

# Justice, justice shall you pursue

Rabbi Roderick Young & David Mooney

**WE ARE DISAPPOINTED BY THE** recent ruling of Judge Sir Mark Potter that the Canadian marriage of Celia Kitzinger and Sue Wilkinson may only be viewed as a civil partnership in the UK.

We were married in Montreal, Canada, on 29 October, 2005. We were married by a rabbi in a traditional wedding ceremony that was at once religious and legal. We chose to be married in Canada, since the option of having a legal, religious wedding, which is open to every heterosexual couple in the UK, was not open to us. As a religious couple we didn't wish to avail ourselves of this new, non-religious institution called civil partnership which the British Government has invented. While we applaud the legal safeguards that civil partnerships now afford to same gender couples, we abhor the discrimination that says that same gender couples may not also be married. The British Government has created a situation of sexual apartheid, not deeming our relationships worthy of equal status with the heterosexual majority. Like the Canadian marriage of Celia and Sue, our fully legal Canadian religious marriage has now been officially downgraded, in the UK, to a civil partnership. It seems to us to be quite astonishing that the Government is now demanding that, on all official forms, we lie and say that we are in a civil partnership when we have never signed a civil partnership contract. In the sight of God, and of all people of good faith, we are married and no small minded judicial ruling can change that.

Sir Mark Potter's judgment strikes us as flawed in at least two ways.

First, we are particularly perplexed that he would deny same gender couples the right to marry because marriage is 'a formal relationship between a man and a woman, primarily (though not exclusively) with the

aim of producing and rearing children' (see also Clarke, 2007, this issue; Whittle, 2007, this issue). Must a rabbi now tell couples over child-bearing age, or those unable to have children for medical reasons, that Sir Mark would like to deny them the right to marry? And then there's the fact that many of the same gender couples, who have been married in synagogues, now have children. Does that, therefore, make their marriages legal, Sir Mark?

It has been pointed out that civil partnership and marriage confer a similar array of rights and responsibilities. However, what is then the point of two separate institutional arrangements? Arrangements that are deemed 'separate but equal' never really are (see de Vos, 2007, this issue). Sir Mark seems to be protecting the word 'marriage' and the mystique or tradition surrounding it, but we regard this not as protection, but as denying same gender couples access to a well loved and recognised social institution.

Second, and of particular relevance to the Jewish community, is the implication that the Government can choose to recognise some of our religious marriages, but not others. Within Reform and Liberal Jewish communities worldwide there is a growing acceptance that Jewish marriage should be open to all Jewish couples, including same gender couples. We are joined in this point of view by a number of long established and respected Christian movements. The idea that the Government can interfere in our religious institutions should not be comfortable for Jews. Reform and Liberal Jews in the UK demand the right to define marriage according to our conscience and expect that Government will accord us the courtesy of granting our unions, same gender or different gender, full legal recognition as marriage.

Reform and Liberal Jews emphasise the importance of reading the Bible using all of our knowledge and understanding, and that those faculties evolve with time. The idea is that the word of God should be vital and inspiring to each generation of people, and that each generation approach the text for itself. The acceptance of same gender unions did not come quickly to many people in our communities, but rather was the outcome of dialogue and study. Many of our communities are tight-knit and friendly, and the gay couple down the street may be our cousins or former schoolmates. Congregations have realised that when we are faced with people who want to make the commitment of marriage, and want to be part of our community, we cannot turn our backs on them. To our perspective, opening Jewish marriage to all couples who are prepared to shoulder the responsibilities, strengthens the institution of marriage for all of us.

Some commentators in the UK seem to regard religious opinion as inherently conservative in its approach to civil institutions. That judgment is far too sweeping. There are progressive voices within every tradition and across the spectrum there are people of good will who want to open the door for those whose love is for someone of their own gender. We are proud that one of our greatest rabbis of the 20th century, Abraham Joshua Heschel, marched with Dr Martin Luther King at Selma, Alabama, to demand justice for African Americans. To progressive Jews, this action flows directly from our understanding of what Torah demands of us.

