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SUE WILKINSON & CELIA KITZINGER

What do you do when your four-year old daughter tells you 'If you loved each other, you'd be married' – but when, as a lesbian couple, you cannot legally marry? What Julie and Hillary Goodridge did was to become lead plaintiffs in the landmark lawsuit which achieved the right to marry for same-sex couples in Massachusetts. The world was watching as the Goodridges – with daughter Annie (now eight) as ringbearer and flower girl – were wed in Boston on 17 May 2004, along with scores of other lesbian and gay couples.

Massachusetts became the first American state to permit same sex-marriage, and the USA only the fourth country in the world to do so. That same day George W. Bush reiterated his vow to change the US constitution to prevent the 'redefinition' by the courts of the 'sacred institution of marriage'. 'This isn't changing marriage,' said Hillary Goodridge. 'It's just opening the door.'

Why would lesbians and gay men, or anyone else, want this particular door opened? And what is the role of psychology in these often emotionally charged 'equal marriage' debates?

Exclusion from marriage

Prior to their marriage, the Goodridges, like many same-sex couples, had the partial protections of mutual powers of attorney, trusts, wills and healthcare proxies – but none of these protections gave them a legal relationship. When Annie was born, by Caesarean section, they were not enough to get Hillary into the recovery room to see Julie, nor into neonatal intensive care to see her daughter. Such rights – along with a string of others, such as the right to adopt as a couple, to vote by proxy, automatically to receive a pension and other income related benefits, to register a spouse's

death, to be exempt from inheritance tax – are taken for granted by heterosexuals who have exercised their right to marry.

Previously, some of these rights could be assembled piecemeal (as the Goodridges attempted to do); increasingly some or all of them can be acquired (in some countries) with 'civil partnerships' or 'civil unions'. With the advent of marriage for same-sex couples, they are acquired wholesale, and automatically, as part of the legal contract, just as they are by heterosexual couples. 'It's about fairness and justice,' said Joseph A. Curtatone, Mayor of Somerville, Massachusetts, welcoming same-sex couples arriving to get married in his town. His words were echoed around the world, with Massachusetts lauded as 'The first American state that has removed the mindless discrimination against its citizens their basic sexual orientation' (Tereza Nosalkova, in the Czech daily newspaper *Lidove Noviny*). However, just six months later, in the conservative backlash after the Presidential election, 11 US states reinforced such discrimination, voting to restrict the definition of marriage to a union between 'one man and one woman'.

The day after Massachusetts equalised marriage, a leader in the *The Independent* asked 'Should not Britain be next?' It is most unlikely that this will be the case. In November 2004 the Civil Partnership Act became law in Britain – meaning that from late 2005 same-sex couples (and only same-sex couples) will be able to register their relationships and have these legally recognised as conferring a range of rights and benefits. The option of equality in marriage is not on the table.

Civil partnerships, or variants thereof, differ from legal marriage in most countries in that they offer far fewer legal benefits. For example, the systems in Vermont and California do not, and cannot, cover federal rights such as the ability for a non-US spouse to become a full US citizen, federal taxes, and the more than one thousand laws triggered by legal marriage (Demian, 2003). Around a dozen European countries have some kind of relationship registration for same-sex couples, varying in the range of benefits thereby conferred (see Kitinger & Wilkinson,

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2004b, for a more detailed review) full adoption rights are excluded in Sweden, Finland, Norway and Iceland; tax benefits are excluded or reduced in Belgium and France; social security rights are excluded in Germany; and so on (see Kitzienger and Wilkinson, 2004b, for a more detailed review). The British Civil Partnership Act will be one of the most extensive, covering virtually all the rights and responsibilities of marriage; its introduction is an important advance for lesbians and gay men in the UK.

