

## Response to “*Equal Civil Marriage: A Consultation*” published by the Government Equalities Office, March 2012

### Summary

- The regulation of marriage was historically left to the Church and was based on Christian doctrine.
- The Church decided who could marry whom, including whether a person could marry another person of the same sex. The rule against that survives to this day.
- Under Christian doctrine, marriage is understood as a God-given “mystical union”, linked to sexual activities, the purpose of which is procreation. Therefore, such union is necessarily heterosexual.
- Marriage is not God-given, not mystical and not a union (the creation of an entity distinct from the parties to it) but a relationship or contract between those parties, which is an evolved biological and sociological phenomenon.
- There is no God-given purpose to marriage; its purpose is for the parties to decide in each case.
- There is no legal definition of marriage.
- Objections, to same-sex marriage, are invalid.

### About Atheism UK

*Atheism UK* is Britain’s only distinctively atheist organization. Our objectives are:-

- the advancement of atheism;
- the challenging of religious faith.

Further information, about our principles, policies and positions on various issues, can be found on the above website.

The following response is based on the rejection of any concept of God, creation, things mystical<sup>1</sup> and alleged phenomena that are apart from, and not subject to the limitations of, the material universe.

The religious faith, espoused by the Church of England, is the main target for challenge in this response, for two main reasons. First, the Church historically held a monopoly of the regulation of marriage, aspects of which survive to this day. Secondly, “the Church of England is part of the One,

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<sup>1</sup> **Mystical:** having a spiritual, symbolic or allegorical significance that transcends human understanding (*Oxford English Dictionary*).

Holy, Catholic and Apostolic Church”<sup>2</sup>. Therefore, what applies here to the Church of England applies to Christianity in general.

## Religious Origins of Marriage Law

The history of legislation in England and Wales, relating to the regulation of marriage, is long and complex. Historically, marriage was a religious ceremony. Until the Clandestine Marriage Act 1753:-

the law had traditionally left the regulation of marriage to the Church. It was the Church which – save for a brief period in the mid-seventeenth century inter-regnum – **decided who could marry whom**; it was the Church which laid down the rules about how marriages could be solemnised and which kept Registers of the marriages which took place in Church; it was the ecclesiastical courts which dealt with disputes about such matters.<sup>3</sup>

Even so, the 1753 Act:-

gave the Church of England a virtual monopoly over marriages.<sup>3</sup>

It was only the Marriage Act 1836<sup>4</sup> that:-

ended the long-standing monopoly of the Church over marriage, and paved the way for the secularisation of the marriage rite.<sup>3</sup>

A further crucial development, in the 1836 Act, was the provision for a purely civil wedding. This was expected to be sought by very few people, because:-

anyone who objected to the religious form of marriage could give the necessary notice and then marry in the Office of the Superintendent Registrar by making the prescribed declaration.<sup>3</sup>

It was not until the Marriage Act 1949 that those wishing a civil ceremony were relieved of this obligation.

## No “Mystical Union”

It was, therefore, the Church of England which originally decided who could marry whom, including whether or not a person could marry another person of the same sex. The rule against that survives to this day, notwithstanding the secularisation of the marriage rite. It is based on the Church’s doctrine, which is stated in the preface to the “*Form of Solemnization of Matrimony*” in “*The Book of Common Prayer*”, 1662:-

Holy Matrimony ... is an honourable estate, instituted of God in the time of man’s innocency, signifying unto us **the mystical union** that is betwixt Christ and his Church.

In the Church’s contemporary version, the “*Marriage Service*” in “*Common Worship*”, 2000, the equivalent text is:-

Marriage is a gift of God in creation ...

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<sup>2</sup> *The Canons of the Church of England*, Canon C15.

<sup>3</sup> Cretney, *Family Law in the Twentieth Century: A History*, 2003.

<sup>4</sup> Coupled with the Births Deaths and Marriages Registration Act 1836.

It is given that as man and woman grow together in love and trust, they shall be **united with one another in heart, body and mind**, as Christ is united with his bride, the Church.

but the principle is the same. That principle is that marriage is, in some sense, a “union”, meaning the creation of an entity distinct from its component parts, the parties to the marriage. That sense is necessarily “**mystical**”<sup>1</sup> and the union is necessarily God-given, since the parties to a marriage – including their hearts, bodies and minds – remain exclusively separate **material** entities.

This “mystical union” doctrine is derived from “the Holy Scriptures”, in particular, the apostle Paul’s “*Epistle to the Ephesians*”:-

Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the saviour of the body. Therefore as the church is subject unto Christ, so let the wives be to their own husbands in every thing. Husbands, love your wives, even as Christ also loved the church, and gave himself for it; That he might sanctify and cleanse it with the washing of water by the word, That he might present it to himself a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church: For we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh. This is a great mystery: but I speak concerning Christ and the church. Nevertheless let every one of you in particular so love his wife even as himself; and the wife see that she reverence her husband.<sup>5</sup>

There are serious objections to this passage, on grounds of subjection of women but, even if it is reinterpreted to allow for mutual subjection, the doctrine of the “mystical union” remains.

