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# Blokes, Sheilas and Perverts – Marriage Equality in Australia

by Dr Alan Branford (© 2 August 2016)

## Prologue

In the good old days, proper blokes married decent sheilas, and anyone else was some kind of pervert. Life was so much simpler. Except that life was never in fact like this, we were communally deluding ourselves. Advances in medical science, genetics, psychology and sociology have exposed this delusion of niceness as a myth, and this expansion of knowledge has empowered the people marginalized by the niceness delusion to speak out and to demand social change. Marriage equality is an important component of that agenda in Australia.

## Sex, Gender and Sexuality

Why do I use the term “**marriage equality**”?

In popular debate, we hear of terms like “**same-sex marriage**” and “**gay marriage**”. These terms are quite inappropriate, as they are guilty of the same sort of over-simplification as the delusion of niceness. Not every individual fits neatly into binary categories. In order to illustrate the necessity of the concept of “marriage equality” rather than “same-sex marriage” and “gay marriage”, I shall need to write a little about the personal attributes of **sex, gender** and **sexuality**.

**Sex** refers to a person’s biological reproductive characteristics with two modes, ‘**male**’ and ‘**female**’. Despite the naïve temptation to think that this attribute is unambiguously binary, for many people, collectively described as being ‘**intersex**’, this is not the case. The Community Affairs References Committee of the Australian Senate published the report “[Involuntary or coerced sterilisation of intersex people in Australia](#)” in October 2013. The report defines ‘intersex’ as follows.

“‘Intersex’ describes biological variation in members of a species that means they cannot be comprehensively described by the labels ‘male’ or ‘female’. Intersexuality occurs in many species, including humans, and it represents a range of genetic, chromosomal and hormonal circumstances. Intersex may be evident from *genotype*: a person may have variations in their genes and chromosomes other than the 46,XX and 46,XY that define typical female and male sex respectively. There may be variations in *phenotype*: the observable sex characteristics of the body may differ from those of a typical male or female.

...

Intersexuality is sometimes but not always evident at birth ...”

The report quotes a United Kingdom National Health Service study that indicates somewhere between 0.1% and 2% of the population are intersex.

**Gender**, on the other hand, has a considerable psychological dimension and also incorporates social constructs; it has two modes best described as ‘**masculine**’ and ‘**feminine**’. Clearly, gender is not a straightforward binary attribute, and issues with respect to gender identity extend beyond those people who are intersex. Even some people who are not intersex identify with a gender different from their sex, or with no gender at all; such people are typically referred to collectively as being ‘**transgender**’, although there is some debate around terminology. (See the webpage “[Lesbian, gay, bisexual, transgender and intersex issues](#)” on the website for the [Australian Psychological Society](#).)

**Sexuality** or sexual orientation can be defined as follows, quoting from a document published by the [World Health Organization \(WHO\)](#) called “[FAQ on health and sexual diversity](#)” (6.5MB pdf document).

“Sexual orientation refers to a person’s physical, romantic, and/or emotional attraction towards other people. Sexual orientation is distinct from gender identity. Sexual orientation is comprised of three elements: sexual attraction, sexual behaviour, and sexual identity.”

There are two modes of sexuality, ‘**heterosexual**’ and ‘**homosexual**’, but many people do not identify with either of these categories and instead are typically described as ‘**bisexual**’.”

There is clearly, then, a great diversity in the attributes sex, gender and sexuality, hence the use of the term “marriage equality”: ***the union of two people to the exclusion of all others, voluntarily entered into for life.***

## **Marriage under Australian Law**

Despite the quixotic efforts of the governments of some states and internal territories, marriage in Australia is unambiguously a matter for the Commonwealth. [The Australian Constitution](#) states in Section 51 (Legislative powers of the Parliament),

“The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

...

(xxi) marriage;

...”

The relevant legislation is the [Marriage Act 1961](#). The original Act did not define marriage, relying instead on an implicit definition provided by Common Law. In the early 2000s, as marriage equality started being achieved to various extents around the world, the conservative Prime Minister John Howard, like any good general threatened by attack from barbarian tribes, shored up his defenses. The [Marriage Amendment Act 2004](#) removed any possible dispute: the amended Act now explicitly defined marriage as the sole right of proper blokes and decent sheilas; the perverts had to stay outside the Pale.

