

An Ethics for Same-Sex Marriage

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A NON-RADICAL HOMOSEXUAL VIEW

Two years ago, while still a professor at BYU, I decided to come out of the closet. To a great extent, the decision was one I don't know that I would have come to anywhere else. BYU is a peculiar university. Its aim is an environment of honesty and a community of truth and integrity, and to a great extent it does achieve that aim. Living and working there, while being a person with "same-gender attraction," and not saying anything about it, became increasingly uncomfortable. So I made a simple, yet very difficult decision. When people (students, other faculty, church leaders) asked me why I was unmarried and why I didn't date, I told them the truth. My personal experiences with coming out to the BYU community were almost universally positive. My colleagues were tremendously supportive and my students (the minority that wasn't oblivious) were understanding and often supportive. Even media attention was overwhelmingly positive.¹

Nevertheless, my status as a celibate gay professor at BYU caused a considerable amount of comment. President Rex Lee admitted to the press that the situation had been uncomfortable for the University.² Some negative editorials appeared in local papers,³ and a local ultra conservative radio talk-show host dedicated most of an hour to a discussion of me.⁴ I was referred to as a militant radical homosexual. I'd like to comment on my radicalness, particularly in terms of the subject of this paper, which is same-sex marriage.

My understanding of the term radical, is that it refers to someone whose goals include an extreme, fundamental change in the way things are done. A radical wishes to dismantle, deconstruct, or even destroy society's institutions and rebuild with new institutions that will be more in keeping with the principles of his or her radical agenda.⁵ By that definition, I am not a radical homosexual. My purpose here is to claim my right

¹ Peggy Fletcher Stack, "BYU May Face Decision on Gay, But Celibate, Language Professor," Salt Lake Tribune, 22 July 1995; Sheila Sánchez, "Gay BYU Professor Feels at Peace," Daily Herald (Provo, UT), 8 Aug. 1995; Sharon M. Haddock, "Homosexual Professor Says He'll Leave BYU," Deseret News, 10-11 Oct. 1995.

² Mark Eddington, "BYU's Future Bright, Says President Lee," Daily Herald (Provo, UT), 10 Oct. 1995

³ Patrick Bryson, "With a Homosexual at BYU, I Deserve an Apology," Utah County Journal, 8 Oct. 1995; Hal Potter, "Y. Shouldn't Let Professor Stay," Deseret News, 26-27 Oct. 1995.

⁴ Mark Eddington, "Conservative Host Follows Rush's Lead," Daily Herald (Provo, UT), 6 Sept. 1995; Perry Smith, *Feminism, Liberalism and BYU*, (Springville, UT: Cedar Fort, Inc., 1996).

⁵ Bruce Bawer wrote a notably conservative book called *A Place at the Table* (New York: Touchstone, 1993), in which he argued that gays and lesbians should be allowed to play a part in national policy. He reported later that a lesbian activist, Donna Minkowitz, commented "We don't want a place at the table—we want to turn the table over." Quoted in Bruce Bawer, (Ed.), *Beyond Queer: Challenging Gay Left Orthodoxy*, (New York: The Free Press, 1996), 1.

to be included in one of our society's most basic and fundamental institutions. As a gay man who argues in favor of expanding the legal protections of marriage so that I might be included, I cannot be called a radical—an activist maybe, but not a radical.

THE PUPOSE OF SEX

While listening to talks at General Conference, watching lots of popular television, and doing my share of reading, I've discovered three reasons as to why I think people have sex. These reasons are: first, procreation; second, recreation; and third, to create intimacy. Perhaps a healthy view of sexuality would involve all three of these possible products of sex—children, fun, and love—but for the purposes of this discussion, I'm going to break them up and discuss each of them separately.

SEX AND PROCREATION

When I was a missionary, the official missionary lessons taught that the reason why men have such a strong sexual urge is to convince them to marry and raise children. Strong desires and appetites accompany the procreative power because "there is a need to persuade men to accept the responsibility of home and family."⁶ This is a silly argument that says the reason for sex, and the only reason for sex, is to have children; but the reason we LIKE to have sex, particularly the reason MEN like to have sex, is to persuade them to get married and have children.

I'm not convinced. I have never wanted to engage in any behavior that could make me a father, and yet I have always wanted to have children. At times I ache to be a father; sometimes it hurts deeply when I am reminded that a whole range of human emotion and interaction is missing in my life. So in my case, at least, it seems the Lord got things a bit mixed up and gave me the desire to have a family without the corresponding heterosexual sex drive.

Anyway, one argument put forth by the LDS Church and others is that sex exists so we can have children, and the sex drive exists because otherwise sane people would never want to have children.

