

TOWARDS AN AUTHENTIC ONTOLOGY OF MARRIAGE

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Abstract

In recent times, marriage is redefined to accommodate the concerns of “gay-rights” movements. Against the classical understanding of marriage as a union between two persons of opposite sex for the purpose of domestic partnership and reproduction of one of its kind, contemporary definitions tend to leave out the gender implicating terminology of “opposite sex”. Marriage is thus defined as a union between two persons. This paper argues, using the Kantian notion of marriage that such definitions that deliberately omit the gender implicating terminology of “opposite sex” mutilates the authentic ontological meaning of marriage. Ontologically and etymologically, real marriage is between a male and a female, where the male is the husband and the female the wife. Until we can correctly talk about a “female husband” and a “male wife” without contradictions in terms, the new definitions of marriage that recognizes same-sex unions is incorrect and ontologically misleading.

Key Words: Marriage, Ontology, Same-sex union.

Introduction

The legalization of same sex union in the United States of America by the Supreme Court attracted public outburst of rejection by some and jubilation by others. It awakens fundamental issues bordering on the ontology of marriage. Marriage is the foundation of the family and the family is the foundation of society. Therefore, marriage is the foundation of society. Sequel to this logic, if the marriage institution is destroyed, the foundation of society is under the threat of destruction. Generally, marriage is considered as the contractual union aimed at raising a family. It bestows on the married partnership, the right to have sex, and provides domestic security. Marriage is a socially or ritually recognized union between two spouses it establishes rights and obligations between the married couple, between them and their children and between them and their in-laws. Although we find different definitions of marriage arising from different cultures, all cultures however, acknowledge marriage as an institution within which sexual interpersonal relationship is acknowledged.

Moral philosophers raise issues about interpersonal moral obligations and their limits, as well as a good human life within marriage. Political philosophers consider whether, and if, how society and the state should organize sex, love and intimacy. These considerations have narrowed down to the legality, morality and appropriateness of same-sex unions, polygamy and abolition of marriage. In the light of these issues, using the Kantian notion

of marriage as contained in *The Science of Rights* (1790), this paper, through a critical analysis reaffirms the authentic ontological meaning of marriage. It therefore, contests the appropriateness of same-sex union and calls for a return to the traditional notion and values of marriage.

The Kantian Notion of Marriage:

Kant's discussion of marriage under the rights of the family as a domestic society is preoccupied with four issues: (i) The natural basis of marriage, (ii) The rational right of marriage, (iii) Monogamy and equality in marriage, and (iv) Fulfilment of the contract of marriage. These came under his title of conjugal right.

The Natural Basis of Marriage:

Marriage, for Kant, is the foundation of domestic relations and it is the foundation of the natural reciprocity or intercommunity (*commercium*) of the sexes.² The emphasis is on 'the natural reciprocity', which brings about a union of the sexes. It takes three forms according to the mere animal nature: *vaga libido*, *venus vulgivaga*, and *fornication*, or according to law. When it is according to law, it is referred to as marriage. Therefore, marriage is "the union of two persons of different sex for life-long reciprocal possession of their sexual faculties".³

The union of marriage may be directed towards "the end of producing and educating children [which] may be regarded as always the end of nature in implanting desire and inclination in the sexes".⁴ This is however, not necessarily an end that legitimizes marriage. If it is, it implies that marriage would cease to be when the production of children ceases. The intercommunity of marriage which serves the purpose of conjugal union, "*usus*", of the married persons is a natural one and thus enables the married to reproduce their own kind. But it can also be unnatural, when marriage is between persons of the same sex or between a person and an animal of another species than humankind.⁵ For Kant, the unnatural "*usus*", either between persons of the same sex or between a person and an animal of the different species is a transgression of all law that should not even be talked about. It is a wrong against humanity in the person that cannot be saved from entire reprobation by any limitation or exception.⁶ Kant considers marriage, either for reproduction of one of their own kind or for reciprocal sexual enjoyment "a contract necessary in its nature by the law of humanity".⁷ According to him, "if a man and a woman have the will to enter on reciprocal enjoyment in accordance with their sexual nature, they must necessarily marry each other; and this necessity is in accordance with the juridical laws of pure reason".⁸

ii. The Rational Right of Marriage: The natural *commercium* of the marriage union, which implies an enjoyment in which one person gives up him/herself to the other does not translate into a situation of one person possessing the other for selfish sexual gratification. In Kant's opinion,

In this relation the human individual makes himself a *res* [something substantive or concrete as against a *spes*, which is something unreal or ethereal], which is contrary to the right of humanity in his own person. This, however, is only possible under the one condition, that as the one person is acquired by the other as

a *res*, that same person also equally acquires the other reciprocally, and thus regains and reestablishes the rational personality.⁹