However, it is not just the restricted range of benefits that accords civil partnership its inferior status. Marriage is universally understood to be the fundamental social institution for recognition of the couple relationship; and civil partnerships are generally seen as something 'less than' marriage. Indeed, this is precisely why they are sometimes favoured by those who oppose same-sex marriage. Historically, exclusion from marriage – on grounds of the partners' gender, sexual orientation, 'race', ethnicity or religion – has always been used as a tool of oppression. On 15 September 1935, the Nazis passed the Nuremberg Law for the Protection of German Blood and German Honour, stating that:

Marriages between Jews and Nationals of German or kindred blood are forbidden. Marriages concluded in defiance of this law are void, even if, for the purposes of evading this law, they are concluded abroad.

Likewise, the Immorality Act and the Prohibition of Mixed Marriage Act of the South African apartheid regime (repealed in 1985) prohibited marriage and sexual contact between 'races'. Forty US states once prohibited 'interracial' marriages (defined, for example, in South Carolina as 'the marriage of a white person with a Negro or mulatto or person who shall have one eighth or more of Negro blood'). Interracial marriage was still criminalised in 15 US states as recently as 1967.

Principles of justice and equality are not served if the key civil institution of marriage is reserved for heterosexuals only – any more than if it is reserved for those of particular 'races', ethnicities or religions. As Justice Laforme wrote in a landmark decision prefiguring the

introduction of equal marriage in the Canadian province of Ontario:

Any 'alternative' status that nonetheless provides for the same financial benefits as marriage in and of itself amounts to segregation. This case is about access to a deeply meaningful social institution – it is about equal participation in the activity, expression, security and integrity of marriage. Any 'alternative' to marriage, in my opinion, simply offers the insult of formal equivalency without the [Canadian Charter's] promise of substantive equality. (Egale Canada, n.d.)

The segregationist 'separate but equal' doctrine (commonly used in supporting the 'alternative' of civil partnerships for same-sex couples) was rejected by the US Supreme Court in the 1954 *Brown v. Board of Education* case – considered by many to be the greatest leap forward in US civil rights history. The 50th anniversary of *Brown* happened to be the very same day that same-sex marriages became legal in Massachusetts. The *Brown* verdict ruled that the segregation of schools on the basis of race violated constitutional equality guarantees, even though the physical facilities and other 'tangible' factors may have been equal. The court held that separate educational facilities are inherently unequal because to separate students 'from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone' (Egale Canada, n.d.). In parallel fashion, the exclusion of same-sex couples from marriage can be seen as offering a negative message about the status of lesbians and gay men in the broader community – and as having similar potential to affect 'hearts and minds' in an enduring way.

Psychology's role

The landmark desegregation decision in *Brown v. Board of Education* was informed, in part, by a new liberal psychology that emphasised the psychological harm suffered by black children as a consequence of segregated schools. Psychologists (many of them founding members of the American Psychological Association's Division 9, the Society for the Psychological Study of Social Issues) acted as expert witnesses

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in the case, and set out to demonstrate that segregated schooling caused intellectual and psychological harm to black children. The Clarkes' famous doll studies (e.g. Clarke & Clarke, 1939) – although later criticised on methodological grounds – were part of the evidence presented.

Psychologists are generally allies of those campaigning for equality, and this has also been so in the context of the equal marriage debates. Although 30 years ago the majority of psychological research presented homosexuality as a form of pathology (Rosario, 1997), today, Euro-American psychology overwhelmingly presents same-sex sexualities and identities as within the normal range of human behaviour, and actively seeks to advance lesbian and gay rights (see Coyle & Kitzinger, 2002). Contemporary feminist, critical, and social constructionist psychology has challenged prevailing orthodoxies, highlighting the ideological dimensions of (certain constructions of) what it is to be lesbian or gay (e.g. Kitzinger, 1987; Wilkinson & Kitzinger, 1993; Wilkinson & Kitzinger, 1996).

