

## A Time to Marry – Twice<sup>1</sup>

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*This article argues for a separation between the two stages of the solemnization of marriage: the civil and the religious. While this would be a good thing in itself, the possibility that same-sex marriage could soon be legalized adds greater urgency to the question and requires the church to reflect more urgently and boldly than it has done so far, both on the relation between church and government with respect to marriage and on its own distinctive theology of marriage.*

### Introduction

I was married twice in the same day and I would like to recommend the practice. It is a perfectly normal occurrence in the Netherlands, as in other countries where civil marriage ceremonies are quite separate from the religious ceremonies taking place in a church or other religious institution. My day began with a brief but cheerful civil ceremony in the town hall of Driebergen presided over by the affable local registrar, and continued with a joyful Christian marriage service a few streets away in the Reformed Church of which my wife's family were members. The first was obligatory, the second voluntary.

Of course I don't literally mean that I was *married* twice on the same day but only that my marriage was *solemnized* in two successive ceremonies. In this article I argue, first, that the advantage of this two-step arrangement is that it puts on clearer display the quite distinct roles of church and government in the public recognition of marriage, to the benefit of both. I argue, second, the more specific point that the longstanding expectation that Anglican parish churches will marry any legally eligible resident has now become a burden which the Church of England should relinquish. My central concern is the long-term integrity of the church's theology and practice of marriage. But there is, of course, a pressing current issue – the possible legalisation of same-sex marriage, if not now then soon – lending such reforms an immediate practical urgency. My focus here is not on same-sex marriage *per se* but rather what the prospect of its imminent arrival might teach the church about both its own view of marriage and its link to government.

### The Church of England and marriage

While the prospect of the legalisation of same-sex marriage concerns all churches, by virtue of its established status the Church of England (C of E) is implicated in the question in a special way. In June 2012 it produced a robust response<sup>2</sup> to the government's 'Equal Civil Marriage Consultation'.<sup>3</sup> This response immediately generated a hostile reaction from Anglican supporters of same-sex marriage on the grounds that it did not represent the full range of C of E opinion on the matter (and it did not). Yet it does seem to convey accurately the C of E's *present official* stance on marriage, even while acknowledging that this stance might evolve in the future. In any event, the document is exemplary in the clarity of its reaffirmation of the understanding of marriage adhered to by almost all Christian churches throughout the ages.

The document also includes a seven-page Annex critically analysing the complex legal questions stumbled into by the government's Equalities Office. While legal experts may question some of the conclusions of

this Annex, it succeeds in exposing a major misconception about marriage law underlying the government's thinking. It points out that the government confused the institution of marriage with the wedding ceremony. In fact, there is and has always been only one kind of marriage in English law – the voluntary lifelong union of a man and a woman – but two settings – civil and religious – in which it may be solemnized. The C of E's response lays bare the serious confusions consequent upon that misunderstanding.<sup>4</sup>

On the basis of the C of E's current official theology of marriage, the document explains why the C of E cannot support the extension of the legal relationship 'marriage' to same-sex couples. Its principal ground is that the effect of the change would not be, as is widely assumed, simply the tidying up a residual area of unacceptable discrimination against gay people, but rather the emptying of the legal institution of 'marriage' of any reference to the sexual complementarity of male and female parties – and so to any necessary link with procreation and child-rearing. It would thereby impose a new legal meaning of the institution of marriage on everyone.<sup>5</sup> The implication would also be that in a church wedding ceremony, churches which functioned as registrars of marriage would be party to inducting couples into a relationship – the 'voluntary lifelong union of two *persons*' – they do not currently recognise.

The C of E's situation in this regard is complicated by the fact that, as the established church, it is widely perceived to be under a common law obligation to marry any (eligible) residents of its parishes.<sup>6</sup> Indeed the C of E's response raises the alarming prospect that the legalisation of same-sex marriage could put the church on a collision course with the law of the land. The fear is that, contrary to the government's assurances about so-called 'religious marriage' being left untouched, the C of E might find itself confronted with a legal duty to engage in an act directly contrary to its own canon law doctrine of marriage.<sup>7</sup> The clash would be all the more fraught because the C of E's canon law is, by virtue of establishment, *itself* part of the law of the land. Note that even the distant prospect of such a clash ought to worry those *in favour* of legalising same-sex marriage as much as it worries those *against* it. For if it eventually transpired, it could amount to a direct state

intrusion in the internal beliefs and practices of the C of E – an authoritarian move which should alarm everyone who cares about the spiritual freedom of any religious institution *vis à vis* the state.