## **The Argument for Marriage Equality**

Surely, in a civilized society, any rights or responsibilities conferred by the legislature should apply to all individuals unless there are compelling reasons for placing restrictions upon

them. What, then, are the compelling reasons for marriage to be defined as “the union of a man and a woman to the exclusion of all others, voluntarily entered into for life” rather than as “the union of two people to the exclusion of all others, voluntarily entered into for life”?

It is up to opponents of marriage equality to argue why marriage should be restricted.

### **Marriage and Religion**

Religion is inevitably drawn into the debate on marriage equality, and this usually just muddies the water. Indeed, opponents of marriage equality often raise the issue of religion in order to muddy the waters deliberately.

Even under the present Marriage Act, there are couples eligible to marry who would not be eligible to marry under certain religions. Some religions require both parties to the marriage to belong to their religion. Some disallow marriage where one or both of the parties are divorced. And the list goes on. I certainly do not expect every religion to recognize a marriage between two men, for example, even were that marriage to be legal under an amended Marriage Act.

#### Couples do **not** have some innate right to a Church Wedding!

In fact, I get rather irritated when a couple gets married by a priest whom they have never met, in a Church they've never attended, of a religion they know nothing about. The argument that the Church building makes for great wedding photographs doesn't really cut it with me.

On the other side of the altar, as it were, a Marriage Act amended to allow for marriage equality should **not** require a minister of religion to solemnize a marriage where that union is not recognized as marriage by that religion.

Religion and the State are rightly kept as separate as possible. The argument for marriage equality is an argument for *civil* marriage.

### **The Argument against Marriage Equality**

So, leaving aside the distractions of religious debate and focussing on civil marriage, what are the arguments against it?

Arguments put forward against marriage equality not only include concerns that civilized debate can alleviate, but also include claims that are patently ridiculous. I could not possibly be expected to anticipate an argument, say, that marriage equality would cause a shortage of gold lamé handbags and diamanté jewellery, in order to provide a rebuttal here. How, then, should I attempt to compile a comprehensive list of arguments in order to then offer my rebuttals?

[Senator Cory Bernardi](#) is a Senator for my home State of South Australia, and he is something of a poster boy for the arch-conservatives. (I am alarmed to discover that his “MPID” in the website for the [Parliament of Australia](#) is “g0d”! Perhaps I am wrong after all,

and upon publication of this post I shall be smitten by a lightning bolt!) In 2012, the [Marriage Amendment Bill \(No. 2\) 2012](#), “A Bill for an Act to amend the Marriage Act 1961 to establish marriage equality, and for related purposes”, was introduced into the Senate (and was ultimately unsuccessful). Senator Bernardi’s speech against the Bill became infamous for the following extract.

“There are even some creepy people out there – and I say ‘creepy’ deliberately – who are unfortunately afforded a great deal more respect than I believe they deserve. These creepy people say it is okay to have consensual sexual relations between humans and animals. Will that be a future step? In the future will we say, ‘These two creatures love each other and maybe they should be able to be joined in a union.’”

Now personally I do not believe that Senator Bernardi seriously believes that marriage equality will lead to human-bestial marriages. I may find his politics odious, but he is not stupid – after all he went to the same School as I did, so he must be well educated. Rather, I believe that he made these incendiary remarks deliberately to be provocative and to advance his mission to be the leader of the arch-conservative movement in Australian politics. I think he succeeded. Everyone remembers Senator Bernardi’s “bestiality” speech; no-one would remember any of the other speakers, let alone what they said!

What I decided to do was to take Senator Bernardi’s speech, the entire transcript of which may be found via this [link](#), and to use that speech as the “case against marriage equality” and to rebut the arguments he put forward in that speech.

By my reading of his speech, Senator Bernardi had three principal themes.

1. Marriage is orientated towards having children
2. Children fare best when raised in a traditional family
3. Marriage equality is the next step in a steady erosion of our society’s institutions and mores

### ***1. Marriage is orientated towards having children***

Senator Bernardi:

“... it is a union that is orientated towards having children, ...”

“Changing the definition of marriage would indeed change the focus of the institution itself. It would put the focus on the desire of adults, as opposed to having the focus on the production and nurturing of an environment for the raising of children for the benefit of society.”

