

Tracing Heterogeneity in Debates about Marriage
Steve Fifield, University of Delaware
4-13-09

NewSSC 09 Vignette...a work in progress

*Male-female marriage is the life-blood of community, society, and the state. We rely on this honored institution for the procreation and proper formation of the next generation. Social science demonstrates, and amici's own long experience confirms, that a child fares best when raised by caring biological parents who have the deepest stake in his or her wellbeing and who can provide both male and female role models.*¹

This passage is from an amicus brief to the California Supreme Court by a coalition of Mormon, Catholic, protestant evangelical and orthodox Jewish organizations during the 2007 deliberations about the constitutionality of a ban on same-sex marriage. The brief argues that the “institution of male-female marriage has its own venerable pedigree intended from time immemorial to address both biological and social realities” (p. 19). While marriage carries a variety of personal meanings for its participants, “regulating the sexual union of men and women for the bearing and optimal rearing of children has always been the primary *public* purpose and meaning of marriage” (p. 9). The wellbeing of children, and therefore of society, rests on the continued recognition of marriage as an exclusively male-female union.

Same-sex marriage, which the brief tellingly calls *genderless* marriage, is said to change the time-honored definition of marriage in ways that are at odds with “biological and social realities” (p. 5). Social science and “commonsense” (p. 37) agree that children do best when raised in a stable marriage of their biological mother and father. In contrast to the genderless households of same-sex couples, in male-female marriages a “child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like” (p. 39-40).² When it comes to raising proper boys and girls, two mommies or two daddies will not do: “Men and women are not fungible in relation to child rearing. They have distinct contributions to

¹ Starr, Kenneth W. & Alexander Dushku. (2007). Amici Curiae Brief of The Church of Jesus Christ of Latter-Day Saints, California Catholic Conference, National Association of Evangelicals, and Union of Orthodox Jewish Congregations of America in Support of Respondent State of California, In re Marriage Cases (S147999). Retrieved from <http://www.courtinfo.ca.gov/courts/supreme/highprofile/amici curiae.htm>.

² Citing the NY State Court of Appeals case *Hernandez v. Robles* (N.Y. 2006) 855 N.E. 2d 1, 7.)

make” (p. 40).³ Of course heterosexuality requires that children become women and men who find the other sex attractive. In this male-female marriage offers children “vital training in bridging the gender divide” and “sets a pattern for cooperation between the sexes” (p. 40).

By following controversies about what kinds of people and relationships ought to have access to civil marriage I hope to explore how heterogeneities—differences that make a difference—are contested through appeals to authority (scientific, religious, legal, commonsense, etc.) on human nature and society. Marriage law is not the only thing at stake here—personal and group identities, citizenship, science and religion are all taken up and shaped as they circulate in these controversies.

The Church of Jesus Christ of Latter-Day Saints et. al brief points to a few of the interwoven strands and knots of heterogeneity that I hope to trace and tease apart by looking at documents associated with recent state court cases around same-sex marriage in the US. Here are a few of the tangled strands of I’d like to follow.

- ***Heterosexual and homosexual*** – This strand traces the paradoxical ways in which the heterogeneity of sexual identities are in play in the mutually defining relationship of heterosexuality and homosexuality. As a defense of heterosexual marriage against a genderless alternative that defies “biological and social realities,” the brief advances a *heteronormative* view of heterosexuality as both natural and good. But as queer theorists have pointed out, the relational nature of the homo/hetero binary effectively internalizes one within the other, simultaneously maintaining and collapsing the distinction.⁴ Homosexuality gives heterosexuality something to be superior to, helping mask the troubling empirical inconsistencies (heterogeneity) of heterosexuality as a distinct kind of person or group of people.
- ***Sex, gender and sexuality*** – Collapsing heterosexual sex and gender into two complementary kinds called men and women produces an orderly heterogeneity of roles and role modeling in male-female marriage. How in the logic of this move a

³ Citing Andersen, *Children, Parents, and Nonparents: Protected Interests and Legal Standards*, 1998 B.Y.U. L.Rev. 935, 998.

⁴ Fuss, Diane. (1991). *Inside/Out*, In *Inside/Out: Lesbian Theories, Gay Theories*. Diane Fuss (ed.), pp. 1-10, NY: Routledge.

same-sex marriage becomes *genderless*, rather than same-gendered (which, in any case, it is not necessarily) is to me a mystery that needs to be traced. Perhaps disordered gender is no gender at all. In any case, the rhetorical utility of a *genderless* marriage lies, at least in part, in the non-sense (heteronormatively speaking) it makes of the notion that same-sex (genderless) couples are capable of rearing children into adults who act like proper men and women. How are children supposed to know how to behave without proper role models? And yet, isn't heterosexuality a natural state (reflected in "biological realities") for humans? Following this strand takes us into the model of individual and social procreation that is advanced in the brief and to the tensions it creates between the natural/biological and the social in the course of promoting some heterogeneities and suppressing others.

- ***Nature and nurture (and church and state) in procreation and development*** – The brief sketches a view of human nature in which biological realities, while definitively heterosexual, are not sufficient to secure the proper behavior of adults or the optimum conditions for rearing children. While mother-child bonds are created “through the biological process of pregnancy and childbirth, there is no corresponding process for creating a relationship between father and child” (p. 39).⁵ Marriage performs a “channeling function” by “encouraging socially optimum behavior” (p. 42) by people who might otherwise (naturally?) behave in ways that are not in the best interests of children and society. Through male-female marriage, the “State and religious institutions informally cooperate in maintaining and fostering a social institution vital to vouchsafing both secular and religious interests” (p. 44).

While this argument remains more or less grounded in the secular domain of a legal brief (with the exception of the preceding demolition of any wall between church and state), my sense is that it does so at the expense of its own internal coherence. I expect that by following this strand out of the brief and into the broader social debate I will find theologies used to support a more robust religio-heteronormative perspective on the problem that nature is not sufficient to secure heterosexuality within male-female marriage. For example, from conservative

⁵ Citing a dissenting opinion from Justice Robert Cordy in the Massachusetts same-sex marriage case (*Goodridge, supra*, 798 N.E. 2d at 995-996 (Cordy, J., dissenting)).

Christian perspectives what the amicus brief does not make explicit, but clearly prefigures, is that human nature includes the heterogeneity of pre-Fall and post-Fall conditions. In our pre-Fall state, the contrivances of church and state would presumably be unnecessary to channel human behavior. But in its Fallen state human nature is an ambiguous and ambivalent guide to proper conduct. As Fallen beings, sinning is our nature. Simultaneously repellant and alluring, natural and unnatural, homosexuality can draw men and women away from their intended compatibility as heterosexual beings. It takes the moral guidance of the church, and the legal strictures of the state, to keep men, women and their children on proper paths. Withdrawing the constraint of male-female marriage leaves children at risk for “numerous social pathologies” (p. 41) and undermines the foundations of society.