The C of E's response also assesses the prospects of future legal challenges to its policy of declining to marry same-sex couples under the European Convention on Human Rights. It concludes that, given the direction of recent European Court of Human Rights (ECtHR) jurisprudence on marriage, this is not at all inconceivable in the event of the government proceeding with its proposals. A key part of the argument here concerns the government's proposal to legalise same-sex civil marriage ceremonies while also banning religious institutions from conducting same-sex marriages. Ironically, the government is proposing such a ban precisely in order to protect the churches against being forced to conduct same-sex ceremonies against their will. But the C of E's document argues that such a ban might not survive a possible ECtHR challenge. Since some religious institutions will certainly want to marry same-sex couple, the ban could be regarded as an unjustified restriction on their religious freedom. This point seems valid, and Parliament might itself insist on removing the anomaly before approving the legislation.<sup>8</sup>

But while Parliament or the ECtHR might require the government to grant the *freedom* for religious institutions to conduct same-sex ceremonies, this does not (*contra* the implication of the C of E's response) yet imply that religious institutions might eventually find themselves, further down the line, *compelled* to perform same-sex ceremonies. Indeed on this point some lawyers may judge that the C of E's response does not adequately take account of the full range of ECtHR (article 9) jurisprudence on institutional religious liberty. A senior legal expert put it to me that, 'politically, the ECtHR making a church marry same-sex couples against their will is about as plausible as making the Roman Catholic church ordain women'.

Yet whatever transpires legally, I want propose two things: that the C of E should relinquish its inherited role as marriage registrar (assumed automatically by Anglican priests on their ordination); and that it should move to clarify, and as necessary terminate, the supposed common law

obligation on all parish churches to marry any legally eligible residents of their parish.

### What is 'marriage'?

To make the case for these two reforms, we must ask what the indispensable roles of church and government are in respect of marriage. But first we must recall what marriage itself is. Earlier I spoke of the public 'recognition' of marriage, not its 'formation'. Neither of the two modes of solemnization actually *make* a marriage. Theologically (and legally), the unique generative moral source of marriage is the free and exclusive pledge of lifelong commitment between a man and a woman. This has long been the church's understanding of marriage as a universal good available to all by creation – given not only for the good of husband and wife but as a uniquely valuable context for the nurturing of children by their father and mother. It is a Christian definition of marriage, but not a definition of 'Christian marriage' (on which more below). Thus, hypothetically, if a man and a woman stranded on an otherwise unoccupied desert island made such a pledge, the relationship would be a morally (and theologically) valid marriage.

### Marriage and government

The church has also long acknowledged that, in the real world of society, marriage carries with it wide-ranging personal and public consequences which bring it within the proper remit of government. The role of government implies both a protective and a promotional task in regard to marriage. Government must *protect* people against the potentially devastating consequences of marriage break-up. This is especially so for children but, wherever men are economically and socially dominant (as they usually are), it is highly important for women as well. It is also important for men, not least in their continuing role as fathers. Government must also *promote* marriage as a wider public good, in view of marriage's irreplaceable contribution to the healthy emotional, moral, social and economic fabric of society.

I suggest that holding a *separate* civil ceremony provides a highly instructive symbolic marking and affirmation of this uniquely important governmental role. My wedding party's trip to Driebergen town hall prior to the church ceremony was a visible reminder that government has a legitimate responsibility in the area of marriage. It

was, we might say, a civic ritual, performing an expressive function akin to that of a citizenship ceremony. The separation of the two marriage ceremonies helps keep the spotlight on the special duty of government towards marriage. Such light is dimmed when all we see of government's role is the routine signing of the registry by the parties to a marriage during a pause in a religious service.

### Marriage and church

The church has also long held that the formation of a marriage between two Christians is rightly recognised and embraced by the church itself. It doesn't only have a Christian view of marriage but also a view of Christian marriage. In a Christian marriage service, the parties make their marital pledge to one another *before God* and in the presence of the *community of faith*, which in turn promises to pray for and support them in their new and demanding vocation. A church ceremony does not create or authorise the marriage. Rather it surrounds the parties with its intercessory blessing, and supportively commissions them to contribute the gifts of marriage joyfully and sacrificially to the mission of the church and to wider society. The specialness of the church's role is much clearer when it is not conflated with the distinct role of government in registering and regulating marriage for public purposes.

