose sides are "customs" (the particular society's mores) & "ideals" (the human ideals, societal & increasingly global, for individual-familial-social-economic-political life). What, then, is the base? It is the "commandments" which appear both in creation's structures expressive of the Creator's mind & will & in particular historical revelations of what God wants from us & for us. The Bible is clear about this base, this bottom-line of divine demand; & it includes the divine design of the "family" as father-mother-child (the child at least as intentional possibility). (The Bible **promotes** the "one flesh" [or person: Gn.2.24] & **proscribes** homosexual behavior [Lev.18.22, 20.13; Deut.23.18; Ro.1.26-27; 1Cor.6.9; 1Ti.1.10].)

I added that as society becomes more complex, the triangle expands, giving both more room & more responsibility for laws. The lawyers said they liked the idea of expanding the laws! I didn't get to state an implication: as the triangle expands, so does the bottom-line: we have more to be responsible to God for.

4 Before the end of the (!) fifteen minutes, I managed to get in that I favor the adoption of children by unmarried couples who can convince government that they are sufficiently committed to one another to sustain (as the two ends of a hammock) the rearing of a child. Children's need of adult affection, protection, sustenance, & guidance outweighs the structural logic of adoptees in (hetero-) "families" only. But the registered adopting couple must not be identified, in the papers of adoption, as to sexual orientation (an identification which would indeed violate the laws' exclusive recognition of "marriage," "union," as [to use an old legal phrase, now properly yielding to "husband & wife"] "man & wife"). Two non-lesbian women may adopt, as may two non-gay men; or two lesbians or two gays. The record would should only "Ms....& Ms...." or "Mr....& Mr...."

