

SAME-SEX MARRIAGE DEBATE

**Hosted by University of Western Sydney and the Whitlam Institute
with Hon Michael Kirby, former High Court Judge**

By Guy Barnett*, Thursday 13 October 2011

Introduction

The pain in their eyes was visible. The grief, sadness and sense of loss expressed by the donor conceived individuals who were witnesses to the Senate inquiry into donor conception practices in Australia, was intense. They told of their search for their biological parents– to know their identity. These young adults were brought into the world without knowing the identity of both a mum and a dad.

The sperm from an anonymous male ensured the link to their biological father was cut forever.

One report says there are up to 60,000 donor conceived individuals in Australia today with many of these not knowing their biological brothers and sisters. This Committee, which I chaired, in February this year unanimously called for a prohibition on donor anonymity, and the protection of the welfare and interests of donor conceived children. The tragedy experienced by donor children offspring who were denied their genetic heritage must never happen again. These donor conceived practises were based on the perceived rights of individuals to have children. The entitlement of these adults to children and the right of sperm donors to be anonymous. We know now this was terribly wrong and had tragic consequences but it was based on the so-called rights of the individual.

Homosexual marriage would sadly perpetuate this tragedy by denying children the right to know and be nurtured by both a mother and father. Children deserve the right to grow up with at least a chance of a mum and a dad. Homosexual marriage would deny them that right.

Marriage and why we have it

Marriage is a bedrock institution worthy of protection. Marriage is an enduring institution, having been with us for thousands of years and across cultures and religions. Despite minor changes to the definition of marriage over time it has always been between a man and a woman. It is a social institution which specifically benefits children and is designed to ensure their welfare is maximised. It provides for stability in society. Marriage is not a fashion to be updated and there should be no doubt about its definition.

The marriage debate to date has been adult centred. There needs to be far greater focus in my view, on what is in the best interests of our children. The rights of kids have been neglected in this debate so far. Children should not be left vulnerable within a new and novel social experiment.

If it were not for the rights of children, they being one of the vulnerable and voiceless groups in our society, the state (via the parliament or the government) would have little interest in regulating its existence. The state rarely is involved in regulating personal and private relationships.

It is said that marriage is merely the coupling of two adults with commitment and in love, however I believe it also an institution centred on the welfare of children, before the interests of adults. It serves the interests of the community by providing stable and secure homes to children.

Homosexual couple relationships have been recognized in law in most states in an official relationship register. This is appropriate in my view but these relationships do not constitute marriage. I acknowledge the Hon Michael Kirby and his long term relationship with his partner and I don't know if their relationship is registered but that is a matter for them. But this relationship in itself does not constitute marriage. The marriage union is publicly recognised and treated as special and unique distinguished from other types of relationships because of its unique capacity to generate children and meet children's needs. Of course not all married couples have children and many married couples adopt but marriage is the foundation stone for procreation. In my view, every child entering this world should have a reasonable expectation, all things being equal, of a mother and father. Of course, this is not always the case. Accidents, tragedy and family breakdown is not uncommon. As a community we should admire and provide support wherever possible for single parent families. Many kids crave the role model of an absent or lost parent; a father or mother. But marriage as the union of a man and a woman is an objective natural reality that reflects the biological and complementary nature of motherhood and fatherhood.

Homosexual relationships are different to heterosexual relationships in relation to child bearing. If a homosexual couple wants a child, a third party has to be brought in. The natural father or mother will be excluded from raising a child. This is unfair on the child. I cite a recent NSW supreme court example where a father's identity was legally removed from his biological daughter's birth certificate. The young girl of 9 years, now officially has two mothers, a biological mother and her estranged lesbian partner, but no father. The father visited the girl every two weeks for 9 years and paid maintenance. Now he (Mr John Williams) doesn't even exist legally as the biological father. Whose rights are being considered here? Is this fair or appropriate? Whose rights are more important?

In short, natural marriage says that mums and dads must take responsibility for the children they conceive. Children have a right to the nurture of their natural mums and dads. And they have a

right to a relationship with their natural brothers, sisters, cousins and broader family members. Same-sex marriage denies these rights.

Same-sex marriage says mums and dads can pass off the responsibility for children they conceive to others; that children have no inherent right to the nurture of their natural mums and dads; that children don't need a father or that children don't need a mother; and finally, that children have no inherent right to have a relationship with their brothers, sisters, cousins and the broader family.

By broadening the definition of marriage it reduces and diminishes its meaning. It becomes a matter of choice by adults, for adults, and is designed to serve the interests of adults. The interests of children are neglected.

Marriage is deeply and uniquely oriented to bearing and rearing children. Homosexual marriage says there is no necessity for a child to experience both fathering and mothering in the family. The best available research indicates that as a general rule, children fare best on almost every indicator of well-being when reared by the wedded biological parents, for example, education achievement, emotional health, rates of anxiety depression substance abuse and suicide, familial and sexual development, and child and adult behaviour.