The current arrangement whereby the churches (not only the C of E) function as administrative agents of government in respect to marriage has always risked blurring the distinctness of the roles of government and church in the public mind, and thereby diminishing their respective dignities. But the government's current plan to legalise same-sex marriage now brings the issue into much sharper focus. Whatever the outcome of the government's consultation, the C of E, and all churches, must think more imaginatively about how they might discharge their unique responsibilities towards marriage in a changing legal and cultural context.<sup>9</sup>

If the C of E were to relinquish its inherited historical entitlement to register marriages and the obligation to solemnize the marriage of any eligible parishioner, it would be in a much stronger position to uphold its own distinctive marriage doctrine and practice, irrespective of the prevailing legal status of 'marriage' (or civil partnerships). If it retained its current doctrine of marriage, as I hope it does, it could continue to commend marriage as

the lifelong union of a man and woman, and it would be free to decline to marry same-sex couples without fear of a possible future legal challenge. Unencumbered by extraneous state obligations or distracting social expectations, the church would be liberated to witness to its own distinctive understanding of Christian marriage. (Note, again, that this general point would apply even if it changed its understanding to embrace same-sex marriage.)

## Conclusion

Even if no clash were to emerge between the C of E, or indeed other churches, and the government or the ECtHR in the event that same-sex marriage were legalised, my proposed changes would yield three notable benefits. First, they would free the churches from the risk of future state impositions on their doctrine and practice of marriage. Second, they would help churches clarify, and perhaps even deepen, their own distinctive theological understanding of marriage and free them (if they wished) to induct their own members, as well as any others seeking a church ceremony, more fully in that understanding. Third, they would help keep a spotlight on the crucial role of government in protecting and promoting stable marriage for the good of the whole society.

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1. This is an abridged version of an article first published on the Fulcrum website in July 2012: <http://www.fulcrum-anglican.org.uk/page.cfm?ID=732>. Published by permission of Fulcrum.
  2. <http://www.churchofengland.org/media-centre/news/2012/06/a-response-to-the-government-equalities-office-consultation-%E2%80%999Cequal-civil-marriage%E2%80%9D.aspx>
  3. <http://www.homeoffice.gov.uk/publications/about-us/consultations/equal-civil-marriage/>
  4. It also exposes the inadequacy of the government's understanding of the implications of the change for civil partnerships. On this, see Andrew Goddard, 'Civil Partnerships, Religion and the State', *Ethics in Brief* 16.5 (2011). <http://klice.co.uk/uploads/EiB/Goddard%20v16.5%20pub.pdf>
  5. For a statement of this point, see Andrew Goddard, 'Should we redefine marriage?', *Fulcrum* website, April 2012. <http://www.fulcrum-anglican.org.uk/page.cfm?ID=708>; Jonathan Chaplin, 'Can the state redefine social institutions?', *Fulcrum* website, July 2012. <http://www.fulcrum-anglican.org.uk/page.cfm?ID=714>.
  6. The lawyers writing this document's Annex assume this to be the case, but this view has been challenged.
  7. This doctrine is expressed in Canon B 30.
  8. It might also seek to remove the distinct anomaly that, under the government's proposals, heterosexual couples would be denied the right to a civil partnership.
  9. Jonathan Chaplin, 'The churches' stance on gay marriage is not homophobic', *Guardian CiF Belief*, 9 August 2012. <http://www.guardian.co.uk/commentisfree/belief/2012/aug/09/churches-gay-marriage-homophobic?INTCMP=SRCH>

### For further reading:

- 'Same-sex marriage', *Respectful Conversation* website (2012). <http://www.respectfulconversation.net/the-conversation/2012/5/27/topic-7-same-sex-marriage.html>
- Sherif Gergis, Robert George and Ryan T. Anderson, 'What is Marriage?', *Harvard Journal of Law and Public Policy* 34.1 (2010), 245-287. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1722155](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1722155)
- John Milbank, 'Gay Marriage and the Future of Human Sexuality', *ABC Religion and Ethics* (13 March 2012). <http://www.abc.net.au/religion/articles/2012/03/13/3452229.htm>

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