

## **A RESPONSE TO ARCHBISHOP JENSEN'S LETTER REGARDING 'REDEFINING MARRIAGE'**

Change is a symptom of human existence; avoid it as we may, it nevertheless exercises its constant effect upon us. We can seek to resist change and thereby control for a time those fearful things that lurk in life's shadows, or we can embrace it and thus discover the creative opportunities that bring new life and understanding to a troubled world. I believe this to be one such occasion.

Our Archbishop requested that a letter be distributed to parishioners last Sunday regarding recent proposals for legislation to allow for the marriage of same-sex couples. This letter was distributed at St James; however, I expressed at the time some misgivings concerning the Archbishop's approach to the matter. It may have been easier for me to make no comment or even ignore the letter and not distribute it, thereby avoiding conflict, however I respect the Archbishop and believe him to be an intelligent and honourable man and that he therefore deserves to be both heard and given a response.

The Archbishop outlined a case for marriage as being an institution ordained by God for the benefit of humanity and as a sign of God's grace. Indeed, the marriage service spells out the church's position: that marriage is a lifelong partnership uniting a woman and a man for the creation of a loving and secure environment in which couples grow together and children are nurtured. I have no great argument with this; indeed, I commend Christian marriage and its ideals. However, the Archbishop proposes that same-sex marriages are bad, but does not explain why except to speak from a particular view of what the Bible says. There is little causal evidence in his argument. It is one thing to simply argue that God says this is bad out of a specific Biblical hermeneutic, or even because of Church tradition, but if the wider community is to be convinced there is need for proof.

Three things cause me concern. First is the consequence of imposing certain Christian ideals upon non-Christians, be they people of other faiths or of no faith. Second is the need for legal protection to be afforded to same-sex couples and their dependants. Finally is to ask the question: if the experience of God's grace through loving and intimate relationships (as in marriage) is such a blessing, why deny it to those who are already living in committed same-sex unions?

Too often the church is perceived as reactionary, dogmatic and uncreative in its engagement with the wider society. This may not be the image that the church wishes to present; nevertheless, it often only enters the mainstream of public debate when its views or powers are under threat. While it may not be the intention of the Archbishop, unfortunately, his desire to express a loving concern for the welfare of society in general may be construed as a matter of the church being defensive in its dealing with social issues.

### **Historical Perspectives**

Marriage is a cross-cultural and cross-religious practice that serves to order intimate and familial relationships in a society, both between the contracting parties, their dependants, their wider families and the community at large. Marriage practices vary across the world and change over time, even in the Christian tradition. Practices include both monogamy and polygamy, arranged and free, and are attached to a range of legal, religious, cultural and social obligations.

Marriage is mentioned in both the Old and New Testaments, however there appears to be a number of practices described. Moreover, there is no mention of a specific Christian marriage ritual as against the normal cultural observances of the day. Polygyny is recorded as acceptable in some parts of the Old Testament and may even be implied in the New. It continues to be practised in certain parts of the world today and is even tolerated in particular places by Christian churches, including the Anglican.

The institutional church took no specific interest in the legalities of marriage until around the ninth century (when the church and state became coterminous) and then only for the purpose of registering marriages. Within the Christian tradition, there was no specific requirement for a couple to marry through a church ritual until the mid-sixteenth century. Up to this point, marriage occurred by consent between two parties, sometimes involving a lengthy betrothal. The requirement for dual church and state recognition only developed from around the seventeenth century, and then predominantly in Protestant Europe and England. Finally, it was in nineteenth-century England that a system of 'civil marriage' was established, which required no church involvement.

Ministers of religion are licensed in many countries to act as officers of the state with respect to marriage, especially in those countries where an established religion prevails, or in the former colonies of such countries. However, many European and other countries have separated the legal from the religious actions, with the state alone attending to the former.

### **Current Practice**

In our post-modern western society there are many marriage practices including, cohabitation (which is also described as *common law* or *de facto* marriage in some countries), both civil and religious marriage, and more recently what has been termed *same-sex marriage* and *recognised civil-unions*. The legal rights of *de facto* couples and their children have for the most part been addressed through a range of new legislative instruments and regulations and so the necessity for legal or *de jure* marriage has diminished. Indeed, pre-marriage cohabitation now occurs in 80% of cases in Australia and 34% of births occur outside of *de jure* marriage.

With respect to religious marriages, it would seem that the proportion in Australia has halved over the past twenty years, with civil celebrations rising correspondingly to 70%. According to the Bureau of Statistics, 121,176 marriages were registered in 2010 (an all-time high), and of the 37,251 marriages performed by ministers of religion, the most common rites used were Catholic (33.3%) followed by Anglican (16.7%). Hence, around 6,220 (or 5%) of all marriages were conducted by Anglican clergy at this time, and this percentage is dropping, while the overall numbers are rising. We therefore must not overestimate our importance in this area, nor be arrogant. Indeed, it would seem that we have failed to convince people of the value of traditional Christian marriage in our society.

It is also clear that there are many same-sex couples who live in long-term, committed and public relationships as cohabitants, some of whom have children. The recent census records that there are 33,714 same-sex couples in Australia, which is not an overwhelming number. In some countries, there is the capacity for such couples to be declared married or *living in a civil union*.

