

Beyond Marriage

In the gay movement the demand for the right to same-sex marriage has become very strong, based on two arguments: a) it is discriminatory to prohibit two persons of the same sex marrying; b) marriage would solve many problems for gays and lesbians. In this article we wish to refute these arguments and present a new way of looking at the question.

Discrimination. It is certainly unjust that lesbians and gays do not have the same rights as heterosexuals. However, though discrimination is always reprehensible, this does not mean that the object of this discrimination must necessarily be desirable. Take the case of obligatory military service for males. Faced with this situation there are two possible options, to call for women to be required to do military service too or to call for the abolition of military service. In the same way, the injustice of exclusively heterosexual marriage can be dealt with in two very different ways: by obtaining same-sex marriage or by abolishing civil marriage.

Solving problems. Marriage could solve some of the problems that we lesbians have, since it is a socially and legally privileged institution. This is clear, but would it not create others? And, on the other hand, is that reason enough to demand this institution? Marriage represents the community's refusal to assume responsibility for people's needs and the abandonment of relations of dependency to the private sphere. Widows, full-time housewives, divorced women without their own means or with children continue to be economically dependent on their (ex)husbands. With marriage we lesbians could begin to sue our lovers to pay us alimony when we separate. Is that what we want? Shouldn't we rather be calling for collective responsibility for people's dependency needs?⁽¹⁾

Marriage is the principal expression of the excessive regulation of relations between adults. Other cases, in Catalonia, are the Law of Stable Unions of Couples, the Law on Cohabitation Situations of Mutual Assistance or the Law on Maintenance between Relations, which establish rights and obligations between persons who in many cases cannot decide if they wish to avail themselves of these laws or not — the Law of Stable Unions is obligatorily applied to straight couples that "live together as if married" — and that leave people's dependency needs to the private sphere.

Marriage can serve to make the existence of lesbians visible, but at the same time it contributes to render invisible and to erode other types of relations that we establish, such as networks for support and friendship, which are of positive value for all women. Marriage means redirecting our relationships toward a logic that is heterosexual, patriarchal and matrimonial, although "our lesbianism has little to do with this *logos* [...] it does not respond to a single *logos* because it is on the margin of common social rationalism."⁽²⁾ ⁽³⁾ On the other hand, the wedding is a social event of great public significance. If many lesbians live exiled from their families and have to conceal their sexual orientation at work, in the neighbourhood, etc., how many lesbians could marry, even if they wanted to? The right that married couples have to enter into the life and property of the other person facilitates situations of domestic violence. These circumstances also occur in lesbian and unmarried straight couples, but "But the law does not protect unmarried batterers or tend to preserve the relationships of unmarried lovers in the way that it protects husbands and tends to preserve marriages."⁽⁴⁾

Since marriage implies certain privileges, it reinforces the possibility for persons to maintain abusive or exploitive relationships and can prevent the beginning of a new relationship of a different type.⁽⁵⁾ Gay campaigns for rights do not take into account that laws also establish obligations, which can be to the detriment of people's freedom and welfare. As for example, in Canada, where with passing of the Modernisation of Benefits and Obligations Act, lesbians who do not declare that they are living in a couple situation can be accused of tax fraud.⁽⁶⁾ Another perverse and seldom considered effect of laws could be a change for the worse in women's

economic situation. (7) In the same way it is not easy to understand the demand for marriage as linked to certain rights, when the number of people without partners, particularly women (single women, divorcees, widows), increases day by day. Up to this point we have argued that the right to homosexual marriage is not necessarily desirable even though the absence of that right implies discrimination and that homosexual matrimony would create more problems than it would solve. One could be in agreement with that and equally defend the right to marriage for those people who wish to marry. But marriage is an obligation, not a right.

Marriage ensures certain conditions (widow's pensions, inheritances, social housing, etc.), in addition to social status, for married persons, conditions that persons who do not want or cannot marry — lesbians and gay people, separated persons, persons without a partner — do not have or have only with disadvantages. The pressure to marry that arises from this situation makes marriage an obligation, not a right. It is unacceptable that people have to marry in order to obtain basic living conditions, and it would be even more so in the case of lesbians, who would be obliged to "come out" while lesbophobia does not stop increasing. (8) On the other hand, "unlike other contracts, marriage is not a private agreement between two persons but rather is of a public nature and is subject to laws that dictate and control the rights, obligations and incidents of the marriage, regardless of the wishes of the persons who are getting married [...] the state establishes conditions with regard to its constitution, duration and consequences." (9)

By demanding the right to marriage we will only succeed in increasing the number of people affected by this obligation and in dividing lesbians into "good ones" and "bad ones" (those who marry and those who don't), but what we need to achieve is to make it cease to be an obligation. Rights must be based on persons, not on couples. The necessary measures should be adopted so that everyone's basic needs are provided for, regardless of whether they are in a couple or not.

So we propose: (10) a) abolishing civil marriage and making it possible for sexual and affective relationships between adults to make use of contracts (if necessary changing the legislation on contracts so that it takes into account power differences and qualifying in detail the concepts of voluntary consent and personal autonomy; b) protecting, legally and socially, relationships of care and dependence between people; c) guaranteeing that each person has their basic needs provided for, regardless of whether they are in a couple or not. In this way the non-recognition of same-sex marriage would be comparable to the discrimination represented in the fact that the princesses of the Kingdom of Spain will never be queens because they are women or that women soldiers cannot go into combat. What must be done is to change the nature of the game: to bury the monarchy, armies and marriage.

Grup de Lesbianes Feministes

www.lesbifem.org

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6. Kathleen Lahey. "Don't lie on income tax". *XTRA*, s.d.
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