

Civil Partnerships, Religion and the State

Andrew Goddard

The recent announcement to proceed with registration of religious premises to host civil partnerships has led to much heated debate. The current limitation is not a violation of religious freedom but recent developments risk the state interposing within religious debates about same-sex relationships. Great care is therefore needed, and is apparently being shown, in framing regulations if the law is not to be used against those who refuse on religious grounds to host such ceremonies or against religious authorities' internal discipline against members who act contrary to religious teaching. Although current proposals are sensitive to religious concerns, the consultation may alter this and bigger questions loom which may make sole state registration of both marriage and civil partnerships and/or more religious elements within civil ceremonies a better way forward.

Introduction

On February 17th 2011, the government announced that it planned to allow registration of civil partnerships on religious premises and it began a consultation process about this at the end of March.¹ In working out Christian responses to this development it is important to go beyond different views of same-sex relationships and consider the wider legal and political questions raised, especially in relation to religious bodies which would not wish to host a civil partnership because of their views on marriage and homosexual relationships.

Before turning to the issues raised by this development, it is necessary to clarify a number of terms and sketch something of the history of English law in relation to marriage, civil partnerships and religion. Firstly, there has been a clear distinction in law between religious and civil marriage ceremonies. Secondly, in thinking about a 'religious' ceremony there are at least three significant ways in which a ceremony (whether a marriage or a civil partnership) may be understood to be 'religious' – the *premises* on which it takes place, the *procedures* surrounding the registration and the *personnel* who officiate. The outworking of these different distinctions can be illustrated through a brief sketch of the historical context of legal developments in relation to the role of the state and religious bodies in marriage and civil partnerships.

Marriage and civil partnerships, religious and civil ceremonies: a brief history

In relation to marriage, the historical background is long and quite complex but the key central facts are clear.² There has been a move from an exclusively Anglican and then wider religious context to a predominantly civil and non-religious context (for about two-thirds of current marriages). Marriage was traditionally a social institution entered into (usually in the presence of clergy) through the promises of the parties and understood, in line with church teaching, as a divinely created institution, not a human or even ecclesial invention.³ In 1753, due to concerns about clandestine marriage, Lord Hardwicke's Act began to give the state a significant role through marriage registration and requiring weddings to take place in church *premises*. The established Church of England maintained a near monopoly on marriage registration as, apart from Quakers and Jews, all others had to marry in an Anglican ceremony.

In 1837, two major changes occurred. Civil marriage (i.e., non-religious *procedure*) was established, although clearly intended as an unusual exception for those who objected strongly to religious ceremonies. In addition, non-Anglican religious *premises* could be registered, although in terms of *personnel* a civil registrar had to officiate until 1898, at which point Nonconformist and Roman Catholic wedding services became legally effective without the presence a civil registrar.

In 1949 the Marriage Act consolidated the varied legislation into a single Act which remains the main relevant law in relation to marriage.⁴ Approved premises were introduced in 1994, but in extending lawful premises beyond register offices a clear demarcation was maintained between civil and religious ceremonies: 'the Act was carefully drafted so as to be restricted to *civil* marriage: the premises must have no recent or continuing connection with any religion, religious practice or religious persuasion, no religious service is to be used, any reading, music, words of performance forming part of the ceremony must be secular in character'.⁵

For same-sex relationships, the movement in relation to the roles of the state and religious bodies has been the exact opposite of that in relation to marriage. Since December 2005, under the Civil Partnership Act of 2004, two people of the same sex can become civil partners. This status is very closely modelled on marriage. Among the few differences, some had the effect of requiring that the formal entry into a civil partnership be non-religious. One constraint – that registration must not be in *premises* which are 'used solely or mainly for religious purposes, or have been so used and have not subsequently been used solely or mainly for other purposes'⁶ – was removed by section 202 of the Equality Act 2010. The government is now consulting on how to authorise registration of religious premises. Another constraint, mirroring civil marriage ceremonies, relates to *procedure*: 'no religious service is to be used while the civil partnership registrar is officiating at the signing of a civil partnership document'.⁷ This is still on the statute book and the current proposals do not seek to remove it.

Civil partnerships will probably start occurring on religious premises within the next year. *How* they will be regulated (in relation to premises, procedures and personnel) is beginning to become clearer, but, more importantly, *why* they should take place in such locations has not been the subject of any serious public debate. Answers to *why* will inevitably shape proposals as to *how* and determine the nature of any subsequent conflicts within religions and between faith communities and the law.

Religious freedom and civil partnerships

One of the main claims made to explain *why* this legislative change is needed is a belief in religious freedom. In the press release announcing the changes, Theresa May, the Home Secretary and Minister for Women and Equalities identified two government commitments: 'advancing equality for

LGB and T people' but also 'ensuring freedom of religion for people of all faiths, which is why we will be allowing religious organisations to host civil partnership registrations if they choose to do so'. The argument is that the Civil Partnership Act, by legally prohibiting use of religious premises and services, unjustly limited the freedom of religious groups. In the words of a *Guardian* editorial, 'The blanket ban on religious institutions hosting partnership ceremonies is a lawful infringement of their liberty. It must be swept away'.⁸ Although rhetorically powerful, on closer inspection this turns out to be a very weak argument.