The BPS Lesbian and Gay Psychology Section (2003) responded favourably to the government's consultative document on civil partnerships (Women and Equality Unit, 2003), but the British Psychological Society has to date produced no public statement in support either of civil partnerships or of equal marriage. By contrast, other national psychological associations have done so, and have provided psychological evidence in support of their position. The Canadian Psychological Association (CPA) and the American Psychological Association (APA) both explicitly support equal marriage. The CPA formally endorsed the Canadians for Equal Marriage campaign (Egale Canada, 2003); and the APA – having previously supported the provision of legal benefits for same-sex couples (APA, 1998) – recently adopted a resolution supporting same-sex marriage. It did so on the grounds that 'it is unfair and discriminatory to deny same-sex couples legal access to civil marriage and to all its attendant benefits, rights and privileges' – and it further resolved to 'take a leadership role in opposing all discrimination in legal benefits,

rights and privileges against same-sex couples' (APA, 2004).

In a manner analogous to the *Brown* case, the findings of psychological research on mental health factors associated with being lesbian or gay are a cornerstone of the arguments presented in support of legal recognition of same-sex couple relationships. Two kinds of evidence predominate. First, there is a frequently cited collection of findings of 'no difference' between the children of same-sex and different-sex couples – and, more generally, of no mental health differences between gays/lesbians and heterosexuals, or between the quality of same-sex and different-sex relationships. Second, there are findings of psychological damage caused by social exclusion and suffered by lesbian and gay individuals (and families) as the 'mark of oppression' (see Kardiner & Ovesey, 1951/1972).

The 'no difference' arguments

The APA policy statement on legal benefits for same-sex couples (1998) claims that 'the scientific literature has found no significant differences between different-sex couples and same-sex couples that justify discrimination'; and that 'scientific research has not found significant psychological or emotional differences between the children raised in different-sex versus same-sex households'. The same claim of 'no difference' for children is emphasised by CPA President Dr Patrick O'Neill in his statement endorsing Canadians for Equal Marriage:

The psychological research into lesbian and gay parenting indicates that there are essentially no differences in the psychosocial development, gender identity or sexual orientation between the children of gay or lesbian parents and the children of heterosexual parents (Quoted in Egale Canada, 2003).

As long as sexual orientation can be used to deprive a lesbian or gay parent of child custody, fertility services, adoption or fostering rights, it remains important for psychologists to point out that the weight of scientific evidence supports 'no difference'. Indeed, Stacey and Biblarz (2001) note that where there are apparent

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differences, these can be seen as favourable to lesbian and gay parenting (e.g. children of same-sex couples exhibit greater gender role flexibility and are more accepting of sexual diversity than those of different-sex couples). As Stacey (2004) discovered, however, following her analysis of lesbian and gay parenting studies, there are always dangers regarding the application of findings in psychology to important public policy issues: findings may be misappropriated by others seeking to promote diametrically opposed agendas. In particular, any findings of 'difference' there are will always be interpreted as 'deficit' in a fundamentally unequal world.

The 'psychological damage' arguments

The APA statement (in 1998) supports the extension of the legal benefits of marriage because, it claims, the absence of them 'constitutes a significant psychosocial stressor for lesbians, gay men and their families'. The BPS Lesbian and Gay Psychology Section's (2003) support for the UK government's civil partnership proposals claimed that legal recognition of same-sex couples would have psychological benefits, including 'acceptance by parents of a child's sexual orientation of preference' and 'the inclusion of a same-sex partner into the extended family of her/his significant other'. Psychological harm arguments are routinely deployed by advocates of equal marriage, who claim that lack of access to marriage has a negative impact on individuals' health, self-esteem and relationship stability and that marriage increases people's life satisfaction and happiness – by an amount equivalent to an additional annual income of £72,000 (Clarke & Oswald, 2002).