The notion, of marriage as a union, is affirmed in the “Common Law definition” of it<sup>6</sup>.

In truth, nothing is mystical; everything is material and nothing is God-given, because there is no God. The notion, of marriage as a God-given mystical union, is entirely spurious. Therefore, since there can be no material union<sup>7</sup> between the parties to it, marriage is not a union at all. Rather, it is a **relationship and contract** between two distinct and autonomous individuals, an evolved biological and sociological phenomenon.

## Sexual Union

It is clear, from the above biblical text:-

... they two shall be one flesh. This is a great mystery ...,

that the notion of “mystical union” is linked to sexual activity. While the former is spurious, sexual activity may, in a legitimate sense, be regarded as a material union – “one flesh” – of two individuals, albeit transitory. The preface, to the “*Form of Solemnization of Matrimony*” in “*The Book of Common Prayer*”, states:-

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<sup>5</sup> King James Version.

<sup>6</sup> See page 6.

<sup>7</sup> Apart, perhaps, from sexual activity – see below.

[Marriage] was ordained for a remedy against **sin**, and to avoid **fornication**; that such persons as have not the gift of continency<sup>8</sup> might marry, and keep themselves undefiled members of Christ's body.

The contemporary "*Marriage Service*" in "*Common Worship*" drops reference to "sin" and "fornication"<sup>9</sup>, but is explicit about sexual union:-

The gift of marriage brings husband and wife together in the delight and tenderness of sexual union

Furthermore, both versions are clear about the purpose of sexual union:-

[Marriage] was ordained for the procreation of children

[Marriage] is given as the foundation of family life in which children are born

Sexual union, ordained for this purpose, is necessarily heterosexual<sup>10</sup>. Therefore, the Christian "mystical union" is exclusively heterosexual.

### **"Bride of Christ"**

The foregoing Christian view is reinforced by the "Bride of Christ" metaphor:-

Holy Matrimony ... signifying unto us the mystical union that is betwixt Christ and his Church.

"Christ" and "his Church" are heterogeneous entities. Marriage, between homogeneous entities – two people of the same sex – could not signify the "mystical union" between them. Which would represent Christ and which the Church? Could a woman represent Christ (and another woman the Church), or could a man represent the Church (and another man Christ)?

### **Civil Marriage as "Mystical union"**

The Christian notion, of a marriage as a "mystical union", applies irrespective of whether it is solemnized in a religious or civil ceremony, even though the proposed abolition, of the rule that a person cannot marry another person of the same sex, applies only to the latter. The position is summed up as follows:-

It is not the Church's ceremony, or even the couple's faith, which makes a true marriage, but their consent to a lifelong union of love and fidelity.<sup>11</sup>

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<sup>8</sup> The exercise of self constraint in sexual matters.

<sup>9</sup> Not so, the General Synod of the Church of England (the "Higton Motion", 1987):-

This Synod affirms that the biblical and traditional teaching on chastity and fidelity in personal relationships is a response to, and expression of, God's love for each one of us, and in particular affirms:-

1. that sexual intercourse is an act of total commitment which belongs properly within a permanent married relationship;
2. that **fornication** and adultery are **sins** against this ideal ...

<sup>10</sup> It is, of course, entirely possible for children to be brought up and nurtured in a same-sex marriage, but the actual procreation of them is necessarily heterosexual.

<sup>11</sup> Mission and Public Affairs Division of the Archbishops' Council "*Guidelines for the Celebration of Inter Faith Marriages in Church*", 2004.

## No “Word of God”

It is enshrined in English Law<sup>12</sup> that:-

[The Church of England] professes the faith uniquely revealed in the Holy Scriptures ... . Led by the Holy Spirit, it has borne witness to Christian truth in its ... *The Book of Common Prayer*.<sup>13</sup>

The doctrine contained in *The Book of Common Prayer* ... is agreeable to the Word of God.<sup>14</sup>

And the Holy Spirit is also supposed to have inspired the writers of the Holy Scriptures (in this case, the apostle Paul) to reveal the “faith” or “Christian truth”<sup>15</sup>.

Therefore, the Christian doctrine of marriage as a “mystical union”, which is exclusively heterosexual, is, by law, “agreeable to the Word of God”.

There is no God to whose word the “mystical union” doctrine is “agreeable”. There is no Christ betwixt whom and his Church there is an analogous “mystical union”. There is no Holy Spirit (which is one of the three branches of the Christian triune God) to have inspired the writing of the Holy Scriptures or led the Church to publish *The Book of Common Prayer*, containing the “mystical union” doctrine, to bear witness to revealed “faith” or “Christian truth”.