Another take on the sex as procreation argument is that marriage exists primarily so that we can have sex. For three years, I was the ward clerk in a BYU student ward. I had the opportunity to attend all of the bishop's disciplinary councils. They occurred with some regularity, and the purpose for these disciplinary councils usually concerned some sort of sexual indiscretion on the part of an unmarried BYU student. Whether a man or a woman was before us, the bishop, or one of his counselors, would always ask whether or not there was any possibility of marriage between the sinners. If the answer was "yes," then the counsel was to get married and make an end of it. Sexual intercourse (and many of the pastimes leading up to it) is the only activity I can think of which constitutes a major sin, yet for which repentance does not entail forsaking the activity, but merely making the activity legal. One day you are in danger of losing your membership in the Church; the next, after a short meeting with a

⁶ Corporation of the President of The Church of Jesus Christ of Latter-day Saints. The Uniform System for Teaching Families, (1973), H-15

justice of the peace or a blessing by the bishop, you are faithfully discharging your espousal duty.

Elder Boyd K. Packer, in his "Little Factory" speech, stressed that sex is a sacred procreative power to be used only within the bond of marriage. "Young Latter-day Saint men," he counseled, "do not tamper with these powers, neither with yourself alone nor with one of your own kind."⁷ It's interesting to note that in this conference talk, Elder Packer never used the word sex. I wonder if any of the younger boys in the Aaronic Priesthood were at all confused as to what he was talking about. Two years later at BYU, Elder Packer gave a devotional speech specifically about homosexuality in which he made a point of using the word *homosexual* only once.⁸

The Church's official policy on homosexuality is that there is a "distinction between immoral thoughts and feelings and participating in either immoral heterosexual or any homosexual behavior."⁹ The duality of the nature of heterosexual behavior is obvious; some is moral and some is immoral. But "any homosexual behavior" is immoral.¹⁰

So this basic theology seems to be that sex is for procreation only. Sex for any other reason is sinful. Procreating outside of marriage is sinful.

Elder James E. Faust has added a common, absurd, argument to this discussion. Writing about the "inappropriate use of sacred creative powers," and of homosexuality specifically, he claimed that "if practiced by all adults, these lifestyles would mean the end of the human family."¹¹ Elder Faust seems to see homosexual sex as such a temptation that all men might engage in it to the exclusion of heterosexual activity, if not for his preaching against it.

The idea that sex is above all a way to have children and should only be engaged in with procreative intent is well established in the Christian tradition. Likewise, the idea that marriage exists primarily as the only healthy institution in which people can rear children, thus limiting legitimate sexual activity to marriage, is well established in Western culture.

Justin Martyr wrote in the second century: "We [Christians] do not enter marriage for any other reason than to have children."¹² Sex, to a Christian, becomes a nasty but necessary means to an end, and it is excusable only when the participants are married and when the goal is procreation.

⁷ Boyd K. Packer, Speech in Priesthood Session, in Official Report of the One Hundred Forty-Sixth Semi Annual General Conference of The Church Of Jesus Christ Of Latter-Day Saints Held in the Tabernacle on Temple Square in Salt Lake City, Utah, 2 October 1976 (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1976), 101.

⁸ Boyd K. Packer, "To the One," Fireside address given at Brigham Young University, 5 March 1978, Speeches of the, (Provo: Brigham Young University Press, 1978), 33.

⁹ Stack, "BYU May Face Decision on Gay, But Celibate, Language Professor."

¹⁰ President Hinckley, in an interview with the San Francisco Chronicle, equated homosexual and heterosexual behavior, referring to a single "line" that separates moral from immoral activity: "We have a very strong moral teaching concerning abstinence before marriage and total fidelity following marriage. And, regardless of whether they're heterosexuals or otherwise, if they step over that line there are certain sanctions, certain penalties that are imposed." Don Lattin, "Sunday Interview—Musings of the Main Mormon. . .," San Francisco Chronicle, 13 Apr. 1997.

¹¹ James E. Faust, "Serving the Lord and Resisting the Devil," Ensign, 25:11 (Sept. 1995), 5.

¹² Cited in John J. McNeill, *The Church and the Homosexual* (4th ed.), (Boston: Beacon Press, 1993), 95.

St. Augustine came up with the "hypothesis of a passionless procreation" wherein love was shared in the Garden of Eden without the "lecherous prompting of lust" and conception could have taken place without intercourse.¹³ Sadly, after the Fall, sex has remained the only approved way to get pregnant.