“I know that not every marriage has children but marriage is a foundation for the family unit upon which our society is built.”

The Mad Professor:

I dispute that marriage is, or should be, “orientated towards having children”.

Although the Senator acknowledges “that not every marriage has children”, he otherwise lets that observation go through to the ‘keeper. By his logic, marriage would be denied to even a man and a woman if they were unable or unwilling to have children; widowed men and women would be unable to marry!

He seems fixated on the notion of a nuclear family: a father, a mother and the children. In many situations the dominant model is the so-called extended family, supporting each other whether or not a particular married couple within it has children.

## **2. Children fare best when raised in a traditional family**

Senator Bernardi:

“... children benefit from having both a male and a female role model living in a house ...”

“I have always said that a child is better in any environment where it is loved and that is irrespective of the circumstances, but it will not stop me from advocating that traditional marriage is the absolutely best environment for the rearing of the next generation. So whatever the forms that families take in this modern day and age – and they do come in so many different forms with some people being individual parents and indeed same-sex couples also raising children and they all do an amazing job in the circumstances – as I said, I will not stop focusing on the importance of promoting and encouraging the traditional family.”

The Mad Professor:

The Senator acknowledges that single parent and same-sex parents can do a good job in raising children, but he asserts that children fare best when raised in a traditional family. This is simply a statement of personal faith on his part, not supported by any scientific evidence.

The passionate nature of the marriage equality debate means that lobby groups on *both* sides will quote and promote studies that seem to support their point of view, and with little scrutiny of their scientific credibility.

I am a statistician of over 30 years' experience.

Firstly, I am conscious of the extreme challenges faced by any researchers in even *designing* a valid study.

Secondly, there appears to be such large variation in the outcomes of children's development even within the Senator's ideal nuclear families, that any studies to compare different types of parenting are unlikely going to be able to detect any statistically significant differences.

Thirdly, there are at present very few non-traditional families in which the parents are married, and so data for such families is scarce. (Of course, what data there are would have to come from outside Australia.)

Rather, I believe that each family situation should be recognized as unique and individual, and appropriate support in the rearing of any children, by other extended family members or by social services, should be provided to each.

## **3. Marriage equality is the next step in a steady erosion of our society's institutions and mores**

Senator Bernardi:

“The move for same-sex marriage is just another step in what I consider an attack on our enduring and important institutions, particularly the social ones. It is another tear in the fabric of our social mores.”

“The next step, quite frankly, is having three people or four people that love each other being able to enter into a permanent union endorsed by society – or any other type of relationship.”

“There are even some creepy people out there – and I say ‘creepy’ deliberately – who are unfortunately afforded a great deal more respect than I believe they deserve. These creepy people say it is okay to have consensual sexual relations between humans and animals. Will that be a future step? In the future will we say, ‘These two creatures love each other and maybe they should be able to be joined in a union.’”

**The Mad Professor:**

The lament that this – whatever “this” is – is the next step in an erosion of our society’s institutions and mores is a familiar one from social conservatives. Society’s institutions and mores have always been evolving; the social conservative simply takes a snapshot in time and romantically believes that it represents society’s trusted and longstanding institutions and mores, to be protected at all costs.

The Senator does have a point in regard to plural marriage. If more than two people seriously wished to enter into a solemn union of marriage, with all its responsibilities as well as rights, then I don’t see this much differently from an extended family model. I, personally, am not advocating for plural marriages at this time, but were there groups who wished to advance that case then I would listen to their arguments respectfully.

As commented earlier, the human-bestial marriage threat I do not believe even the Senator takes seriously. Your cat is incapable of giving informed consent, and that is the end of it. Should, hypothetically, another species of hominin be found in some remote corner of the world, though, with a fully developed sense of self and ability to comprehend the idea of marriage and to give informed consent, why would one not permit cross-species marriage in such a case? This sounds like a plot for ... my novel!

## **A Million Dollar Opinion Poll**

The official position of the current Commonwealth Government, which is a coalition between the Liberal Party and the National Party, is to hold a national plebiscite on marriage equality during the term of the current Parliament. No details have yet been decided in respect of the question(s) or the timing. (For international readers, the Liberal Party, despite its name, is a “right-of-centre” political party and is the senior partner in the coalition; the National Party is also a “right-of-centre” political party whose support base is primarily in rural and regional areas.)

