

## КНИЖКОВІ РЕЦЕНЗІЇ ТА ОГЛЯДИ

**Yatsunska Olena.** Book review: *Reconstructing Marriage: The legal status of relationships in a changing society.* By Caroline Sörgjerd. Cambridge; Antwerp; Portland: Intersentia Publishing, Ltd., 2012. Pp. vii, 358. ISBN: 978-1-78068-037-8

Caroline Sörgjerd's book, originally written as a PhD Thesis, was published in 2012 at Cambridge in the European Law Series. Her tome analyses the modern evolution of marriage and its role in Swedish society in the 21<sup>st</sup> century. She attempts to redefine and justify various forms of cohabitation models and marriage enactments in Sweden. Drawing parallels with the United States and the United Kingdom, she concludes that these countries seem to follow Sweden culturally by five to ten years thereby placing it at odds with various world cultures thereafter.

The book starts with a historic review of Swedish family related legislation. The author examines the Church's approach toward marriage by the first half of the 18th century when the Church of Sweden found difficult to control and define the moral values of people's sexual behavior in the context of marriage. In 1734, the Church obtained—an overture, concluding that the marriage ceremony between a man and a woman is absolute. As a result, the Code of 1734 introduced the requirement that a marriage had to be celebrated in the Christian Swedish Evangelical Lutheran Church (further Church of Sweden) in order to be legally valid in Sweden. The author notes that Christianity states that marriage as understood between a man and a woman is a "voluntary union based on the consent of the couple as opposed to a means of arranging financial affairs between families." However, legally "because of the hardness of our hearts" a woman could be disinherited by her parents should she marry against the wishes of her "giftoman" (the father of a bride). This concept of marriage was based on the consent of the individual spouse-to-be.

In 1920, the Code of 1734 was amended. As Sörgjerd writes, this document was recognized by the European society for being ahead of its time. According to the Marriage Code of 1920, women were emancipated from the legal guardianship of their husbands and became entitled to administer their own property. The legal idea of marriage became a mutual prospect based on the equal rights and duties of the husband and wife. The book describes how each spouse contributed according to his or her

capacity. Women contributed through household work, men did so through gainful employment. Concurrently the Marriage Code of 1920 facilitated divorce by a permissive „divorce ground catalogue” that among other things permitted divorce on the grounds of adultery and desertion.

The crux of this story is about how a highly influential, historically conservative State Church changed itself into a Church that not only officially accepts same-sex marriages, but often performs them. According to Sörgjerd, the prelude is that the Swedish Government adopted some pivotal documents. Autonomy in marriage increased with the law reforms of the 1970s. The basic idea was that married partners were the best judges to decide matters concerning their own personal life. Partners could decide if their marriage should continue or be dissolved. Cohabitation without marriage was legally regulated with the 1973 Act on the Joint Dwelling of an Unmarried Couple. Originally, this Act was understood as a law regulating the natural unity of a man and a woman. In 1987, The Homosexual Cohabitees Act aimed at extending full legal coverage to same-sex couples living together was adopted. In 1994, a formalized union modeled on marriage was introduced to same-sex couples. That was the Registered Partnership Act. In 2009, a gender-neutral Marriage Act was enacted. This document had wide parliamentary support. Out of the Parliament's 349 members only twenty two voted against it. Sixteen refrained from voting. During deliberations, the Church of Sweden debated and decided that it would permit but not require its clergy to officiate in same-sex marriages. This put Church of Sweden out of line with most other Christian denominations in the country. Caroline Sörgjerd states in her book that equality has won overwhelming acceptance in Swedish society and that the new law has followed rather than led changes in community beliefs and opinions.

The author pays special attention to the analyses of the situation towards homosexual marriages in Spain and the Netherlands; two countries with similar legislation but different societal historical and religious backgrounds.

In Spain, the Catholic Church strongly criticized the same-sex marriage reform of 2005 because it was unwilling to solemnize a marriage between two men or two women. Although seventy six percent of the Spanish population define themselves as Catholic, Sörgjerd states that there is a majority support in Spanish society to open up marriage to homosexual couples

The Netherlands was the first jurisdiction in the world to allow homosexual marriages. Unlike in Sweden, there was no church participation in marriage as such. The author accents that for the Dutch it was simpler to enlarge the availability of that civil status, whilst leaving it to religious bodies to make their own decisions concerning their involvement in same sex marriages. Successive parliamentary committees concluded that equal treatment of citizens to enter into civil partnerships required a change. The enactment of the change did not give rise to debates either in parliament or in society, which, in Sörgjerd's

opinion, shows the high level of tolerance in the Netherlands.

A separate chapter is devoted to the interpretation of homosexuality in the Bible. This appears to be the most controversial part of the book. The author's attempts to reinterpret the biblical passages the meaning of which has been intuitively obvious to the casual observer are simple rationalization to justify the phenomenon.

Overall, this book provides an interesting account of historic and recent developments in Sweden in the field of family law and might be of interest to those who study legal forms of relationships. However, it is doubtful that scholars who share traditional family and marriage values will accept the ideas proposed by the author.

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