Following this reasoning, any non-procreative use of sex must have as its goal pure venereal pleasure and is therefore sinful and selfish. Homosexual behavior, because it denies even the possibility of children, is completely selfish. Elder Boyd K. Packer proposed at BYU in 1978, that

the cause [of homosexuality], when found, will turn out to be a very typical form of selfishness. . . . I do not think for a minute that the form of selfishness at the root of the perversion is a conscious one, [but] it can become imbedded so deeply and disguised so artfully as to be almost indistinguishable.... Consider this: *One cannot procreate alone*. And this: *One cannot procreate with his own gender*. These are absolutes. And there is a third: *One cannot procreate without yielding or giving*. (emphasis in original)¹⁴

It seems to me that the Mormon ethic of sex as procreation is bit immature. It is not explanatory. It is, indeed, confusing. We are taught that the drive to have sex exists to convince us to marry and have children. Yet at the same time, the leaders of the Church have consistently found it necessary to remind men to get married,¹⁵ and Elder Faust feels it necessary to remind men to have sex with women. The heterosexual sex drive must not be a very strong one. I, of course, cannot speak from experience. But it seems that to some of our church leaders, the very knowledge of the existence of gay sex is such a temptation that it will convince otherwise straight people to go gay. The fear is that if same-sex marriage is allowed, everyone will want to do it.

California assemblyman William Knight argued, "I don't think it's in the best interest of our children to teach them that homosexuality is an acceptable alternative lifestyle on the same plane with heterosexual marriage. That puts marriage in the category of self-gratification, instead of the category of procreation of children."¹⁶

This common argument against homosexual behavior is that it is sterile and unnatural because it cannot result in procreation. But if we buy the argument that the purpose of sex is procreation, then all sexual activity should be limited to behaviors that can or might result in conception.

¹³ St. Augustine of Hippo, *The City of God*, An abridged version from the translation by G. G. Walsh, S.J., D. B. Zema, S.J., G. Monahan, O.S.U., & D. J. Honan. V. J. Bourke (Ed.), (Garden City, NY: Image Books, 1958), 318-319.

¹⁴ Packer, "To the One," 36-37.

¹⁵ Brigham Young, *Journal of Discourses*, 12, (8 Apr. 1868), 200-201; Orson Hyde, *Journal of Discourses*, 2, (6 Oct. 1854) 84; Wilford Woodruff, *The Discourses of Wilford Woodruff*, (1875) 271; George Q. Cannon, *Journal of Discourses*, 24, (6 May 1883), 148; Joseph W. Summerhays, *Conference Report*, (April 1902), 95; Joseph Fielding Smith, *Juvenile Instructor*, 40, (15 Apr. 1905), 240-241; Joseph Fielding Smith, Jr., *Doctrines of Salvation*, 2, 74; J. R. Clark, *Messages of the First Presidency*, 2, 186-187; Spencer W. Kimball, *The Teachings of Spencer W. Kimball*, 292; Spencer W. Kimball, *Ensign*, (February 1975), 2; Ezra Taft Benson, "Conference Report" *Ensign*, 18, (May 1988), 51-53.

¹⁶ K. Smith, "Knight Warns of Gay Marriage Impact," *Santa Clarita Valley Express* (a publication of *The Signal*), 21 July 1996.

The sex as procreation argument is widespread. It is often used as a threat. As Elder Packer put it: "This power is ordained for the begetting of life. . . . If you misuse it, you will be sorry."¹⁷ But it is a weak argument and an overstated threat. The fact that there is, and always has been, so much sexual activity outside of marriage, and so much use of birth control inside marriage,¹⁸ leads me to believe that the sex as procreation theology is not a very useful one.

SEX AND RECREATION

Popular culture, television, and advertising, often represent sex as a purely recreational activity. From Aldus Huxley's *Brave New World*¹⁹ through the sexual revolution of the 1960s, sex, in order for us to view it as entertainment, has had to be separated from procreation. In Huxley's dystopia, the very idea of giving birth was culturally unthinkable. The widespread availability and effectiveness of birth control through the last thirty or forty years has allowed sexual activity to be divorced from conception and child rearing. The ethic has been repeated often: if it feels good do it; any behavior between consenting adults, so long as no one gets hurt, should be OK.

For gays and lesbians the ethic of sex as recreation has been a tempting one, for an unwanted pregnancy is never the accidental outcome of a homosexual union. For gays who have healthy libidos and even strong parenting instincts, but for whom the procreative pieces don't fit, sex as recreation seems to fill the void left by the cruelty of the often repeated ethic of sex as procreation.

I believe, however, that a sex as recreation ethic is unacceptable, if only because it cannot be generalized without causing harm. Most sexual unions do run the risk of resulting in conception and most sexual unions involve the most basic emotional attachments between people. To ignore the affective, emotional aspects of sexuality, and to emphasize instead only the physical enjoyment of sexual activity, is to invite a slide into hedonism that predictably results in single's bars, bath houses, prostitution and other usurious activities that treat sexual partners as mere commodities.

SEX AND INTIMACY

The third ethic of sexuality that I would like to present deals with sex as an efficient means for creating intimacy. Some have argued that this, also, is the purpose of marriage.²⁰ Sex changes everything. A couple that has "done it" has irrevocably altered the relationship. It is for this reason, I believe, that those who engage in sex for recreation so often shun relationships. If the sex act is taking place with an anonymous partner, then there is no relationship to alter.