At the national level, there is a clear distinction made between a **referendum** and a **plebiscite**.

A **referendum** has a very specific meaning at the national level: it is part of the process that must be followed in order to amend [The Australian Constitution](#). A question is put to the voter in a form that requires an answer either in the affirmative or in the negative. In order for the referendum to pass,

1. a majority of voters overall must vote in the affirmative; and,
  2. a majority of voters must vote in the affirmative in a majority of the States;
- this is the so-called “**double majority**”.

A **plebiscite**, on the other hand, is simply a national opinion poll. The question put to the voters may be of the form which requires an answer either in the affirmative or in the negative, or may be more structured, such as giving a list of options and requiring the voter to express an order of preference. (The National Song Poll held in 1977 was of the latter kind.) The outcome of a plebiscite is not binding.

For more information and discussion, see "[A quick guide to plebiscites in Australia](#)", which is posted on a blog, hosted by the [Parliament of Australia](#) website, called *FlagPost* ("a blog on current issues of interest to members of the Australian Parliament").

In my lifetime, the following changes to legislation have occurred. (Some of these have been State legislation and some have been Commonwealth legislation.)

- Divorce law has been liberalized
- Abortion law has been liberalized
- Capital punishment has been abolished
- The "White Australia" immigration policy has been abolished
- Homosexuality has been decriminalized

In every case, these changes have been achieved without the relevant Parliament feeling the need for a plebiscite. Indeed, in some of these cases, a plebiscite may well have gone against the legislative changes! The Parliaments passed these legislative changes because in each case *it was the right thing to do*.

So why are we having a plebiscite on marriage equality?

The answer is, of course, political. Sigh! This incredibly expensive national opinion poll is being planned due to feeble leadership in our present Government. What a shameful waste of money!

So what do I want the Commonwealth Parliament to do?

I WANT IT TO DO ITS BLOODY JOB !!

We live in a representative democracy modelled on the British Westminster system. We elect representatives to the Parliament so that they can become informed about and debate the various issues of the day, issues that the everyman cannot be expected to have either time or resources or capacity to research and to develop an informed opinion. Bills can be referred to Senate Committees whose job it is to examine the scientific evidence and carry out other necessary deliberations in order to make informed reports to the Parliament. Certainly, individual citizens may contribute to the debate, but this should be done through representation to their elected parliamentarians, through lobby groups, through traditional media and through social media. But, at the end of the day, it is the Parliament that must make the decision – that's why it is there in the first place!

***The members of the Commonwealth Parliament have a moral responsibility to debate and to vote on legislation, and to be prepared to be held accountable by present and future generations of Australians for their decisions!***

## The Sensibilities of our People

A lot of Australians are surprised to discover that Australian Commonwealth legislation already applies to de facto partnerships (of any two people) in exactly the same way as to married couples, in respect of matters for which it has jurisdiction. This includes taxation, social security, migration and many more. Thus, amending the Marriage Act to achieve marriage equality could be seen as simply conferring on all couples the right to say “We are married”. In all other respects, proper blokes, decent sheilas and perverts are already treated identically, so why are the perverts getting all worked up over the word “marriage”!?!?

Let me share a sobering anecdote with you.

The United States of America started as a society in which black people were enslaved. Gradually, reforms were passed and attitudes were changed, and the process still goes on. By 1925, considerable advancement had been achieved but much still remained. Nonetheless, many white Americans were alarmed at the “concessions” that had already been made. Indeed, Time Magazine had adopted the practice that, when referring to a black man Tom Smith, say, they would write “Mr Smith” rather than “Smith”. This so enraged Mr Barlow Henderson of Aiken, South Carolina, that, on 9 September, 1925, he wrote a [letter to the Editor](#):

“Is the glorification of the Negro now an accepted policy of your magazine? I had hoped that after the protest of one Southerner you might show some consideration of the sensibilities of our people by the discontinuance of your practice of referring to the colored man as “mister.” I was deeply grieved, therefore, to find two new instances in your Sept. 7 issue ...

(Time responds: It is not Time’s desire to lose the good will of its Southern friends. Time will, however, continue to employ the “Mr.” in referring to men who lack other titles.)

We look back in amazement and horror at that letter.

***In a century’s time, how will society look back and judge those who opposed marriage equality today?***