This implies that such a reciprocal and respective surrendering and acceptance of, or by, one sex in relation to the other is really only possible and permissible under the condition of marriage. It is only within the condition of marriage that the personal right acquired is real in kind by both partners. As the one partner receives and acquires the other partner so the other partner receives and acquires the one partner. Therefore, Kant argues that this characteristic of marriage is established by “the fact if one of the married persons run away or enter into the possession of another, the other is entitled, at any time, and incontestably, to bring such a one back to the former relation, as if that person were a thing”.¹⁰ By this, Kant implies that each partner in marriage has equal right over the other, while none of the partners loses his/her personality. What partner A gives up he regains in partner B, ditto, what partner B gives up she regains in partner A. This introduces the grounds for monogamy and equality in marriage.

iii. Monogamy and Equality in Marriage: Married persons are related to each other as equals in the mutual possession of each other as well as their goods.¹¹ Consequently, marriage can only be appropriately and truly realized in monogamy. Polygamy negates the fullness of giving in reciprocal order. As Kant puts it, “in the relation of polygamy the person who is given away on the one side, gains only a part of the one to whom that person is given up, and therefore becomes a mere *res*”.¹² Although, under a special contract, they have right to renounce the use of any part of their goods, which means that, while they can regulate the use of their goods in polygamy without one partner being a mere *res*, same cannot be with the giving of self. Consequent upon this principle, concubinage would be more like a situation where one can hire and fire the other and therefore, does not enjoy the status of marriage. It involves the acquisition of another for the sole purpose of use – a mere *res*.

iv. Fulfilment of the Contract of Marriage: Conjugal cohabitation completes the contract of marriage. Therefore, when two persons of different sex enter into the contract of marriage and mutually agree to abstain from conjugal cohabitation or with the consciousness of the other person’s inability to conjugally cohabit, what you have is a simulated contract of marriage and not marriage in the real sense.¹³ Such a simulated contract can be dissolved by either of the partners at will. However, if it is a case of inability that arises after marriage, which means it is a contingency that is not legally blameable, the contract of marriage is valid and not diminished by the fact of the inability.

Marriage is not constituted by the very fact of cohabitation without a preceding contract, neither is it constituted by a mere contract without subsequent cohabitation. Marriage is the effect of the obligation formed by two persons of different sex, who enter into sexual union on the basis of reciprocal possession of each other.

The Altering Notions of Marriage

The classical notion of marriage as ‘made in heaven’ offers a theological justification for the conception of marriage as an indissoluble union, which constitutes the only permissible *locus* of sexual activity.¹⁴ It is also conceived as a biological phenomenon

instituted by human societies. This latter notion accommodates various forms of marriage, like polygamy and polyandry, and justifies them in relation to their social functions.¹⁵ From its Latin etymology, *maitare*, which means “to marry” or “provide with a husband or wife”, and *matrimonium*, which is a combination of the concepts of “mother” and “action, state or condition”, marriage has always been tied to cohabitation, procreation, and family. Socially, marriage denotes a recognized union between spouses who have obligations towards each other as well as rights. The meaning varies from one culture to another, but generally implies an institution that recognizes and acknowledges sexual interpersonal relations between the married.

Over the centuries, the notion of marriage evolved to accommodate the wide variety of marital practices obtaining in various cultures. Anthropologists propose various competing definitions of marriage and according to Evan Gerstmann, “definitions of marriage have careened from one extreme to another and everywhere in between.”¹⁶ Even the scripture, which many often refer to in establishing their take on marriage does not seem to provide an explicit definition of marriage. According to Anthony Ewherido, there is no exact definition of marriage in scripture, “what we have are establishments that are identified as marriages”.¹⁷ Edvard Westermarck once defined marriage as “a more or less durable connection between male and female lasting beyond the mere act of propagation till after the birth of the offspring”.¹⁸ Later he abandoned this definition for a provisional definition of marriage as “a relation of one or more men to one or more women that is recognized by custom or law”.¹⁹ This provisional definition of Westermarck simply follows the drift of society by accommodating different forms of unions that contemporary society recognizes as marriage. If he were to define marriage now, it is likely that he would drop the terms that are gender referent and simply refer to two or more persons. This would ensure the accommodation of same-sex unions as marriage.

The *Merriam-Webster Dictionary* defines marriage as “the state of being united to a person of the opposite sex as husband or wife in a consensual and contractual relationship recognized by law” ... “the state of being united to a person of the same sex in a relationship like that of a traditional marriage”.²⁰ The second definition, which is apparently a more recent inclusion is an attempt to include the concern of gay-lobbyists and bring to bear current trends in the social and legal understanding of marriage. These attempts by Merriam-Webster and Westermarck to accommodate same-sex marriage prompts the question whether marriage is a mere social, political or legal phenomenon or it goes beyond these, as an institution?

Authenticating the Ontological Meaning of Marriage

Within the understanding of the Kantian notion of marriage, what *is* marriage? The interest in this fundamental question is the “is”. It gives the crucial understanding of the ontology of marriage. The term ontology was fleshed by Aristotle and Thomas Aquinas. As a 17th century concept that designates *being* as a *model*, it points to the *essential* in the existence of a thing. The emphasis is on *esse*, which is the Latin infinitive for “to be”, from which the modern word “essence” is derived. The essence of a thing is absolutely necessary to the *being* of the thing; separate the essence from the thing, it ceases to be the thing. Therefore, the essence defines the very core of the thing.²¹ In the question, what is marriage, if we suppose the answer to be, “marriage is a union between husband and wife”, where lies the essence?

