

Notes for a discussion of issues raised by the SJC decision regarding same-sex marriage in Massachusetts:

It should not be expected that the immediate popular and institutional response to the SJC decision of November 18th would be well-informed. The 'media-ized' character of that response insures that the expression of ill-informed prejudice will occupy the most time. When Ronald Crews, president of the Family Institute of Massachusetts, states on WBUR that the SJC decision failed to consider the welfare of children, large numbers of people who do not *read* will believe that the section of the court decision dealing with that very issue does not exist. Remember the number of fellow citizens who believe that the invasion of Iraq was a response to terrorist attacks.

The following notes are shared as an introduction to thinking about the SJC decision, its basis and its implications.

1. 'Marriage' is a general term describing a widely distributed social institution rooted in the family as a needed transmitter of biological and cultural continuity.
2. The social sanctions surrounding marriage vary so greatly, that it becomes necessary in a polity based on theories of human rights rather than cultural homogeneity, to distinguish those aspects of marriage peculiar to a particular ethnic or religious group. Only in this way can people of differing beliefs be protected from having a particular one imposed on all.
3. The doctrinal base of Christian marriage, as given in canon law — "one in the flesh" — applying to an indissoluble and sacred bond between a man and a woman, consummated by sexual intercourse (to produce children) represents an exceptional view of marriage. But this view, however true or beautiful, has little to do with civil law — man-made law.
4. The teachings of the Latter Day Saints on exaltation, requires celestial marriage. The revelation of May, 1843, published for the select few on July 12. of the same year, stated that the doctrine of plural and celestial marriage is central to Mormon priesthood. However beneficial in maintaining the strength of the family as a social institution for the engendering and nurturing of children this teaching may have been, the doctrinal benefits were limited by the application of civil law. Notwithstanding President Fillmore's belief that the civil law could accommodate itself, the U. S. Supreme Court ruled otherwise.
5. Jewish marriage has no theological basis. Most of the regulations surrounding marriage, to be found in the biblical codes, have to do with incest prohibitions, exchange and contract, protections of person. The contracts are binding and set conditions to be met if the marriage is dissolved. Rabbinical law recognizes as valid marital relationships by simple cohabitation of valid partners. Mutual obligations are presumed even if not specified in contract. In some Jewish traditions, the marriage is validated by exhibiting tokens of the virginity of the bride.

6. Marriage antedates the development of civilization. It is an institution found in tribal societies. The forms vary enormously: polygyny, polyandry, monogamy and group marriage may coexist within the same culture. More peculiar to specific cultures are complex kinship rules (endogamous and exogamous) that determine permitted and preferred marriages.. Among the Zuni, as well as among other Native American tribes, marriages may be arranged between members of the same sex.

7. The earliest written civil law codes (from Mesopotamia) demonstrate the City-state's interest in regulating marriage contracts.

8. The interest of the modern state in the family, the institution of civil marriage in Western European cultures, develop most fully in states founded on democratic, not theological principles. The distinctive feature of such states is that the only sanction of government (the right of some persons to tell other persons what they may or may not do) is the consent of the *demos*. Another important feature of such states is that they are founded on theories of human rights, and not on divine commandments of any particular god or goddess.

9. While it is understandable that people directly involved in the formation of rules might rely on familiarity and custom, it is important for social progress in a society based on theories of human rights that it include the positive experience of others by extending those rights. There is no intrinsic reason for protecting marriage as an institution, or privileging those who benefit from it, that cannot be extended same-sex couples.

Let us be wary of arguments that opening the door to an additional form of marriage will allow for many others that may be undesirable. This is an argument that has been used so frequently to avoid inclusion, that we live in fear of chimeras. There is no evidence that the institution of marriage is threatened by the variety of its forms.

Elie Yarden

November 24, 2003

A handwritten signature in cursive script, reading "Elie Yarden". The signature is written in dark ink and is positioned below the typed name and date.

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Communication #10

A communication was received from Elie Yarden, regarding same-sex marriage in Massachusetts.

In City Council November 24, 2003

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