In reality, no religious body is banned from 'hosting partnership ceremonies'. Religious bodies are perfectly free within English law to celebrate same-sex relationships – before or after a civil registration – in whatever form fits with their religion. The statutory restriction relates solely to the place of formal, written legal registration. As the consultation document notes, 'It is currently possible for couples to have a religious service to celebrate or mark the formation of their civil partnership. What is new under these proposals is the scope to hold the registration itself on the same – religious – premises' (3.25). Formal statutory registration of a partnership, unlike marriage, requires no ceremony with spoken words but simply the signing of a document before witnesses. As evident in relation to births and deaths, religious bodies do not need to be authorised places of registration to mark significant events within the life of the religious community in whatever way their theology suggests.

The religious 'freedom' allegedly being denied here is actually not properly described as a 'freedom' at all. It is rather a 'legal power' or 'authority' conferred by the state pursuant to the state's own purposes of ordering the public dimensions of marriage and other close personal relationships. No organisation has any automatic entitlement to exercise this power on behalf of the state (and in most of Europe few religious organisations possess it). For it to be withheld is thus no infringement of 'religious freedom'. The legal power being sought by some religious bodies is that of being authorised by the state to use religious buildings for legal registration of a civil partnership, even though no religion has a long-standing tradition or well-established liturgical form of celebrating this kind of relationship. Once this reality is recognised the support for this change among 'free churches' and anti-Christendom groups opposed to 'civic religion' (such as Ekklesia) appears rather paradoxical.

In fact, in contrast to marriage, almost all religious bodies are strongly opposed to and/or divided (sometimes seriously) over civil partnerships. Part of the rationale for the original restrictions was that they kept the law and the state out of such internal religious disputes. Now, however, regulations to authorise places of religious worship to register civil partnerships are to be drawn up. Given the variety and complexity of governance within religious bodies – the consultation document notes (p. 47) that there are about 30,000 places registered for religious worship belonging to forty different faith groups – the danger with this development is that state intervention could influence internal debates about sexuality within religious bodies and lead to conflict between religious belief and state law with potentially serious impacts on religious freedoms.

The current proposals out for consultation seek to avoid this by stating that ‘it should not be possible to make an application to the local authority for a religious premises to be used for the registration of civil partnerships without the prior consent of the faith group under which the premises falls’ (3.4).

So, ‘faith groups would be able [to] specify a person or body which is competent to give consent to any application for its religious premises to be approved to host civil partnership registrations. The owner or trustee of the individual religious premises would have to provide evidence of this consent as part of the application for approval, or declare that no consent was needed. The consent could be either general or specific. Without evidence of the appropriate consent, an application would fail’ (3.4).

The proposal thus avoids conferring on the state the power to identify an individual or organ within religious institutions as the authority empowered to apply to host civil partnerships on religious premises under its control. It seems, therefore, to avoid two possible dangers. On the one hand, it avoids granting a lower body the legal right to host even if a higher authority within a religious body (e.g., a national Synod) opposes religious civil partnership ceremonies in its places of worship. On the other hand, it is also clear that if the recognised statutory authority grants authorisations, those under that authority (eg., a local parish church) who refuse to host such ceremonies cannot be forced to register. Thus no cleric will be compelled to officiate against their conscience, and refusing to register religious premises will not make someone liable to prosecution for discrimination against same-sex couples. The Equality Act which amended the Civil Partnership

Act states that ‘nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so’ and the consultation document is clear that ‘No faith group will therefore have to consent to allowing civil partnerships to be registered on their religious premises, and no faith group or minister of religion will have to apply to the local authority for their premises to be approved for this purpose. If religious premises have not been approved, by law, a civil partnership registration cannot take place there, so no minister of religion could be sued for not allowing one’ (3.36).

Although the consultation process may increase pressure to give greater freedom to those minorities within religious groups wishing to register their premises, the current proposals allow each religious group to determine at what level it decides whether its premises can be used. The legal change thus does have the effect of forcing religious groups to specify that level and to reach a decision on this matter (which in some case may increase intra-religious tensions), but it appears the regulations will draw back from interfering in the internal life of religious bodies by granting some person or body within them a right in secular law to apply to host civil partnerships on religious premises.⁹

What next and what alternatives?