### **Language, Interpretation and Definition**

Control over language, interpretation of texts (such as statutes and the Scriptures), and definition are vital aspects of the process of determining what is true or valued. For this reason the use of the word 'marriage' is contentious. However, I wonder: is there only one type of marriage, or can a number of descriptors be applied to the term such as *Christian* and *Islamic*, *monogamous* and *polygamous*, *heterosexual* and *homosexual*, *religious* and *secular*? Of course, there are many distinctions that can be made, even if some may be prohibited under the law or questioned in other contexts.

Interestingly, the fact that some parts of the Anglican Church have made allowance for *polygamous marriage* and *same-sex marriage* does suggest a degree of ambiguity, at least for the Church. At the end of the day, the word 'marriage' happens to be one defined in law for the purposes of the law and within a particular jurisdiction. It can always change.

### **Marriage under the Law**

The Commonwealth Marriage Act 1961 defines marriage as 'the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.' As one would expect, the Act delineates a number of restrictions on marriage and regulates the process that is to be followed for couples to become married. The only matters pertaining to religion in the Act are limited to the authorisation of religious celebrants and the rites that they are to use. No preference is given to any particular religious or non-religious practice when operating within the law.

As an aside, confusion does arise in Australia between the status of *de jure* and *de facto* marriages, as they are covered by diverse legislations and operate under different jurisdictions. Indeed, so loose are the definitions and the regulations, that it is possible for someone to be in a *de jure* marriage with one person while being in a *de facto* marriage with another at the same time, and having dependants in both. This situation can create great confusion and distress when such a person dies intestate.

### **Marriage in the Church**

I acknowledge that there is a variety of practices and rationales for the operation of marriage across different Christian denominations. Not all recognise the validity of each other's rites, and the role and purpose of the minister can vary. However, I will confine my views to the Anglican context, which has its own internal divisions on this matter.

Until recently, it was a requirement when a couple came to be married within the church for at least one of them to be a baptised Christian. The Synod of the Diocese of Sydney recently removed this requirement so that any couple (Christian, non-Christian believers or atheists) can be married according to the rites of the Anglican Church. It was perhaps an attempt to address the decline in church weddings; however, it also has had the effect of acknowledging that the marriage service is becoming less specifically a Christian act and more a secular one.

A small part of the Anglican Communion has adopted the practice of blessing same-sex unions. This has caused a huge rift in the Church and has led to much bitterness and on-going controversy internationally. The Diocese of Sydney has been a major critic of this practice, and describes it as a turning point in the on-going life and unity of the Church. As the Archbishop indicates, the Diocese is very interested in where this matter might go in Australia, and therefore forcefully pursues its policies in this regard. However, there is a concern that the Church may be entering a public debate and drawing the state into making a specific decision on a matter more for the purpose of managing its internal concerns than for the welfare of the wider community.

### **Church and State**

A formal recognition of the political doctrine of the *separation of church and state* does not exist in Australia, although the Constitution does forbid the establishment of any official or state religion. Religious groups may therefore reasonably exercise their participation in the democratic process by entering into public debate. They may also be recipients of government money for the many services

that they provide to the wider community. In this respect, Archbishop Jensen's letter is an understandable response to a proposed change in government policy.

The spirit of the idea of the *separation of church and state* is that the state does not seek to exercise control over the church in religious matters, and that the church does not seek to exercise control over the state in political matters. Its origins are to be found in the views and actions of many who gave rise to the Protestant Reformation (including King Henry VIII and Martin Luther), and later through the writings of philosopher John Locke. The idea has currency in the community but no authority.

In Australia, marriage is an activity controlled by the state through government legislation. However, the churches also have their own internal laws and regulations that direct their practices. As previously stated, the Marriage Act does recognise the church's role through the actions of clergy as celebrants, likewise the church accepts the state as legitimising its activities. However, this need not remain so.

### **The Napoleonic Code**

The *Napoleonic Code* was established in 1804 for the needs of post-revolution France and created a new civic legal system based on Roman law. Part of its intention was to remove feudal, royal and religious laws from the legal system and create a secular code established by a legislative process. Similar systems of law are to be found in much of Europe including Italy, Spain, the Netherlands and Belgium; and it has influenced many others.

The effect of the *Napoleonic Code* with respect to marriage is that the activities of the state and the church are separate. The legal aspect of marriage is governed by the state and requires a couple to register their union under the civic authority. Once this is done, a couple may then seek religious recognition of their marriage if they wish. The religious ceremony may be sacramental in nature or otherwise. The state and the religious organisations both maintain their own integrity in the process.

### **Where to from Here?**

What I propose is a separation of the interests of church and state, with respect to the administration of marriage, and that a variation of the *Napoleonic Code* be developed in this matter. I also think that the overlapping systems of *de jure* and *de facto* marriage should come to an end, and that all legal recognition of marriage-type relationships be under the one Act. This would allow for equal standing under the law for all marriages. The state can choose to extend marriage to same-sex couples in this regard if it sees fit, or create new civil-partnership structures, such as the French *Pacte Civil de Solidarité (PACS)*, but there would be no direct requirement for the churches to follow suit.

Religious groups can maintain their own integrity in this matter by promoting the advantages that a faith-based union can bring, and administering marriage according to their particular traditions. Christians can then concentrate on marriage being a sign of God's grace and extol the goodness and benefits of relationships within family life because of it. Moreover, churches still have the freedom to extend their marriage rites to same-sex couples if they so choose; and this is a debate that the churches can manage for themselves.

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