(Source: Witherspoon Institute "Marriage and the public good: Ten Principles")

The research by Bartrell & Bos regarding the welfare of children in same-sex relationships has been critiqued by A Dean Byrd, PhD, MBA, MPH, as not substantiating with evidence the claims that dismiss the value of fathers in lesbian relationships or address the high dissolution rates for lesbian couples. No research was cited regarding the outcomes of children conceived through sperm donation. (NB: research by Marquardt, Glenn and Clark "A New Study of Young Adults Conceived through Sperm Donation" which identified more negative factors including confusion, isolation from families, psychic pain, depression, delinquency and substance abuse compared with a matched group)

Australian ethicist and UN advisor, Dr Tonti Fillipini has said "...marriage in the *Marriage Act* is the most secure relationship for generating and nurturing the rising generation...". I agree.

International experience and trends

Gay lobby activists have often claimed that Australia should be more progressive and catch up with the rest of the world when it comes to same-sex marriage. Based on my latest research only 10 countries out of nearly 200 have legalised same-sex marriages. Who should be catching up to whom? In the US only 5 of the 50 States have done the same. In the 30 of the 50 US States where a referendum has been held, in every one, the people have said "No" to same-sex marriage. This

included the more 'progressive' California where the legislature initially passed the laws granting same-sex marriage but this was then overturned. In recent months the French Parliament rejected legislation for same-sex marriage.

The Australian Human Rights Commission and gay lobby activists often claim that denying homosexuals the right to same-sex marriage is a breach of human rights. In 2010 the European Court of Human Rights ruled that its member states were not obliged to recognise same-sex marriage on human rights grounds. The French Constitutional Court has recently likewise ruled that natural marriage laws were not a breach of human rights. On the contrary I would contend that there is a very strong argument that same-sex marriage, if it were introduced in Australia, would breach the most popularly signed UN Convention – the Convention on the Rights of the Child (and specifically Articles 7, 8, 9 & 18).

Article 9(1) reads in part: “parties shall ensure that a child shall not be separated from his or her parents against their will,...”

Article 18(1) “both parents have common responsibility for the upbringing and development of the child...the best interests of the child will be their basic concern...”.

Federal Parliament

Marriage in Australia means “...the union of a man and a woman to the exclusion of all others, voluntarily entered into for life”. Although this definition was only formally inserted into the *Marriage Act (1961)* in 2004 it is neither recent nor arbitrary. The definition is derived from the common law and that common law ultimately reflects the fundamentals of human biology and the deep and unique interest of the state in protecting and supporting children. On 31 March 2004, I drafted a letter to the then Prime Minister John Howard signed by some 30 Coalition colleagues seeking this amendment because doubts were increasing as a result of court decisions. The letter had the intended effect and ultimately bipartisan support was obtained. Today we are on a cliff's edge with the Labor Party conflicted, notwithstanding a clear and public pre-election commitment by Prime Minister Julia Gillard that the definition of marriage between a man and a woman would not be changed.

The push for same-sex marriage has momentum.

The gay lobby often say the community supports same-sex marriage but Adam Bandt MP's motion for Members of Parliament to provide feedback was successful and this feedback was provided to Parliament on 24 August this year. Only 6 out of 30 said their constituents supported same-sex marriage. A message clearly that the community is not on-side.

In addition, a Galaxy poll found that 86% of Australians think children should be raised by their own biological Mum and Dad. This result suggests strong opposition to same-sex marriage.

Language and the media

Sadly, the gay lobby campaign is derogatory of those with an opposing view accusing them of prejudice, bigotry, hate speech, anti-human rights and being 'religious'. Of course if you are purportedly religious or have a Christian perspective they say your views should be automatically discounted or disregarded altogether. The Christian community and those who support natural marriage have been insulted, offended and downright persecuted. It appears that this agenda setting has been aided and abetted by many in the media. Several weeks ago on the ABC's Q & A program a special guest drew the parallel of those opposed to same-sex marriage to racism; a disingenuous and hurtful observation. It is designed to gain a certain result and has increasingly shut-down open debate in our community.

Similarly as the debate has also been raised in the UK where British businessman, Sir Brian Souter, recently said it was increasingly difficult for those who supported traditional marriage to speak out. They are being consistently marginalised, he said.

The gay lobby campaign calls for "marriage equality" and the removal of discrimination. But in 2008 no less than 84 federal laws were amended to remove all forms of discrimination against same-sex couples. These laws relating to superannuation, property rights, pensions etc. received bipartisan support and many gay lobby activists at the time advised that they were not and would not be seeking same-sex marriage reforms. What a turn-around in less than three years.

Research by the eminent Professor Patrick Parkinson of the University of Sydney entitled *'For Kid's Sake (Repairing the Social Environment for Australia and Young People'* said ..."if there is one major demographic change in western societies that can be linked to a large range of adverse consequences for many children and young people, it is the growth of the numbers of children who experience life in the family other than living with their two biological parents, at some point before the age of 15..."

