

Book Reviews/Comptes rendus

WILLIAM ESKRIDGE JR., *Equality Practice: Civil Unions and the Future of Gay Rights*. New York: Routledge, 2002, x + 280 p., Index, \$17.95 (U.S.) paper.

With same-sex marriage and gay rights on the Canadian Parliamentary agenda, it behooves us to examine our long-standing thinking on the social meaning and politics of sexuality. Through the use of legislative proceedings, interviews, and first-hand observations, Eskridge offers a lucid account of the legalization of civil unions in Vermont. His previous works, *The Case for Same Sex Marriage* (1996) and *Gaylaw* (1999), were critical of 20th century legal developments that created "an apartheid of the closet." This volume offers solutions to ending that apartheid. While concentrating his analysis on the social history of gay rights in Vermont, Eskridge includes a modest comparative analysis of similar developments across the Western world, including Denmark, Holland, France, Germany, Israel, South Africa, and Canada.

From this transnational analysis, Eskridge, a classic liberal and gay himself, convincingly argues that same-sex marriage is inevitable because of three interrelated social developments: the decline in marriages and increase in divorces; the slow trend towards gender equality; and the increasing number of open relationships formed by gay men and lesbians. These social changes have contributed to the liberalization of family law and, not surprisingly, a traditionalist critique of such liberalization. Eskridge provides an original analysis of the conflict between these incommensurable trends which he refers to as the "politics of recognition" versus the "politics of preservation." The first refers to the petitioning by gays to have their relationships treated equally before the law and be respected by the rest of society, while the latter refers to those, typically religious fundamentalists, who argue that same-sex marriage infringes on family values and contributes to the moral corruption of society.

Eskridge is convincing in his articulation of how same-sex marriage mobilizes the deepest foundations of homophobia. The public perceives that through same-sex marriages, gays and lesbians are flaunting their sexual "deviance" in public. It becomes "hysterical" because it is unacceptable that the state would sanction, legitimize and promote sexual deviance through the institution of same-sex marriage. For gays and lesbians the issue is very clear-cut— they refuse to be treated as second class citizens. Heterosexuals have the freedom to marry whomever they choose, homosexuals do not. The state has a responsibility to all its citizens

and it should not be allowed to treat one group differently than others, especially if there are structures in place to ensure this, as in Canada, where they are protected by the Charter.

For Eskridge, equality for lesbians and gays and their relationships is a liberal right for which there is no reasonable justification for state denial, but it is not a right that should be delivered immediately, especially since it could disrupt the community. In the interest of preserving social harmony the state must look for a moderate compromise that fosters social and legal change gradually. This compromise is the practice of equality; the incremental process of creating an environment in which outsiders are destigmatized and accepted by the rest of society. For Eskridge, this progressive process has several steps and has been used with considerable success in many "progay" countries.

First, states must repeal laws making consensual same-sex intimacy criminal, which permits lesbians and gay men private spaces for developing meaningful personal relationships and perhaps give them the confidence to "uncloset" themselves to family, friends, and co-workers. Such repeal contributes to straight people accepting the second step, which is implementing state laws prohibiting public and private discriminations against sexual and gender minorities, especially in the workplace. The third step is state recognition of same-sex relationships through the use of other terms, such as civil union, rather than the use of marriage. It provides gay people an opportunity to celebrate their relationships and provide straight people an opportunity to see that gay people can form healthy loving relationships and even raise children. Consequently, it is not long before the final step, same-sex marriage, becomes acceptable to all. Theoretically, equality practice is a law-based synthesis of liberal rights and communitarian remedies that offers a less radical alternative for achieving full rights for gays and lesbians. It is a pragmatic rational method concerned with initially protecting the basic rights of gays, reducing the anxieties of those opposed to such rights, and educating and acclimatizing them to the reality that homosexuals contribute to society like any other citizen.

Perhaps Eskridge is overly optimistic as to the extent to which civil unions will actually help further the rights of lesbians and gays. Indeed, it could just as easily be argued that civil unions are a means of legitimizing the continued stigmatization and marginalization of lesbians and gays. Nonetheless, Eskridge has provided a well-written, thought-provoking, and refreshingly original legal analysis that contributes significantly to the literature on gay rights, the politics of identity, and the sociology of deviance.

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