¹⁷ Packer, "Speech in Priesthood Session," 100.

¹⁸ Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap*, (New York: Basic Books, 1992), particularly Chapters 1 and 2.

¹⁹ Aldus Huxley, *Brave New World*, (New York: Modern Library, 1946).

²⁰ Richard D. Mohr, *A More Perfect Union: Why Straight America Must Stand Up For Gay Rights*, (Boston: Beacon Press, 1994); Andrew Sullivan, *Virtually Normal: An Argument About Homosexuality*, (New York: Alfred A. Knopf, 1995); Robert W. Williams, *Just As I Am: A Practical Guide to Being Out, Proud, and Christian*, (New York: Harper Perennial, 1992).

Every year the bishop in each of the wards for single students at BYU gets to give the traditional talk on chastity. As I recently served in a BYU ward, each fall the bishop would give his annual sex-talk. And each year what he said impressed me all over again. Bishop Moon did not try to convince his ward members that sex existed solely for the purpose of creating children. He did not try to frighten them with the prospect of unwanted pregnancy or venereal disease. He did not try to scare them with visions of lonely sex addicts or threaten them with excommunication should they have sex outside of marriage. Rather, he explained to them that the closeness and intimacy created through the sharing of the sexual act, is so powerful and so special that it should be reserved for marriage. According to Bishop Moon, this is why the commitment of marriage should come before the intimacy of sexual intercourse.

Richard Mohr, in his book on gay rights, argues that "marriage is intimacy given substance in the medium of everyday life."²¹ The intimacy of marriage includes, but is by no means limited to, sex. Indeed, sexuality is but one tool, perhaps best used within marriage, for creating intimacy.

I find it interesting that when the topic of same-sex marriage is mentioned, a great number of people think immediately and only of sex. Since these people envision sex as a means to have children, and since homosexual couples cannot have children, they assume, wrongly, that the reason for the gay marriage is sex as recreation. They do not stop to think of the insult they would feel if their own marriages were defined in purely sexual terms. Indeed, one of the more painful barbs taken at Mormonism by Ed Decker, author of several outrageous anti-Mormon videos and books, is his summation of eternal marriage as eternal sex. Decker claims, "Mormons believe that Elohim. . . the God of Mormonism and his wives, through endless Celestial sex, produced billions of spirit children."²² He later wrote that "Mormons will. . . enjoy the eternal pleasure of celestial sex!"²³

As Mormons, we are generally quick to take offense at the reduction of the ennobling doctrine of eternal marriage into one of sexual promiscuity. Marriage, and sex, in the hereafter, will not exist so that we might engender an eternal progeny, nor will they exist so that we might forever enjoy the legal sanction of sexual pleasure, but rather, marriage and sex in the hereafter will have as their primary purpose the same purpose they have here—they will present an unparalleled opportunity to create and maintain intimacy.

BIBLICAL SEXUALITY

The Scriptures do not offer a great deal of help when discussing the ethics of sexuality. Certainly, Adam and Eve were commanded to multiply and replenish, but this makes a weak argument for linking sex to procreation. Because family and relationships were defined so differently in Biblical times, the following sections present a cursory look at Biblical sexuality.

²¹ Mohr, *A More Perfect Union*, 41.

²² Ed Decker, *What You Need to Know About Mormons*, (Eugene: Harvest House, 1990), 50.

²³ Ed Decker, *The God Makers II*, (Jeremiah Films, 1992). This citation is a blurb from the dust jacket.

SEX IN THE OLD TESTAMENT

In the Old Testament, family was defined largely in terms of property rights. The father was the property owner and as head of the household was also the owner of his wife and children.²⁴ The Law of Moses put forth four general sanctions on who men could and could not have sex with (see in particular Lev. 18):

1. no sex with animals,
2. no sex with other men,
3. no sex with a woman who belongs to another man (his wife or daughters),
and
4. no sex with blood relatives (daughters, mothers, etc.).

For women, the code was somewhat more restrictive:

1. if married, you may only sleep with your husband,
2. if a minor (unemancipated) you may sleep with no one, and
3. if an emancipated woman, you can sleep with anybody (so long as it's not an animal)—the idea of two women having sex with each other seems not to have occurred to anybody in the Old Testament.

This is a very different way of describing the sexual world from what we are used to today, but it goes far in explaining some of the seemingly strange wordings in the Old Testament. Men were permitted sexual intimacy with their wife or wives, with other unrelated women in their household (e.g., their handmaids), and with emancipated women, often referred to as harlots. Abraham slept with Hagar. Judah slept with Tamar, his daughter-in-law. And Joshua saved Rahab, the harlot, before destroying Jericho. Sex with a minor, being the property of another man, was forgivable if one was willing to marry the girl. If the act had been a rape, it would still only be punished if the aggressor was unwilling to marry the girl and pay damages to her father.

