

MEMORANDUM ON MARRIAGE

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The Daily Telegraph on 17th February 2011 reported that Lynne Featherstone the Equalities minister is, later this year, to introduce legislation after a consultation period, permitting gay couples to "marry" in religious premises. Several organisations already describe civil partnerships as "gay marriages". It is suggested that this description is a non sequitor, because it is a contradiction in terms.

The purpose of this memorandum is to set out some reasons why these proposals should be resisted. The first proposal misdescribes a civil partnership as a "marriage" and the second allows such ceremonies to be held on religious premises

English law defines marriage as *"the voluntary union for life of one man and one woman, to the exclusion of all others"*. This definition was given in the leading case *Hyde v Hyde and Woodmansee* [1866]. Lord Penzance, the Judge in the case, sought to give a definition recognised throughout 'Christendom'.

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This memorandum will first discuss why a civil partnership is not a marriage. All evidence shows that marriage is an act or contract between a man and a woman whereby they become husband and wife. Therefore to describe a union between two persons of the same sex as "marriage" is a corruption of the word.

One of the main purposes of marriage is the procreation of children and bringing them up in a steady family background, thus perpetuating the population and maintaining a stable society.

For centuries this state of affairs has been encouraged by governments. Why is it any different now?

The previous government did not acknowledge "marriage" and there is some evidence that this word is being erased from official documents. Why?

For many centuries the Church was the only authority which officiated and legitimised marriage. This was changed by the Marriage Acts of 1836, which came into force on 1st July 1837. From that date on men and women had the option to marry each other lawfully in a registry office before a civil Registrar, instead of marrying in the local parish church.

The Civil Partnership Act 2004 came into force on 5th December 2005. This Act allows same sex couples to register their partnership and allow it legal status. This relates to a variety of issues including children matters, inheritance tax, property and financial arrangements, immigration, occupancy, tenancy and so on. The Act expressly forbids such partnership arrangements being entered into on religious premises.

In 1998, the Government Green Paper on the Family, *Supporting Families*, said, “...marriage is the surest foundation for raising children and remains the choice of the majority of people in Britain.” The Government restated this in March 2004. It is still true that most people marry and most marriages (59 per cent) last for life.

The evidence strongly shows that marriage is good for adults and children. As Professor A H Halsey, (Professor of Social Policy at Nuffield College, Oxford) and co-author of *English Ethical Socialism* stated; “No one can deny that divorce, separation, birth outside marriage and one-parent families as well as cohabitation and extra-marital sexual intercourse have increased rapidly. Many applaud these freedoms. But what should be universally acknowledged is that the children of parents who do not follow the traditional norm (i.e. taking on personal, active and long-term responsibility for the social upbringing of the children they generate) are thereby disadvantaged in many major aspects of their chances of living a successful life. On the evidence available such children tend to die earlier, to have more illness, to do less well at school, to exist at a lower level of nutrition, comfort and conviviality, to suffer more unemployment, to be more prone to deviance and crime, and finally to repeat the cycle of unstable parenting from which they themselves have suffered... The evidence all points in the same direction, is formidable, and tallies with common sense.”

As Professor Hadley Arkes of Amherst College, USA argues: “Is it better for children to be spawned in random relations, or is it better for them to be begotten in arrangements in which their parents are bound to their offspring by the ties of law as well [as] nature? Would anyone seriously deny that it is altogether more wholesome, more preferable in principle, that parents would be as committed to the nurturance of their children as they are committed to each other as husband and wife?”

Other evidence shows that children do better living in two-parent rather than single parent households. However, although cohabiting parent families are likely to lead to improved outcomes for children compared with their single parent counterparts, co-habitation does not lead to the same degree of improvement as marriage. Married couple relationships are significantly more stable than cohabiting relationships: regardless of socio-economic status and education, cohabiting couples are between two and 2.5 times more likely to break-up than equivalent married couples. Indeed, just one in 11 married couples split up before their child’s fifth birthday compared to one in three unmarried couples. The difference in stability between marriage and co-habitation is of fundamental importance, yet Government policy has failed to recognise this. Marriage is also directly linked to better mental and physical health amongst adults, including lower mortality risk, significant reductions in depression, lower risk of suicide and lower incidence of acute and chronic conditions. Crucially, research has found that unmarried individuals living alone are no more distressed than co-habiting (unmarried) couples – it is, specifically, a ‘Marriage Effect’. (Source: The Centre for Social Justice Green Paper on the Family January 2010)

Strengthening families is vital, both to the health of Britain and in ensuring a more socially just society. The wealth of evidence showing that the family environment in which a child grows up is key in determining their future life outcomes cannot be ignored. A child growing up in a fractured, dysfunctional or chaotic family is far less likely to develop the pro-social systems essential for success later in life. They are less likely to do well at school and more likely to become involved in negative behaviour such as offending and substance abuse. Right from their earliest years they are

at a disadvantage to their peers. Family structure and process matters. (Source: The Centre for Social Justice Green Paper on the Family January 2010)

Universal Declaration of Human Rights adopted by the General Assembly of the United Nation in 1948 – Article 16 provides *“that men and women of full age ... have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”*

The 2008 edition of UDHR goes further in amplifying Article 16 (on page 23) by stating

“It is obvious that only man and woman have right to marry and to found a family (man and woman with children). According to UDHR two men or two women have no right to marry and to found a family.”

Turning next to why civil partnership ceremonies should not be held on religious premises. The Office for National Statistics (ONS) reports that in 2008 there were 232,990 marriages, 156,290 being civil ceremonies and 76,700 being religious ones. As for civil partnerships in 2008 there were 7,169, ie 3% of marriages. ONS statistics also show a decline in interest in couples celebrating their marriage on religious ceremonies from 179,459 in 1981 to 76,700 in 2008, a fall of 57%. In contrast the decline in civil ceremonies is less marked from 172,514 in 1981 to 156,290 in 2008, a fall of 9%

These statistics demonstrate that the current trend is for couples to marry off religious premises. Thus it is going against the current trend to propose that some civil partnerships should be held on religious premises. But assuming the proposal is proceeded with, then using the same percentage as found with marriages on religious premises the number of civil partnerships that might be expected to be held on religious premises is 2,360 (7,169 divided by 232,990 multiplied by 76,700). Thus the government is going to all this expense for the sake of an estimated 2,360 partnerships, a figure which is less than one per cent of the aggregate of marriages and partnerships combined.

Neil Addison in his article published in the Catholic Herald on 4th March 2011 argues thus:

“The problem with both the suggested changes is that, in the present era of human rights and anti-discrimination laws, once something is allowed it can become illegal to refuse it. If churches, synagogues, mosques and so on are allowed to perform same-sex “marriages” or civil partnerships they could easily find themselves being sued for discrimination if they refuse to perform them. Any legislation would, no doubt, say that no religious group would be obliged to perform such ceremonies but any such guarantees could be legally challenged.

In a recent case in Saskatchewan the Canadian courts struck down provisions in their marriage legislation that protected marriage commissioners who for reasons of conscience did not want to perform same-sex “marriages”. This recognition of freedom of conscience was declared to be contrary to the Canadian Charter of Rights and Fundamental Freedoms. The charter is very similar to the UK Human Rights Act and therefore it is quite possible that British courts would use the same

logic to strike down conscience protections given to religious organisations that did not want to perform same-sex ceremonies.”

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