Public bias in private lives

Stephen Vines

In Hong Kong, it is perfectly acceptable to graduate from rags to riches or indeed to move from being a loyal subject of the colonial government to a flag-waving patriot extolling the virtues of the Communist Party.

However, when it comes to change on a far more personal level, involving people who are uncomfortable with their gender, serious problems with the law arise.

This was highlighted this week when a transsexual woman was barred from marrying a man on the grounds that, at birth, she was male, although she has undergone surgery to complete the transformation and is classified as female on official identification documents.

The court took the view that permitting marriage in this case was a matter of public policy rather than interpretation of the law. The ball is therefore back in the government's court. What needs to be decided is not whether the government approves of transsexuality or indeed of homosexuality but the extent to which the state needs to take a view on what are essentially personal matters.

The law currently denies legal recognition to same-sex and changed-sex partnerships, which in effect means depriving rights to a significant minority of the population.

Homosexuality is far more widespread than transsexuality, yet it is largely a taboo subject among decision-makers who seem to wish that gay people would simply hide away. Meanwhile, in other parts of the world, homosexual partners are being granted rights of marriage, pension rights as couples and a range of other rights that apply to conventional married partners.

The state needs to get involved here because bestowing statutory rights is a matter of public policy. However, the recognition of certain types of relationship, and indeed of a person's sexuality, gets confused with value judgments. The more ardent moralist campaigners do not recognise the distinction between the private domain of what is permissible among consenting adults and the public domain of how society regards these relationships. They usually shroud their bigoted views under the guise of "protecting children". As some of the most appalling cases of child sexual abuse have occurred from within the Catholic Church, a bastion of moral judgment on this issue, the credibility of this protestation is distinctly questionable.

It is frequently argued that Hong Kong is a largely conservative society, adhering to traditional Chinese values that need to be reflected in law. The proponents of this point of view seem to be woefully ignorant of a long history of both transsexual and homosexual behaviour in China, which was quite open in times gone by. Nor do they seem to know that transsexuals are allowed to marry on the mainland, despite China's general lack of liberal social legislation.

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Nevertheless, many people are repulsed by what they see as "abnormal" sexual behaviour and, yes, they worry that their sons and daughters might be less than heterosexual and therefore tempted to openly express "aberrant" sexual preferences.

A great leap is made from here to an insistence that the law should actively prevent people expressing their real sexual and gender preferences. And in that leap of intolerance is a determination to prevent the creation of lasting relationships between people whose sexuality does not meet their approval. It was this determination which ensured that Hong Kong continued to outlaw homosexual behaviour until 1991 and the age of consent for homosexuals remains above that for those engaging in heterosexual activity.

Outside Hong Kong, there is a growing recognition that, by and large, people should be allowed to live their lives as they wish as long as their behaviour does not infringe on the well-being of other citizens. This increasing atmosphere of tolerance has led to a realisation that many people wish to live together without marrying, that racial differences cannot be the grounds for discrimination and that beliefs which guide unusual lifestyles are to be tolerated.

Hong Kong is also changing, and those who wish to maintain intolerance in the name of tradition are having a harder time than in the past. However, the government and most legislators, with a few honourable exceptions, would prefer not to extend the official boundaries of tolerance because they fear a backlash from the usual rabble of bigots and therefore see little upside in catering for the interests of largely powerless minorities.

Yet the strength and moral integrity of any society is not to be judged by how well it looks after those most able to look after themselves, but by how it is able to protect and nurture minorities who sometimes demand nothing more from the state than to be allowed to get on with their lives without hindrance.

Why is it so difficult to make this case in Hong Kong, where small government is applauded except, it seems, when it comes to personal relationships?

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SCMP 10/10/12