The Holiness Code in Leviticus makes it very clear that it is the man, the patriarch, the property owner, who is offended when his property is violated.

The nakedness of thy father's wife shalt thou not uncover: it is thy father's nakedness. (Lev. 18:8)

Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness. (v. 16)

The nakedness of thy son's daughter, or of thy daughter's daughter, even their nakedness thou shalt not uncover: for theirs is thine own nakedness. (v. 10)

In the Old Testament, adultery was a crime against a man by uncovering his nakedness through his wife, his property. An unmarried woman could not commit adultery. A man, married or single, could only commit adultery with a married woman. Unlike our view of sexuality today, where adulterers are viewed as doing damage to

²⁴ William L. Countryman, *Dirt, Greed and Sex: Sexual Ethics in the New Testament and Their Implications for Today*, (Philadelphia: Fortress Press, 1988).

themselves and to one another, the offended party in the Old Testament was the aggrieved husband (certainly not the wife of an adulterous man).

SEX IN THE NEW TESTAMENT

The ethics of sexuality in the Bible change noticeably in the New Testament. Jesus taught that sin was an individual problem and a universal one. Jesus spoke at length about adultery and divorce in order, I believe, to emphasize his change in perspective. We are all sinners, by his way of thinking. We are all adulterers, for if we haven't actually done the deed, we have lusted in our hearts (Matt. 5:28). Adultery became less a property offense and more an offense against relationship and a betrayal of love.

The New Testament also begins to reserve sex for marriage only. Whereas the Old Testament seems quite forgiving of prostitution and mentions fornication a mere five times, all of them metaphorical (2 Chr. 21:11; Isa. 23:17; Ezek. 16:15, 26, 29), the New Testament commonly lists prostitution and fornication with adultery and divorce, pride, lying and blasphemy (Matt. 15:19; Mark 19:9; John 8:41; Rom. 1:29; 1 Cor. 5:10-11; Gal. 5:19; Jude 1:7). The sexual ethic of the New Testament defines sex as a unifier that joins a man and a woman as one flesh (Gen. 2:24; Matt. 19:5). Any sexual activity outside of that joining, or premature to it, only serves to weaken it.

DEFINING A SEXUAL "IDEAL"

Traditional Christianity has long defined sexual behavior in terms of an ideal. There is nothing wrong with idealism *per se*, but it can lead to an intolerance of imperfection. In the LDS and Christian traditions, what begins as ideal, is later defined as standard and eventually becomes required. It is my observation that idealistic standards are seldom met and that their existence leads to a lack of diversity and usually ends in both hypocrisy and guilt.

Ideal sex occurs under specific conditions, with a specific motive, between a certain type of couple and in a certain way. The further an act strays from this ideal, the more sinful and less holy it is. Ideal Mormon sex takes place between a heterosexual couple that has been married in the Temple. They approach the sexual encounter with their hearts open to the possibility that pregnancy might result, and they engage in no genital stimulation that could not result in conception (these things are typically called sodomy and are illegal in Utah, even for temple-married Mormons). Masturbation, although certainly a victimless sin, strays very far indeed from the sexual ideal, and is therefore, traditionally sinful in Christian experience. Homosexual behavior, likewise, threatens the sexual ideal.

Hanigan, a Roman Catholic theologian, states this traditional view quite clearly:

The relationship of marriage between a male and a female is the normative context for human sexual activity, most especially for genital, coital activity. Marriage is by its very nature. . . monogamous and indissoluble. Therefore, all deliberately willed and pursued venereal pleasure outside the context of marriage is contrary to nature, against God's will, and consequently

sinful. Within marriage the primary purpose of sexual activity is the procreation of children. Therefore, all forms of contraceptive intercourse, all intercourse during pregnancy or after menopause, and all sexual activity leading to orgasm outside the act of genital intercourse contradict this purpose, are against God's will as revealed in nature, and so are seriously disordered. . . . Given this basic sexual ethic, all homosexual acts are clearly morally wrong, for they occur outside the context of marriage and cannot be aimed at procreation.²⁵

Hanigan's last sentence makes two propositions: first, that homosexual acts are wrong because they take place outside of marriage, and second, that they are wrong because there can be no procreative intent. The first proposition is rather unconvincing. Gays and lesbians are often unmarried because they can't be married. Vituperating someone for not doing something that you won't let him do seems a bit unfair. Nevertheless, Christians have been fairly consistent in their insistence that sex, to be sinless, take place within a legal marriage. The second proposition is even more troubling. If homosexual acts are wrong because even within marriage, there can be no possibility of procreation, and if we are willing to ban homosexual marriages for that lack of potential offspring, then our religion and our society should be consistent. All married couples should be open to the possibility, however remote, of conception and parenthood. Certainly, if a couple are old or infertile, through no act of their own, sexual intimacy would be allowed by almost all but Hanigan, who writes that sex with a post menopausal woman is "seriously disordered." Yet, in 1996, the Utah State Legislature found time to pass a bill making it legal for first cousins to marry in Utah, so long as they are both senior citizens, or otherwise demonstrably infertile.²⁶ This type of marriage is allowed, not with the ever-present hope of procreative intent, but precisely because the couple cannot procreate. To then make same-sex marriage illegal, as the same Utah State Legislature did one year before,²⁷ on the professed grounds that homosexuals cannot procreate, seems at least a little bit inconsistent.

