

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION BY THE BISHOPS' CONFERENCE OF SCOTLAND

Overview

In submitting evidence on the Marriage and Civil Partnership (Scotland) Bill, the Bishops' Conference of Scotland takes this opportunity to repeat its conviction that marriage should not be re-defined.

The wisdom of the ages, the light of human reason and the teaching of Christian faith concur that marriage is a conjugal union of a man and a woman designed so that the children who may be born of that union will have a father and a mother.

The institution of marriage pre-exists and pre-dates the State. This means that marriage can only be contracted by a man and a woman, and the State has no authority to redefine marriage. Crucially, children have a right to the complementarity of a father and a mother, and not just to "parents".

We note a lack of adequate protection for civil liberties for the substantial number of citizens who will have a conscientious objection to endorsing a revised understanding of marriage.

Rights and Right

In recent public discourse there has been a tendency to view social issues in terms of personal rights. The Church has identified repeatedly the importance of recognising the inherent rights of everyone to ensure the protection of the dignity of the person.¹ However, prioritising personal rights can lead to demands for radical personal autonomy which conflict with rational choices for society. The full context for considering society's understanding of marriage is that in which the consequences for society are objectively assessed. The wellbeing of children and the promotion of family life are irrevocably linked to the present and future wellbeing of society. "The future of humanity passes by way of the family."²

Unrestrained demands for personal rights can turn from freedoms into a form of self-destruction. This is why the state limits certain behaviours, known to be harmful and outlaws others altogether. Eroding a foundation may not immediately damage an edifice but can hasten its long term destruction. Re-engineering the understanding of marriage, and thereby the family, is such a change. As marriage is marginalised children are increasingly vulnerable to the ill effects associated with family fragmentation.

The Equality of All Persons and Unjust Discrimination

¹ For example *Pacem in Terris* details a range of rights see paragraphs 11 - 27: "Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood."(para 11)

² *Familiaris Consortio*, Pope John Paul II, Paragraph 86

The Church believes that all persons are equal in dignity. It is necessary to embrace all people in society and to provide the environment for the flourishing of all persons. The recognition of the equal dignity of each person however does not support the notion that men and women are identical in nature and interchangeable in their family roles. Such a vision of 'sameness' in fact diminishes the respect for the inherent dignity of male and female.

*"Since something of the glory of God shines on the face of every person, the dignity of every person before God is the basis of the dignity of man before other men (Gaudium et Spes, 29). Moreover, this is the ultimate foundation of the radical equality and brotherhood among all people, regardless of their race, nation, sex, origin, culture, or class."*³

At times society has been insensitive to injustices arising in relations to people in same sex relationships. There are those who have suffered because of their sexual attraction to those of the same sex. Regrettably the unfortunate experiences of some people have created feelings that identify the traditional structures of family life as sources of intolerance. Though sincerely held, these feelings are misplaced. The failings of individuals and groups to understand and react compassionately to the needs of persons with same-sex attraction are greatly regrettable. The human dignity of every person should be recognised at all times. Christians too have suffered denigration and injustice because of their beliefs on marriage and human sexuality. This has contributed to making the issue of same-sex marriage difficult to consider objectively in the public forum. We restate our commitment to a healthy democracy based on respect and freedom directed for the common good in which reasoned argument must be protected.

Nature of Marriage and the Family

The complementarity of male and female, and their unique role in the transmission of life, underscores the reality of marriage as a natural social environment for the birth and growth of every person.

"The family has central importance in reference to the person. It is in this cradle of life and love that people are born and grow; when a child is conceived, society receives the gift of a new person who is called from the innermost depths of self to communion with others and to the giving of self to others. It is in the family, therefore, that the mutual giving of self on the part of man and woman united in marriage creates an environment of life in which children develop their potentialities, become aware of their dignity and prepare to face their unique and individual destiny".

*"The first and fundamental structure for 'human ecology' is the *family*, in which man receives his first formative ideas about truth and goodness, and learns what it means to love and to be loved, and thus what it actually means to be a person. The obligations of its members, in fact, are not limited by the terms of a contract but derive from the very essence of the family, founded on the irrevocable marriage covenant and given structure in the relationships that arise within it following the generation or adoption of children."*⁴

³ Compendium of Catholic Social Doctrine, paragraph 144

⁴ Compendium of Catholic Social Doctrine, paragraph 212

The State does not have the authority to redefine the family.

Given the precedence of the family as the first society in which the human person is formed, its nature and function are not a creation of the state or of civil society, therefore it follows that the State does not have the authority to redefine the family.

“The priority of the family over society and over the State must be affirmed. The family, then, does not exist for society or the State, but society and the State exist for the family”.⁵

Given this precedence of the family built on marriage as a natural good, ordered for the growth and flourishing of society, it is not in the gift of political or legal authorities to redefine its very nature.

This understanding of marriage and the family arises from human reason and is not a religious imposition. The European Convention of Human Rights, for example, recognises the nature of marriage built on the complementarity of male and female. The right to marry, Article 12, begins with the formulation “Men and women have the right...” rather than using the form “Everyone has the right...” which is used to assert other articles in the convention. This has been recognised as significant by the European Court of Human Rights and there is no right for same-sex marriage. “The choice of wording in Article 12 must thus be regarded as deliberate. Moreover, regard must be had to the historical context in which the Convention was adopted. In the 1950s marriage was clearly understood in the traditional sense of being a union between partners of different sex.”⁶

Parental Bonds and Children’s Welfare

The wellbeing of children is closely linked to the family unit. It is self-evident that children have a male and female parent and that this unit is the foundational structure of social life.