Recent psychological research has focused explicitly on the negative psychological effects on lesbians and gay men of being discriminated against, and reports that oppression causes anxiety, depression, substance-use disorders, suicidal thoughts, and other stress-related mental health problems (e.g. Cochran, 2001; Mays & Cochran, 2001; see also APA, 2004). In acknowledging such harms, we need, of course, to be wary of treating negative psychological reactions to inequality and injustice – rather than

inequality and injustice itself – as the problem (see Kitzinger & Wilkinson, 2004a, for more on this argument).

Separate is still not equal

Important though psychological evidence has been – and continues to be – in relation to major social issues like school desegregation and equal marriage, it is only one way of arbitrating on such issues. In the desegregation battles, while the majority of the expert witnesses in the early cases were psychologists (at least 20 of the 30 signers of the *Brown* brief), 25 years later, psychologists were in the minority as expert witnesses (only 6 of the 38 signers of the *Columbus* brief) (Chesler *et al.*, 1988). Psychological accounts of lowered black self-esteem were subsequently displaced by sociological explanations of structural disadvantage. In parallel fashion, expert witnesses in Canadian cases involving lesbian and gay issues from the late 1980s onward were increasingly not psychologists, but sociologists presenting evidence about structural inequalities and diverse family forms (Herman, 1994). Philosophers, political scientists, and – particularly – legal theorists have also contributed their disciplinary expertise to the contemporary debates on equal marriage. The contributions of psychologists are part of the discipline's track record in the pursuit of equal rights and social justice. We take as axiomatic psychology's commitment to these ideals; and the continuing deployment of psychological skills and knowledge in pursuit of equality and justice for all.

Like interracial marriages in the 1950s, today's same-sex marriages are not yet supported by a majority of the population in the US or in Britain – although polls suggest a substantial majority of younger people are in favour, and there is majority support in Canada (where federal legislation on equal marriage is pending). But recent history suggests that lesbian and gay relationships have won acceptance – and are continuing to win acceptance – more quickly than interracial relationships, in part because they have been able to draw on civil rights precedents achieved by other groups. 'The freedom to marry has long been recognised as

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one of the vital personal rights essential to the orderly pursuit of happiness by free men,' declared Chief Justice Earl Warren, striking down the law banning interracial marriages in the 1967 *Loving v. Virginia* case.

In the context of the conservative backlash against equal marriage in the US, the victory in Massachusetts (partial and limited as it is) represents an important symbolic victory. Finally free legally to marry their loved ones, the happiness of same-sex couples bubbled onto the streets of Massachusetts: 'I'm so happy right now. This is a dream come true', said Tanya McCloskey, as the city of Cambridge recorded the nation's first legal same-sex marriage. 'Happy is an understatement' replied her bride Marcia Kadish. Others described 17 March 2004 as 'a day for love and happiness'; 'amazing'; 'almost too good to be true'. 'Next to the birth of our daughter Annie, this is the happiest day of our lives,' Julie Goodridge told reporters in Boston.

Here in Britain (and much of the rest of Europe) lesbians and gay men are still denied equal access to marriage. Although the Civil Partnership Act, whose provisions come into force later this year, is a significant advance for lesbian and gay rights, it also perpetuates same-sex couples' exclusion from the right to marriage itself. The introduction of civil partnerships constructs a two-tier system of state recognition of relationships that concedes to same-sex couples virtually all of the rights, benefits and responsibilities of marriage, withholding only the symbolically charged name of 'marriage'. By continuing to exclude same-sex couples from marriage – the fundamental institution for recognition of the couple relationship – the new civil partnerships send the inescapable message that lesbians and gay men are second-class citizens. Separate is still not equal.

One day, Britain, the rest of the US – and the rest of the world – might join Massachusetts, the Netherlands, Belgium and Canada in according equal marriage rights to all citizens. As psychologists, we can play a substantial role in this struggle for social justice.