THE VALUE OF MARRIAGE

I have tried to show that ethics and mores change over time, and that even synchronically, differing views can be held within the same society or even the same religious tradition.

Our culture (American culture in general, and the LDS culture in specific) places tremendous value on marriage, and likewise, merely tolerates single people. There is certainly no special or esteemed status for single people in the Church.

During my last year as a professor at BYU, I was summoned to an interview with Todd Britsch, who was at that time Vice President and Associate Provost at the university. President Britsch had been a professor of Classics, and told me that he had

²⁵ James P. Hanigan, *Homosexuality: The Test Case for Christian Sexual Ethics*, (New York: Paulist Press, 1988), 42.

²⁶ Utah State Legal Code 30-1-1, "Incestuous Marriages Void. . . (2) First cousins may marry under the following circumstances: (a) both parties are 65 years of age or older; or (b) if both parties are 55 years of age or older, upon a finding by the district court, located in the district in which either party resides, that either party is unable to reproduce."

²⁷ Utah State Legal Code, Section 30-1-2, Subsection 5.

often considered what his life would have been like had he lived in another age and chosen a path different from that of husband and father. His frame of reference was gleaned from medieval history and ran along the lines of the Catholic Priesthood and celibacy. It is interesting that his choice did not include living single and celibate in 20th century Utah; rather, he chose a culture that valued the unmarried state and cherished celibacy. Our LDS culture values only marriage, and unmarried people, whether virgins or widows, divorcees or spinsters, whether celibate or not, are all second class citizens. This trend, I believe, is general throughout American culture, and is merely highlighted and boldfaced among us Mormons.

In New Testament times, things seemed less clear cut. The Apostle Paul was tremendously ambivalent about marriage. Chapter 7 of I Corinthians seems to imply that marriage is an imperfect but acceptable state for those who can't control their libidos, yet he wrote a few chapters later that women were created for men, and that a man is incomplete without a woman (I Cor. 11:7-12). In the first epistle to Timothy he wrote that a bishop should be married, reasoning that if he can't rule his own house, "how shall he take care of the church of God?" (I Tim. 3:1-5). Yet he also argued that single men care about the Lord, while "he that is married careth for the things that are of the world, [and] how he may please his wife" (I Cor. 7:32-33).

I have never read or heard a reasonable LDS explanation of the New Testament reference to the hundred and forty-four thousand single men who will achieve a high status during the Millennium. They will be redeemed, the firstfruits unto God, they will be without fault, they will sing a new song before the Lord's throne, and will have the Father's name written on their foreheads. But most surprisingly, we read in Revelation, they will be virgins: "These are they which were not defiled with women" (Rev. 14:1-5).

So while in early Christian times both marriage and celibacy were valued, since the Restoration the Church has consistently placed a premium on the married state. The Church has insisted that members of bishoprics and stake presidencies "should be married men of mature judgment". Today, even a bishop's counselors in a student ward for single members should be "mature" and "married."²⁸

Single members of the Church, and single men in particular, are marginalized. The First Presidency recently proclaimed that "[m]arriage. . . is essential to [God's] eternal plan" and that "the family [is] the fundamental unit of society."²⁹

Although the Church, and our society in general, value marriage highly, and discriminate against unmarried people, the Church is not about to allow all unmarried people to marry just whomever they want to. Nevertheless, the Church's attitude and policies can and do change over time. Until 1978, the Church was officially against miscegenation. Back in 1954, Elder Mark E. Petersen addressed a group of religion teachers at BYU and said that "the Negro seeks absorption with the white race. He will not be satisfied until he achieves it by intermarriage."³⁰ Through the Civil Rights Movement the Church most certainly changed its stance. The State of Utah began

²⁸ Instructions for Priesthood Leaders on Single Members, (The Church of Jesus Christ of Latter-day Saints, 1993), 4.

²⁹ First Presidency and Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, "The Family: A Proclamation to the World," Ensign, 25:11, (Nov. 1995), 102.

³⁰ Mark E. Petersen, "Race Problem: How They Affect the Church," Speech given at Brigham Young University, Provo: Unpublished manuscript, 25 Aug. 1954), 4.

permitting interracial marriages in 1963.³¹ The priesthood was extended to all races in 1978. Today good Mormons at least pretend not to be racial bigots.