Again, therefore, the “mystical union” doctrine is wholly spurious. Marriage is purely an evolved biological and sociological phenomenon; there is nothing “mystical” about it. It is not a “mystical union”, nor does it “signify” a non-existent “mystical union”. It is a relationship or contract between the parties to it.

## No “Gift of God in Creation”

In the current debate, many Christians have tended to emphasize, as much as the “mystical union” doctrine, an ostensibly social justification for the rule against same-sex marriage<sup>16</sup>. That “family life” purpose of marriage is summed up in the preface to the Church of England’s “*Marriage Service*” in “*Common Worship*”, 2000:-

Marriage is a gift of God in creation ...

It is given as the foundation of family life in which children are born and nurtured and in which each member of the family, in good times and in bad, may find strength, companionship and comfort, and grow to maturity in love.

Same-sex marriage, they then argue, would be contrary to this purpose. However, this argument should not even be entered into, because the alleged purpose is invalid. Marriage is not a “gift from God” or “in creation”, for there are no such things. It is the product of evolution, which is without foresight or purpose. As with life in general, it was not designed, by God or any other agent, with any

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<sup>12</sup> *The Canons of the Church of England*.

<sup>13</sup> Canon C15.

<sup>14</sup> Canon A3.

<sup>15</sup> “Faith” and “Christian truth” are used interchangeably in Canon 15.

<sup>16</sup> “*Common Worship*” attempts to show a causal link between the “mystical union” doctrine and the “family life” purpose: “Marriage is a gift of God in creation through which husband and wife may know the grace of God. It is given that as man and woman grow together in love and trust, they shall be united with one another in heart, body and mind, as Christ is united with his bride, the Church”.

purpose in mind. The purpose of marriage is, in every case, to be decided by those who enter into it. Therefore, it may be for other than the “family life” purpose.

## The Definition of Marriage

Many statutes, including the Marriage Act 1949 and the Matrimonial Causes Act 1973, make provisions relating to marriage but none offers any definition of it. They do, however, draw a distinction between the **state** of marriage, the relationship between two persons, and the **act** of marriage, by which that relationship is formed. The latter is termed the “**solemnization of marriage**” and is distinct from marriage itself.

Although there is no statutory definition of marriage, the following *dictum*<sup>17</sup>, from the judgment in *Hyde v. Hyde and Woodmansee* (1866), is commonly cited as the “Common Law definition”<sup>18</sup>:-

What, then, is the nature of this institution as understood in Christendom? ... If it be of common acceptance and existence, it must needs have some pervading identity and universal basis. I conceive that marriage, as understood in Christendom, may for this purpose be defined as the voluntary union for life of **one man and one woman**, to the exclusion of all others.

This affirms the Christian doctrine of marriage as a union.

However, the case concerned Mormon marriage and polygamy, and the *dictum* would remain valid, in that context, if “two people” were substituted for “one man and one woman”. The term “Christendom” was used primarily to draw a distinction with Mormonism.

Therefore, there is nothing, within this definition of marriage itself, which limits it to a “hetero-sex” relationship<sup>19</sup>. Rather, such limitation is imposed by regulation which has its origins in the Church of England and Christian doctrine.

Furthermore, the above “Common Law definition” is not a statement of law at all but a finding of fact. Therefore, there is **no** legal definition of the state of marriage – a view apparently expressed (albeit somewhat ambiguously) in the consultation document itself:-

There is, however, no legal definition of religious and civil marriage<sup>20</sup>.

The Christian argument, that the proposal would change the definition of marriage, is invalid. Marriage is a relationship and contract between two individuals. Who those individuals may be is merely a matter of regulation, not definition.

## Conclusion

Any two people, of the same or opposite sex, are free to marry unless regulation, of who can marry whom, prevents them. Such regulation originated with the Church of England and included the rule

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<sup>17</sup> Per Sir James Wilde (later Lord Penzance) QC, President of the Court of Probate and Divorce.

<sup>18</sup> Both in the United Kingdom and, unless overruled by an explicit statutory definition, in the Common Law jurisdictions which were formerly part of its Empire. For example, the Canadian Civil Marriage Act 2005 contained the following definition: “Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others”.

<sup>19</sup> Or, indeed, places any other restriction (for example, age) on who marry whom.

<sup>20</sup> Paragraph 2.4.

against same-sex marriage which survives to this day, notwithstanding the secularisation of the marriage rite. It is based on the wholly spurious biblical doctrine of the “mystical union” (and the analogous “Bride of Christ” doctrine) which is derived from the idea of procreational (and, therefore, necessarily hetero-sex) sexual activities. Same-sex marriage is repugnant to the “Word of God”. This is the true rationale for Christian opposition to the proposed abolition, even though it applies only to civil marriage. Opposition, based on the alleged social purpose of marriage, is disingenuous, since it tends to play down the true reason. In any case, such purpose implies the mind of a non-existent creator.

**Therefore, *Atheism UK*, since it rejects all notions of God, endorses the proposed abolition of the rule against same-sex marriage.**