Professor Parkinson said "...the number of children who do not reach the age of 15 in an intact family with both of their biological parents has almost doubled within a generation".

Conclusion

Broadening the definition of marriage to include those of the same sex is not a tweak or a minor amendment. It is a massive and fundamental change which will turn on its head the definition we

have known for millennia. The revisionist marriage would change the way children are conceived and nurtured. What more significant change to society is possible?

Is the gay lobby seeking a minor change to our same-sex marriage laws without the obvious and looming consequences? I think not. If passed I predict a concerted campaign for symbolism and “normalization” and the consequences that will flow from such a change such that it will be unacceptable and intolerable to have a different ethical viewpoint. For example, it’s already happening.

In the Australian newspaper Angela Shanahan referred to a UK married couple of 40 years, who because of their Christian beliefs on homosexuality, were disqualified as foster parents. In their application they had made a point of saying that they would respect and support children who thought they might be gay, but they were not going to encourage it or affirm it as right. This was not an acceptable position and their application was denied.

Marriage celebrants may be compelled to authorise homosexual marriage. It was recently reported that financial penalties are now being imposed in Canada on marriage celebrants who defy the law and refuse to marry same-sex couples.

The law has an educative role. There will be changes in our schools and the school curriculum. Christian schools will have particular concerns in terms of employment, policy and practice. Teachers would be required to tell their students that marriage is about love and commitment to meet adult needs rather than what is in the best interests of children. This is despite the fact that in any antenatal class you attend there is enormous emphasis on the intrinsic value of the unique relationships of a biological father and mother, not to mention the same training messages given to parents when preparing for foster care. This contradicts the views of same-sex marriage that says that it does not matter at all. As is being suggested as an option for our Australian passports, Parent 1 and Parent 2 rather than mother and father. Does it not matter at all?

If we don’t speak now it is possible we could lose the right to speak at all. To have a different ethical viewpoint is fast becoming politically incorrect, unacceptable and not tolerated.

Along with many others, I believe the community has a duty to speak up for children, for the vulnerable and for those who cannot speak for themselves, if not for themselves and the next generation.

If the definition of marriage is changed by federal parliament in my view it will continue to be the subject of change.

Marriages in Australia are voluntary. We do not authorise marriages by compulsion or arrangement, yet this is the case in many countries. Marriages are between two people. We do not authorise polygamy which would legally become a possibility under the laws proposed by the

Greens in the Senate. Note that the exclusivity clause was not included in the original legislation proposed by the Greens. In this regard the push for polygamist relationships is now being tested in Canada where same-sex marriage has been legalised. The gay lobby say it is a far-fetched argument but the facts say differently. It will be important to consider the viewpoints of others such as the Islamic community including here in western Sydney and their values regarding marriage. What marriage laws do we want to define our Australian society? Our marriage laws apply age limits and do not allow for incest. Rightly so. But why? To protect the interest of the children, both now and in the future.

In the news recently in Mexico, a proposal was put forward in the parliament to have a new kind of marriage licence that is only valid for 2 years such that when the term ends the contract simply ends unless the couple mutually agree to renew. The argument goes “You wouldn’t have to go through the tortuous process of divorce”. If it’s all about love – what is love? Is marriage only about love, however individuals define it, or is it also about discipline and implications for others, including children?

Marriage is not perfect, in fact it can be painful and problematic with daily challenges. Marriage break-down and its consequences appear to be increasing in severity and impact for not only our children but society as a whole. But this does not mean we should throw out natural marriage as an institution altogether. In fact, as a community we should be doing all we can to support it and in this regard I have long supported government funding support for both pre-marriage and post-marriage counselling and education. My wife Kate and I are currently part way through a marriage enrichment course. We are enjoying it and still learning. There is always room for improvement.

In respect to any major change to a fundamental bedrock institution such as marriage and its impact on our children and consequences for our community the burden of proof should be on the proponents to ensure that the risks, both known and unknown, and the consequences of such change will not disadvantage our children and our community. A precautionary principal is required.

In the end we have two competing rights. That of a homosexual adult and their same-sex partner to the revised definition of marriage; and the rights of children to know their biological father and mother and where possible to be reared and nurtured by them. Being a child in a same-sex couple relationship happens but it not the norm, and children in normal circumstances should have the right to both a mother and a father.

I quote Margaret Somerville, Canadian professor of law and medicine, “Marriage provides the right to marry and found a family. Homosexual marriage unlinks marriage from biology and denies children the right to both a mother and a father”.

I think Australians have little idea about where this debate could be taking us. We need to consider the consequences. This is not a fine tuning of our marriage laws. It will turn on its head a fundamental bedrock institution that has served our community well and protected and

supported our children and future generations. The fact that we are having this debate is excellent and I congratulate the organisers.

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As a Senator he supported family values and was instrumental in the successful 2004 Howard Government amendment to the Marriage Act. He was awarded both the William Wilberforce and Australian Christian Values Institute award during his time in the Senate.

Guy Barnett is married with three children and is a sports enthusiast.