In 1980, just two years after the Church decided to allow all interracial marriages to occur in the temple, *The Ensign* printed a pamphlet about the Equal Rights Amendment. "Passage of the ERA would carry with it the risk of extending constitutional protection to immoral same-sex—lesbian and homosexual—marriages. The argument of a homosexual male, for example, would be: 'If a woman can legally marry a man, then equal treatment demands that I be allowed to do the same.'"³² It seems prophetic, since this is precisely the argument being used today to push for legal same-sex marriages in Hawaii under that state's equal rights amendment. More recently however, the Ensign published a relatively affirming article about same-sex attraction.³³ The Church's rhetoric about and against homosexuals has changed over the years, and I believe it will continue to change, although it has a long way to go.

THE PURPOSE OF MARRIAGE

Why do people get married? Mostly, for love and family.

What is society's purpose in promoting marriage? The marriage statue in the state of Wisconsin is typical and reads as follows: "Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state."³⁴ Lynn Wardle, a BYU law professor, has argued that "we pass a law because that law will benefit society as a whole. Society as a whole is benefited from the union of a male and a female in ways that are not valid for unions of two persons of the same-sex."³⁵ I have come up with several reasons for state and religious sponsorship of marriage: they are Power, Patriarchy, Property, Procreation and Paternity. This does not paint a necessarily pretty picture of marriage. Certainly, it's not a romantic picture. After this discussion I will argue why I believe thinking about same-sex marriage, for gay and straight people alike, actually offers insights for improvement in our conception of the marriage relationship.

POWER

The state's sponsorship of marriage, and as importantly, the states' reservation of the right to define marriage through licensing, preserves for itself and for the ruling class the power to maintain their own status. Those tax benefits, health and educational benefits, employment and property rights that are obtained through marriage can be denied to any segment of the population simply by denying them the right to marry or to intermarry.

³¹ Utah State Legal Code, Section 30-1-2.2.

³² "The Church and the Proposed Equal Rights Amendment: A Moral Issue," *Ensign*, 10:2, (Feb. 1980), Special 23-page insert, 9.

³³ Dallin H. Oaks, "Same-Gender Attraction," *Ensign*, 25:10, (Oct. 1995), 7-14.

³⁴ Cited in William N. Eskridge, Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment*, (New York: The Free Press, 1996), 63

³⁵ K. Snow, "Law Professor Defends Marriage in Same-Sex Marriage Battle," *Brigham Young Magazine*, Spring 1997, [http://advance.byu.edu/BYM/1997/97_spring/marriage.html], 1.

At times the state or the church have felt so comfortable with this position of power, with this self serving right to decide who can marry and who cannot, that it has been taken to extremes. The LDS Church argued in the ongoing same-sex marriage case in Hawaii, that if same-sex marriages were legal, then Mormon bishops could be required to perform such ceremonies. But the Hawaiian Supreme Court struck down that argument, pointing out that simply because lawyers, drivers, and dentists are licensed by the state, "having such a license does not require them to practice law, drive a vehicle, or practice dentistry."³⁶ The Church made a silly argument, one that was handled by the Court in a footnote to its decision, and yet the Church was responding to a very real threat to its power. Many state legislatures and now the US Congress have responded in similar ways.³⁷

PATRIARCHY

State sponsored marriage promotes patriarchy. Although some changes have been made in the last few decades, marriage focuses power and allows for the accumulation of wealth into the hands of men. The traditional Mormon concept is often that the husband is the "senior companion" and the wife is the "junior companion" or "helpmeet." Until fairly recently, divorced women had a difficult time owning property or obtaining credit in their own names. Male-female marriage is all too often a heterosexist institution. It is generally not a great promoter of equality.

PROPERTY

Marriage laws benefit society by allowing for an orderly distribution of property as the result of death or divorce. Although we hear a great number of wrenching stories about the difficulties couples endure after the breakup of a marriage, the difficulties are minimal compared to what would occur if there were no laws to guide us in terms of community property, spousal rights, and inheritance. Since most members of our society do indeed marry, these laws serve as a form of standard contract. Many of the provisions of this standard marriage contract cannot be obtained in any other way.

PROCREATION AND PATERNITY

Society's interests are served through marriage laws by keeping the rearing of children within a unit, namely the family, that can be held responsible for the children's upbringing and for their possible wrongdoing. It is often said that the family is the basic unit of society. Indeed, having parents rear their own children, and making them legally obligated to do so, is very efficient. This does not mean that society should insist that all marriages have children, or that all children be reared by their parents, no matter what

³⁶ Supreme Court of Hawaii, *Baehr, N. v. Miike*, Lawrence H, 80 Hawaii 341, 910 P.2d 112, (Jan. 1996), ff. 6.