This definition provides us with two possible interpretations: (i) that the essence of marriage is the participation and union of husbandness and wifeness, and (ii) that marriage as observed historically appears to be the participation and union of husbandness and wifeness. To accept one interpretation or the other, we must appeal to ontology.

Ontology makes a distinction between the substance and the accidents of a thing. While the substance of a thing refers to that, without which the thing cannot be, the accidents are properties of the thing that are not essential to it – the thing can be without its particular accidents. Take for instance, a triangle. The accidents, which Aquinas refers to as quiddities or peculiarities would be its acuteness, obliqueness or dimensions, while its substance would be its ‘third’, which makes it ‘tri’ by closing up the open and contiguous side to form a ‘third and final angle’. This distinction between substance and accidents remains a debate, with some arguing that it is non-existence, others argue that they may exist but such a distinction is not necessary.²²

Traditionally, the participation and union of husbandness and wifeness – that is, of maleness and femaleness is conceived as the substance of marriage.²³ The factor of maleness which corresponds to the husbandness and femaleness, which corresponds to wifeness provides the prospect of generating one of its kind – reproduction. This is a historically secular and religious fact. As Shaun Kenney posits, “to remove husbandness or wifeness from this equation makes the statement false”.²⁴ Therefore, ontologically, marriage *is* between a husband and a wife. Does it mean that husbandness or wifeness is the essence of marriage?

Kant’s analysis of the ontology of $7 + 5 = 12$ would be enlightening here. According to Kant, sevenness or fiveness is not the essence of 12, but if we remove either of them, along with the plus or equal sign, the equation $7 + 5 = 12$ would be false and nonsensical. In the same vein, while husbandness or wifeness is not the essence of marriage, to remove either of them would implicate the definition of marriage. That marriage is ontologically between a husband and wife is an analytic truth. The concept of husband necessarily implies a man who has a wife, while the concept of wife necessarily implies a woman who has a husband.

Aside the fact of history, the etymology of the term “marriage” confirms this. Marriage is a derivate of “marry”, which itself derives from the Latin words: *maritus* – a husband, and *marita* – a wife. The English “husband” comes from the Old English word for house – *hus* and owner or owning yeoman – *buondi*. “Wife” comes from the Old English word for woman – *wif*.²⁵ It will not only be ontologically absurd to talk about a husband without a wife or *vice versa*, it would be contradictory and nonsensical. To define marriage without the notion of husband or wife would be contravenous as well as ontologically irrational.

Conclusion

Contemporary attempts to redefine marriage as a union that does not necessarily have to be between persons of different sex – male and female, throws up the question whether

we can talk about a female husband and/or a male wife. If this is ontologically possible, it follows that same-sex marriage does not contravene the ontological status of marriage.

The notion of a “female husband” implies a woman who is a man. Note that we are not talking about *a woman who is playing the role of a man* or *a man who is playing the role of a woman*, as we would be made to accept with the case of same-sex unions. The definition of husband, both from its ontological meaning and its etymology implies that “husband” is necessarily a man and therefore a male. A “woman man” or “female husband” is therefore a contradiction as it falls foul of the logical laws of identity and non-contradiction, it is absurd. The essence of marriage requires the concepts of husbandness and wifeness. Both concepts ontologically imply maleness and femaleness, respectively. Consequently, the idea of same-sex marriage is not only absurd, it is ontologically meaningless and epistemologically ridiculous.

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² Immanuel Kant, (1790), *The Science of Rights*, trans. by W. Hastie, (Start Publishing LLC, 2012), # 24.

³ *Ibid.*

⁴ *Ibid.* (The word in bracket is my addition).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*, # 25. (The explanation in bracket is my addition).

¹⁰ *Ibid.*

¹¹ *Ibid.*, # 26.

¹² *Ibid.*

¹³ *Ibid.*, # 27

¹⁴ Paul Gilbert, “Marriage” in Ted Honderich, (ed.), *The Oxford Companion to Philosophy*, (Oxford: University Press, 2005), p. 556

¹⁵ *Ibid.*

¹⁶ Evan Gerstmann, *Same-Sex Marriage and the Constitution*, (Cambridge: University Press, 2004), p. 22

¹⁷ Anthony Ewherido, “Marriage and Family in the Light of the New Evangelization: Divine and Human Relations in the Biblical Tradition as *Locus* of Evangelization”, A Paper presented at the 2nd Annual Theological Conference of the Southwest Association of Nigerian Catholic Theologians on the Theme: “Marriage and Family in the Light of the New Evangelization” at SS. Peter and Paul Seminary, Bodija, Ibadan. (May 2015)

¹⁸ Edvard Westermarck, *The History of Human Marriage*, vol.1, (1922), p. 71.

¹⁹ Edvard Westermarck, *The Future of Marriage in Western Civilization*, (Books for Libraries Press, 1936), p. 3.

²⁰ See www.merriam-webster.com/dictionary.

²¹ Shaun Kenny, “An Ontology of Marriage”, <https://bearingdrift.com>, (Retrieved July 8, 2016).

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*