Author note

Sue Wilkinson is Professor of Feminist and Health Studies at Loughborough University, and Celia Kitzinger is Professor of Conversation Analysis, Gender and Sexuality at the University of York. They were legally married in British Columbia, Canada, in August 2003, and are seeking a declaration of the validity of their marriage in Britain. E-mail: sue_wilkinson_2000@yahoo.com or celia_kitzinger@yahoo.com.

References

- American Psychological Association (1998). *Legal benefits for same-sex couples*. Policy statement. Retrieved 26 January 2005 from www.apa.org/pi/lgbc/policy/statements.html
- American Psychological Association (2004). *Resolution on sexual orientation and marriage* (adopted by the APA Council of Representatives, July 2004). Retrieved 26 January 2005 via www.apa.org/pi/lgbc
- Chesler, M., Sanders, J. & Kalmuss, D.S. (1988). *Social science in court: Mobilizing experts in the school desegregation cases*. Madison, WI: University of Wisconsin Press.
- Clarke, K. & Clarke, M. (1939). Development of consciousness of self and the emergence of racial identification in Negro preschool children. *Journal of Social Psychology, 10*, 591.
- Clarke, A.E. & Oswald, A.J. (2002). A simple statistical method for measuring how life events affect happiness. *International Journal of Epidemiology, 31*, 1139–1144.
- Cochran, S.D. (2001). Emerging issue in research on lesbians' and gay men's mental health: Does sexual orientation really matter? *American Psychologist, 56*, 931–947.
- Coyle, A. & Kitzinger, C. (Eds.) (2002). *Lesbian and gay psychology*. Oxford: BPS Blackwell.

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Demian (2003). *US federal laws for the legally married*. Retrieved 27 January 2005 from www.buddybuddy.com/mar-fed.html

Egale Canada (2003, 11 August). Registered partnerships are offensive and unworkable segregation [Press release]. Available via www.egale.ca

Egale Canada (n.d.). *Equal marriage for same-sex couples: The problem with partnership registries*. Retrieved 28 August 2003 via www.egale.ca

Herman, D. (1994). *Rights of passage: Struggles for lesbian and gay legal equality*. Toronto: University of Toronto Press.

Kardiner, A. & Ovesey, L. (1972). *The mark of oppression: Exploration in the personality of the American Negro*. New York: Meridian. (Original work published 1951)

Kitzinger, C. (1987). *The social construction of lesbianism*. London: Sage.

Kitzinger, C. & Wilkinson, S. (2004a). Social advocacy for equal marriage: The politics of 'rights' and the psychology of 'mental health'. *Analyses of Social Issues and Public Policy*, 4(1), 173–194.

Kitzinger, C. & Wilkinson, S. (2004b). The rebranding of marriage. *Feminism & Psychology*, 14, 127–150.

Lesbian and Gay Psychology Section of the British Psychological Society (2003). *Response to the Women and Equality Unit consultative document on 'Civil Partnership'*. Available from the Secretary of the Section: E-mail: victoria.clarke@uwe.ac.uk

Mays, V.M. & Cochran, S.D. (2001). Mental health correlates of perceived discrimination among lesbian, gay and bisexual adults in the US. *American Journal of Public Health*, 91, 1869–1876.

Rosario, V.A. (Ed.) (1997). *Science and homosexualities*. New York: Routledge.

Stacey, J. (2004). Marital suitors court social science spin-sters: The unwittingly conservative effects of public sociology. *Social Problems*, 51(1), 131–145.

Stacey, J. & Biblarz, T.J. (2001). (How) does the sexual orientation of parents matter? *American Sociological Review*, 66, 159–183.

Wilkinson, S. & Kitzinger, C. (Eds.) (1993). *Heterosexuality: A 'Feminism & Psychology' reader*. London: Sage.

Wilkinson, S. & Kitzinger, C. (Eds.) (1996). *Representing the other: A 'Feminism & Psychology' reader*. London: Sage.

Women and Equality Unit (2003). *Civil partnership: A framework for the legal recognition of same-sex couples*. London: DTI Publications.