Although the proposed regulations avoid the major threats to religious freedom that could have arisen from allowing civil partnerships on religious premises, it is clear that they are not the final word. The government is committed to ‘consult on further developments in legislation, including progress towards equal marriage and partnerships’ (p 6).¹⁰

Religious bodies are one of the social institutions still refusing to embrace equalisation of same-sex relationships with marriage, although a minority in most religions wish to support this social trend. Does this mean that we must ultimately choose between ‘religious freedom’ and ‘LGBT equality’? Although some definitions of LGBT equality seem to make such a clash inevitable, many concerns of gay and lesbian people about discrimination or their religious freedom could in fact be quite adequately met in ways that would not risk involving the state in religious disputes about same-sex relationships. These involve revisiting the distinction between civil and religious ceremonies and the place of religious *procedures*.

As in much of Europe there could be universal civil

registration of marriage, thereby keeping any religious celebrations for both marriage and civil partnerships separate from the procedure of state recognition. Alternatively, or alongside this, moves to allow more religious readings and music in civil ceremonies could be extended further to allow participants' religious convictions to shape civil registration on non-religious premises. In an age where personal spirituality is often more important than organised religion and no religious tradition has a long-standing religious form for solemnising a same-sex relationship in accordance with its beliefs, such more personalised religious ceremonies are likely to be what is sought.

Conclusion

For centuries, the secular state has done its best to avoid taking sides in internal religious disagreements by legislation and regulation. That was easy when religious disagreements had little obvious direct social impact as they focussed on articles of faith which held little interest for non-adherents. It is not so easy when disagreements relate to ethical issues where the state wishes to encourage certain forms of moral and cultural change. Thankfully it appears that proposed changes in regulations concerning religious buildings and civil partnerships are sensitive to the relationship between secular statute law and the rights of religious bodies to order their own response to civil partnerships in line with their beliefs. However, if religious bodies continue being authorised to register marriages, a more serious conflict looms with the possible move to redefine marriage in English law.

-
1. "New push for LGB and T equality will allow civil partnerships in religious buildings", Government Equalities Office, online at <http://nds.coi.gov.uk/content/detail.aspx?NewsAreaId=2&ReleaseID=418069&SubjectId=2>
 - For the consultation process see http://www.equalities.gov.uk/news/civil_partnership.aspx
 2. Stephen Cretney, *Family Law in the Twentieth Century: A History* (OUP, 2003), ch. 1 is a helpful guide to details.
 3. Marriage's 'natural' order is noted by Austen Ivereigh, 'In Marriage We Trust, Guardian, 22nd February 2011, online at <http://www.guardian.co.uk/commentisfree/belief/2011/feb/22/gay-marriage-civil-partnership>
 4. The 1949 Act distinguishes between Marriage According to the Rites of the Church of England and Marriage Under Superintendent Registrar's Certificate. The latter sub-divides into religious ceremonies in registered buildings which are approved places of worship and civil ceremonies held either in register offices or on approved premises. There are also provisions for Society of Friends and Jewish weddings.
 5. Stephen Cretney, *Family Law*, 31.
 6. Section 6 of Civil Partnership Act 2004.
 7. Section 2(5) of Civil Partnership Act 2004.
 8. *Guardian*, Monday 28th February 2011. At <http://www.guardian.co.uk/commentisfree/2011/feb/28/civil-partnerships-bluster-bad-faith>
 9. In discussing the impact of its proposals on religion and belief the consultation paper comments, 'There could be a negative impact on organisations who do not register to conduct civil partnership registrations as they face pressure to do so, possibly damaging relations with their wider community. Conflict could also be caused if the competent authority of a denomination decides not to opt in but an individual wishes to conduct these ceremonies (or vice versa). However, the internal structures and governance of religious bodies would not be for Government to interfere with' (p 84).
 10. The document is also clear (p 48) that one of the risks of the current proposal is that it could result in 'Pressure on Government, local authorities and faith groups and individual places of worship arising because there will be a further difference in the options available to same- and opposite- sex couples for forming an official legal relationship. For example, civil marriage will remain entirely secular and there will be many religious premises on which it will not be possible to register a civil partnership'. This may lead to legal challenges.

For further reading

- Stephen Cretney, *Same-Sex Relationships: From 'Odious Crime' to 'Gay Marriage'*, Oxford University Press, 2006.
- Goddard, Andrew, *True Union in the Body?* (with Peter Walker), 2003, online at http://www.anglicancommunion.org/listening/book_resources/docs/true-union-inthebody.pdf
- Andrew Goddard, *Friends, Partners or Spouses? The Civil Partnership Act and Christian Witness*. Grove Ethics, 141, Grove Books, 2006.
- Government Equalities Office, *Civil partnerships on religious premises: A consultation* (March 2011), online at <http://www.equalities.gov.uk/pdf/425156%20Civil%20partnerships%20tagged.pdf>

The Revd Dr Andrew Goddard is part-time Tutor in Christian Ethics at Trinity College, Bristol. As an ordained Anglican he has contributed to debates about homosexuality within the Anglican Communion and more widely. He is editor of *Anvil*, the Anglican journal for theology and mission and on the Leadership Team of *Fulcrum*, a group working to renew the evangelical centre of the Church of England.