

# Celebrating Marriage: Same Sex Marriage Forum

In 2004, the Australian Government took the extraordinary step of restricting the rights of certain members of our community when it passed a law to limit marriage to heterosexual couples. In order to flesh the issue out, the Castan Centre held a forum on same sex marriage in May of this year, inviting its speakers to address the philosophical and legal underpinnings of the issue. Grevis Beard provided an overview of legal developments in Australia, Associate Professor Kristen Walker did the same for overseas jurisdictions and Professor Raimond Gaita spoke from a philosophical perspective.

Mr Beard commenced his talk by noting that the *Marriage Amendment Bill*, passed by the Federal Government in 2004, directly contravenes the International Covenant on Civil and Political Rights, which requires nations to ensure that all persons are equal before the law. The bill amended the *Marriage Act* to define marriage as “the union of a man and a woman to the exclusion of all others, voluntarily entered into for life”. The bill also prevented same sex marriages from other countries from being recognised in Australia.

As Kristen Walker noted in her talk, the number of those marriages is growing. Same sex marriage is legal in Holland, Belgium, Canada and Spain while the South African Supreme Court has ruled that the constitution protects the right. More than a dozen countries recognize same sex civil unions.

On the other hand, Ms Walker noted that the situation in the United States is more mixed. The courts in New York and California have ruled that legislation banning same sex marriage is unconstitutional, while Nebraska has gone to the next step and passed a constitutional amendment prohibiting it. Massachusetts will consider a similar measure in 2006. Ms Walker noted that President Bush, like many other American politicians, has supported the idea of a similar federal Constitutional amendment.

The position of conservative politicians was a theme taken up by Mr Beard in his talk. He quoted Attorney-General, Philip Ruddock, who stated that heterosexual marriage “provides the best environment for the raising of children”. This view was, according to Mr Beard, a re-hashing of the myth that homosexual couples cannot or should not bring up children and a denial of the reality of same sex unions in today’s society. There are almost 19,000 same sex couples registered in Australia. Mr Beard also quoted the Prime Minister, who said that the amendment was “reaffirming a bedrock understanding of our society” and was not directed at gay and lesbian people. How can a law which denies gay people rights not be directed at them, he wondered. More disturbingly, Mr Beard sees a connection between the attitude of the Government and the upswing of violence and intimidation directed against gays and lesbians. It starts at school, where 74% of homosexual youth are subjected to physical or verbal abuse, and continues right through life.

It seems, however, that the Australia states are providing a glimmer of hope. The Constitution prohibits the states from making laws governing certain areas if the Federal Government makes a law which “covers the field”. By expressly

limiting the *Marriage Act* to heterosexual marriage, the Federal Government may have inadvertently opened the way for states to make laws relating to homosexual marriage. In both Tasmania and New South Wales, same sex marriage bills have been prepared and South Australia and the ACT have both introduced bills to establish civil union registries.

If the legislative field is perhaps moving slowly in favour of same-sex marriage, Raimond Gaita sees the ongoing volatility over the issue as an indication of the deep philosophical rift within our society. Professor Gaita recounted discussing the Archbishop of Canterbury, Rowan Williamson, and his support for same sex marriage in front of a gay friend. “We agreed...that it was understandable that in order to prevent a split in the Church, Williamson would at least play down his support for gay clergy. Nick said not a word, but I caught his eyes. In their pained expression I read these questions: Is it really so obvious that one shouldn’t be prepared to split the church over this matter? Wouldn’t it be different if racism were the issue?”

Professor Gaita sees some parallels between the current debate over same sex marriage and the history of racism in Australia. For him, both issues are less about rights than they are about humanity and dignity. For example, the belief that aborigines could not have a deep relationship with the land, or with their children, sprung from the failure to see that aborigines were “like us”. Such views, according to Professor Gaita, can only be challenged by “coming, through living with a people, to see dignity in faces that had all looked alike to us, to see the full range of human expressiveness in them, to hear suffering that lacerates the soul.” Similarly, much of the opposition to same sex marriage is driven by homophobia, which Professor Gaita considers to be a way of “denigrating the entire lives of gays and lesbians”. This is why the call for the right to marry is not simply a demand for fairness. It is, according to Professor Gaita, “the demand for justice conceived as equality of respect”.

On the other hand, Professor Gaita suggested that much opposition to gay marriage comes not from homophobia but rather from a belief that same sex unions are simply not compatible with married love; that the legalisation of gay marriage would “sow confusion and degrade the concept of marriage”. Professor Gaita concluded by dissecting this argument, and in particular the notion that gay love cannot deepen because it does not incorporate the possibility of conceiving new life. He asked “why should that be a reason for doubting that gay and lesbian love can worthily rise to, be vitally responsive to, a full and deep understanding of what it means to be married, of what it means for love to be transformed by the marriage vow, for love worthily to become married love? Only ignorance, confusion or residual homophobia, I suspect, could make one think that there is a compelling reason.”

*The papers of Mr Beard and Professor Gaita, and the powerpoint presentation of Ms Walker are available at <http://www.law.monash.edu.au/castancentre/public-edu/ssmforum.html>*