Last year Liberal Judaism became the first Jewish movement in the UK to publish a same gender marriage ceremony. It seems strange that a mainstream religion is prepared to conduct a ceremony that the law refuses to recognise. Sir Mark Potter might do well to reflect on what a sensitive, informed reading of our religious traditions requires the law to do in order to promote simple justice.

This legal setback of Sir Mark's ruling, while disappointing, is not the end of the

battle. In a UK context there will be further legal action. One area of focus may well be the religious factors in this ruling and in the legal environment created by the Civil Partnership Act. We are not lawyers, but we know that marriage law in the UK evolved to allow religious ceremonies to be an intrinsic part of the legal process of marriage. Specific laws were passed to allow Catholic and Jewish clergy to solemnise marriages that then had full legal force. Clearly in the 19th century there was an understanding that, for many in faith communities, marriage was more than a contract to be executed in a legal environment. Rather it required ceremony and ritual, celebration and the cheers of friends and family, and the blessing of a priest or rabbi to seal the union. What has happened to that sense of respect for religion that it can be denied to same gender couples – and how can this be legal in the 21st century?

A second area of focus is the cross-border aspects to this ruling. The debate on the rights of same gender partners is clearly a global matter (see Croome, 2007; de Vos, 2007; Wilkinson & Kitzinger, 2007; all this issue) but various countries have come up with solutions that are at odds with each other. A Canadian different gender marriage is recognised as a marriage in the UK, but a Canadian same gender marriage is deemed to be equivalent to a civil partnership. Even to non-lawyers, this seems strange and disrespectful to same gender couples and indeed to Canada, which graciously recognises UK marriages and Massachusetts marriages without question. It seems clear that Canada and Spain, and other countries that have kept matters simple by opening marriage to all, have circumvented all of the problems that will be faced by jurisdictions that offer half-way house solutions.

In retrospect the Government should have simply followed Canada and Spain. Religious groups opposed to same gender marriage would simply decline to offer religious ceremonies to same gender couples, while those in progressive traditions would accommodate their same gender congre-

gants. We are delighted that the Israeli courts have recently ruled in favour of recognition of Canadian same gender marriages. The court saw no reason for discrimination between valid Canadian marriages, and no reason why conservative religious views should define marriage for all of society. The prophet Isaiah called upon the people of Israel to be a light to the nations – in this instance Israel is living up to the prophet's demand.

We know that it often takes the apparatus of the State many years to catch up with God, so we are not surprised by Sir Mark Potter's ruling. It took decades before the courts of the US recognised the marriages of black and white couples. The fight for same-sex marriage may take as long, but we will win.

Last year the Government finally accorded equal rights to transsexual people (see Whittle, 2007, this issue). When we read the rulings of the 1960s and 1970s, that denied transsexual people the right to be regarded as who they are, those rulings now seem barbaric and cruel. One day Sir Mark's ruling will be seen as just as archaic and it will merely become an interesting footnote in the history of discrimination. We are proud that Jews are taking a prominent part in this fight for marriage equality. As Jews, we know how long it can take to achieve equality but we hold always in front of us the words of the Torah: 'Justice, justice shall you pursue.'

Even as we write, the next challenge to the denial of recognition of our legal marriage is being worked out. We hope to challenge the British Government in the European Court of Human Rights on the grounds that we were denied the right to conduct a religious marriage, in the same manner as heterosexual Jews can. We feel justified in demanding that if the Government can accommodate the beliefs of some religious groups, it is obliged to accommodate our views too. If as progressive Jews we celebrate marriages in our synagogues for both different gender and same gender couples, we do not need the secular authorities telling us that one marriage is valid and the other is not.

We in the religious LGBT community will never give up the fight for equality in all areas of our lives.

#### **Correspondence**

**Rabbi Roderick Young** is Principal Rabbi of Finchley Reform Synagogue.

E-mail: rabbiyoung@btinternet.com

**David Mooney** is a money manager, based in London.