Claims that “LGBT people are the only group who are banned from marrying”⁷ are unreasonable and untrue. Brothers and sisters are not discriminated against because they cannot marry each other. The law rightly restricts marriage, for example, on the basis of degrees of relationship and age. Children as a group are not allowed to marry. Those who call for same-sex marriage are not excluded from marriage; rather they wish the state to ratify and affirm a relationship which is not marriage.

The Scottish Parliament needs to ensure that it pursues an intellectually robust assessment of the provisions rather than provide an emotional response to this issue. This requires some level of objective analysis of the claims made supporting redefinition of marriage. A redefinition of marriage in law will inevitably obscure the notion of marriage’s link to parenthood in the eyes of citizens.

⁵ Compendium of Catholic Social Doctrine, paragraph 214

⁶ Case of Schalk and Kopf v. Austria(Application no. 30141/04), European Court of Human Rights Judgement, 24 June 2010, paragraph 55

⁷ See Equality Network Manifesto, Equality at Holyrood ,Scottish Parliament Session 2011-2016

In the pursuit of an abstract theory of equality which promotes 'sameness' the proposal is now made that male and female are interchangeable, denying the inherent dignity of the human person in their complementary natures of male and female. This ideological proposal creates a form of intolerance which can be fundamentalist in its denial to others of the right to proclaim what they believe to be true.

We urge those involved in the political process to be objective in their analysis of the reality of marriage and family life, rather than be guided by appeals to emotion. The consequences of this Bill will be far-reaching and will impact most profoundly on children. The loss of a sense of marriage paves the way for family instability as marriage is de-institutionalised and replaced by less stable and often chaotic serial relationships which often weaken or sever the relationships children have with their parents.

Civic Freedoms

Equality laws are so structured that they will pose a threat to basic civil freedoms if marriage is redefined. Warnings about the dangers of previous legal changes were not accepted yet have been shown to be real. Redefining marriage will lead to threats against freedom of expression, belief and association.

Following the passage of Same-sex Marriage Act there already are threats to challenge Churches in England and Wales which will not perform same-sex marriage ceremonies.⁸ School teachers are already vulnerable to coercion to contravene their conscience by promoting alternatives to marriage as equally valid.⁹

We can learn from other jurisdictions where there are calls for people to be dismissed from employment if they don't support same sex marriage.¹⁰ We foresee that the Equality Act 2010 provisions in conjunction with redefined marriage will lead to similar calls in Scotland, should this bill be passed.

The Equality Act 2010 has provisions which combine with other pieces of legislation to give unexpected outcomes. Catholic adoption agencies were repeatedly assured that they had nothing to fear from changes in law which permitted same-sex couples to adopt. It was stated that the "committee considered carefully the issues that relate to adoption agencies that are attached to a faith. We are sure that nothing in the bill will require such agencies to provide adoption services to people whom they feel are inappropriate. However, the committee felt that those agencies should be required to refer such people to an appropriate agency. I do not think that an ECHR issue will arise, provided that the people concerned are referred appropriately."¹¹ These reassuring words were quickly shown to be wholly inaccurate. We are left with no easy remedy for the apparently unintended consequences that have arisen. We are

⁸ C.f. Case of Barry Drewitt Barlow, Pink News, 20th August 2013, URL: <http://www.pinknews.co.uk/2013/08/20/essex-gay-dads-say-local-church-supports-them-in-gay-wedding-legal-fight>

⁹ C.f. Marriage (Same Sex Couples) Bill, Memorandum submitted by Samuel Webster (MB 97), URL: <http://www.publications.parliament.uk/pa/cm201213/cmpublic/marriage/memo/m97.htm>

¹⁰ Consider for example URL: <http://www.examiner.com/article/san-antonio-proposal-would-ban-anyone-opposed-to-homosexuality-from-city-council>

¹¹ Iain Smith (Education Committee Coordinator), <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4671&mode=html>

following a parallel path in changing marriage and there will be parallel consequences for those who will not wish to condone the new version of marriage.

The Public Sector Equality Duty of the Equality Act 2010 threatens to become an instrument where controversial views are imposed rather than permitted. The Equality and Human Rights Commission has already suggested that schools could comply with the public sector equality duty by teaching Lesbian Gay Bisexual and Transsexual History Month.¹²

There is a right not to be compelled to assert falsehood as truth. However, due to the structuring of the current framework of equality laws there will be an impact on civic bodies which will promote and enforce views on marriage which are contrary to the truth of human identity and the nature of sexual unions.

In consequence, freedom of expression will be undermined and the career prospects of those asked to cooperate in this work will be jeopardised.

Safeguards protecting essential democratic freedoms are lacking. The protections provided in the Bill are modest and neglect the wide implications for civil liberties for those who would wish to uphold authentic marriage.

Conclusion

We conclude our response by once again repeating that legislation for same sex marriage is wrong. It will diminish rather than strengthen marriage and it will disadvantage children. It will divide society for the sake of a totem of 'equality' which has arisen amongst some campaigners despite the tiny percentage of same-sex couples who avail themselves of marriage in jurisdictions where it is available to them¹³. Parliament should not proceed to make such changes against so many strong recommendations to the contrary and an overwhelming public rejection of the proposals in unprecedented numbers during the consultation period. For the sake of the common good, we appeal to parliamentarians not to proceed with this legislation.

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¹² Equality and Human Rights Commission, 'Public sector equality duty guidance for schools in England', p7

¹³ C.f. 'Demand For Same-Sex Marriage: Evidence From The United States, Canada, And Europe', Maggie Gallagher & Joshua K. Baker, Institute for Marriage and Public Policy, Vol. 3, Issue 1, April 2006; see also Baroness Scotland, House of Lords Debate, 22 April 2004, Hansard Volume 660 Column 392