³⁷ Utah was the first state to specifically ban same-sex marriage. Since 1995, 26 states and the US Congress have passed legislation banning such marriages, including nine states in 1997. However, in 1997, 16 other states attempted, unsuccessfully, to outlaw same-sex marriage. "Equal Marriage Rights Home Page," [<http://www.ucc.gu.uwa.edu.au/~rod/gay/marriage.html>], August 1997.

the situation. Nevertheless, marriage serves society by requiring parents in most cases to provide for the financial needs of their children. This, in general, takes a great burden off the state.

WHAT DOES SAME-SEX MARRIAGE HAVE TO OFFER?

There certainly is a vocal portion of the homosexual political community that feels that marriage is not a right that gays and lesbians should be seeking. Not now, not ever. Paula Ettlebrick³⁸ and Urvashi Vaid³⁹ argue that marriage is an oppressive institution no matter who participates in it. Still, the overwhelming feeling today is that most gays and lesbians feel marriage is an important right.⁴⁰

I believe that gay relationships can be made better by using the civilizing example of the marriage institution, and that opposite sex marriages can be made better by considering some of the peculiarities of homogamy.

Traditional marriage places an extreme value on covenant, fidelity, and the promised benefits of exclusionary intimacy. This is a lesson that is hard to learn even for many married straight people, yet they have the support of their society, their churches and their cultural tradition pushing them toward faithful monogamy. Young people in our wards and branches are sent two related messages. First, find someone to be with. Date. Dance. Be social. We have Church sports and outings, cotillions and roadshows, all with the express purpose of getting the youth together so they can meet each other and fall in love. Second, and at the same time, we look carefully over their shoulders and tell them, "Don't have sex! Not until you're married." In the Church, singles young and old get a lot of support for meeting the opposite sex and equal support for not getting intimate.

Gay people have no such support in our society. Gay people need marriage so that they too can, as Eskridge terms it, become civilized.⁴¹ Most of the places where gays and lesbians can meet each other have only one message—and it's a message of sex: sex now, sex cheap, sex for entertainment. Although the gay bars in Salt Lake City are much like the straight singles bars in Salt Lake City, they are not Church socials. If long term lasting relationships are best built by falling in love first and consummating that love only later, then it is no wonder that so few lasting gay relationships are begun at bars and sex clubs.

Gay sex is not about procreation (remember Elder Packer's absolute: "One cannot procreate with his own gender"). Reasons for refraining or controlling homosexual behavior must be more convincing than the simple fear of pregnancy. My thesis is that marriage is not about procreation either. Gays and lesbians need marriage for the same reasons other people do.

Same-sex marriage requires that power be shared. Any giving or taking of power or control must be done voluntarily. There are no cultural norms which define who is the senior and who is the junior companion. If one partner prefers to cook while the other

³⁸ Eskridge, *The Case for Same-Sex Marriage*, 61.

³⁹ Urvashi Vaid, *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation*, (New York: Anchor Books, 1995).

⁴⁰ J. Lever, "Sexual Revolutions," *The Advocate*, (Aug. 1994).

⁴¹ Eskridge, *The Case for Same-Sex Marriage*.

does the dishes, if one works in an office while the other stays home and keeps the house, if one makes all the economic decisions and the other all the domestic ones, it is because they have mutually decided to make it that way. There is no automatic tie breaker in case of a difficult problem. No partner can best the other by claiming, "I have the priesthood and you don't." I believe that straight couples could learn a lot by watching gay and lesbian couples work through their problems.

CONCLUSIONS

I have presented several sexual ethics and how they might relate to same-sex marriage. Certainly, most modern people will view the Old Testament property ethic as unacceptable as a guideline for sexual action or for married life. Of the more modern ethics, I have tried to point out that sex is not just about procreation and that marriage is not just about sex. Also, sex for its own sake comes down to no ethics at all.

I conclude that marriage and sex both serve the same end. They can both lead to a rewarding intimacy between two people.

I have sometimes wondered why God, when he created us the way he did, why he made sex so important, so unavoidable. It could be that our God is an adolescent and has a fixation. But I think it more likely that he created sex in us so that we can better love one another. If the only purpose for sex were reproduction, certainly he could have found a less confusing, less messy, less passionate way to do it. But the passion and the complication bring people together, and that has nothing to do with procreation.

Richard Mohr described beautifully this coming together:

Marriage requires the presence and blending of both necessity and intimacy. Life's necessities are a mixed fortune: on the one hand, they frequently are drag and dross, and cussedness, yet on the other hand, they can constitute opportunity, abidingness, and prospect for nurture. They are the field across which, the medium through which, and the ground from which the intimacies which we consider marital flourish, blossom, and come to fruition. (p. 42-43)⁴²

Once marriage and procreation have been separated, as they are with old cousins in the State of Utah, there is really no reason to deny the social, legal and spiritual benefits of marriage to same-sex couples. I believe that once this is done, straight and gay married people will see that they have much more in common than they do in difference.

⁴² Mohr, A More Perfect Union, 42-43.