

ESSAY 6: Agents of the State: A Question for Discernment

Over the last decade, as Episcopalians have discussed our theology of marriage and the place of marriage in the life of the Church, the role of clergy as agents of the state in solemnizing civil marriages has come under consideration. Increasingly, the question has emerged, “Should we be in the marriage business?” Usually when this question is raised, the question is not whether we should perform Christian marriages in our churches.³⁶ Rather, the question is whether in these celebrations clergy should also legally solemnize civil marriages as agents of the state. That is, should clergy sign marriage licenses and return them to the town clerk? In the United States this is the action that renders a couple legally married in the eyes of the state, regardless of the vows they make in church.³⁷

1. Invisible/Visible

In the life of many congregations, this interface with civil marriage may be nearly invisible. The signing of the marriage license may take place off to the side, perhaps in a sacristy. Many people may not realize that clergy routinely perform double duty when they officiate at marriages, acting as agents of both church and state. In contrast, in states with marriage equality and in which congregations have permission to officiate at same-sex weddings, the signing of the marriage license may well take a place of honor. And indeed, due to this new attention to the role of clergy in signing marriage licenses, some may be newly aware of this double duty.

2. Strategic Disengagement

Some congregations have sought to pause or eliminate this double duty, however. In dioceses where same-sex and different-sex couples might experience legal or ecclesial discrepancies in access to marriage, some congregations have taken up a new policy. They require the marriages of all couples to be solemnized by a civil official before being blessed in the course of the church liturgy. Here the concern is to treat all couples equally, regardless of sexual orientation.³⁸ Such congregations are emulating, in their own way, some European countries (for example, France), where couples have historically married first at a courthouse or mayor’s office and then later joined their communities at their places of worship.³⁹

Some have further argued from a position of support for same-sex couples that even where marriage equality is legal and there are no discrepancies of access between civil and ecclesial marriage, clergy in The Episcopal Church still should no longer legally solemnize any marriages. At the same time, others are beginning to urge a similar practice of strategic disengagement to critique the expansion of marriage to include same-sex couples.⁴⁰ Here the concern is to stand apart from understandings of marriage that are not strictly heterosexual. Both of these perspectives express concern about how serving as agents of the state may compromise their ability to bear authentic witness to their understandings of Christian marriage, and perhaps even of the gospel itself.

3. Pastoral Concerns

Not surprisingly, Episcopalians have varieties of responses to these practices of strategic disengagement. While many proponents of marriage equality prefer having a civil official sign the marriage license, other

³⁶ One exception to this argument can be seen in “Familiar Idolatry and the Christian Case against Marriage,” by Dale Martin, in *Sex and the Single Savior: Gender and Sexuality in Biblical Interpretation* (Louisville: Westminster John Knox, 2006), 122: “I am deeply ambivalent about pursuing same-sex marriage as a solution to the injustices of homophobia. I believe that both the state and the church should get out of the marriage business.”

³⁷ V. Gene Robinson, *God Believes in Love: Straight Talk about Gay Marriage* (New York: Vintage, 2013), 141.

³⁸ Robinson describes such a scenario on pp. 144-45.

³⁹ Robinson, 144.

⁴⁰ See, for example, the Reverend Ephraim Radnor and the Reverend Christopher Seitz, “The Marriage Pledge,” <http://www.firstthings.com/marriage-pledge>

proponents have wondered why the Church might question its role as an agent of the state in marriage at a time when more dioceses may be prepared to extend that practice to same-sex couples. People of various perspectives have further wondered about the pastoral impact that might be felt by couples and families across the Church if we were to require all couples to engage a civil official as well as a clergyperson as part of “how we do marriage.” It may well be that in France, such duality of practice is widespread, this line of reasoning explains, but in the United States a shift to this model could simply feel alienating in our congregations.

4. Whether and/or How

On this question, therefore, it seems clear that we have some discernment in which to engage as a church. Having approached Christian marriage through a vocational lens in the paper “Christian Marriage as Vocation,” the question arises as to whether and/or how the Church may be called to serve as an agent of the state in this arena. In *God Believes in Love*, Bishop V. Gene Robinson describes a fictional scenario in which a church has discerned a call not to have its priest serve as an agent of the state.⁴¹

Yet how exactly did this congregation embody this distinction? In Robinson’s example, the congregation’s senior warden serves as an agent of the state for all marriages at the parish. The warden signs the marriage license of all couples in the doorway at the back of the Church, embodying quite literally the border of the civil and ecclesial spheres. While wardens are not clergy, they are members of their parishes. Therefore, although the distinction between church and state is indeed much clearer here than it is when a clergyperson signs the marriage license, the parish as a community is still making a conscious decision to interface with civil marriage in a particular (in this case, spatial) manner. The community might have asked all couples to have their marriage licenses signed someplace outside the Church altogether, for instance. A congregation might choose a path of greater church-state linkage or separation, and it might do so in a number of different ways. Thus the discernment is not only *whether* a parish might or might not decide to participate in civil marriage, but potentially *how*.

5. Implications for Discernment: Unjust Structures

Our discernment process should also consider the ways in which our participation in civil marriage may contribute to the status of privilege accorded to marriage in the civil as well as ecclesial spheres. The paper, “Christian Marriage as Vocation” points out that marriage is both a profound vocation in its own right as well as a manner of life to which some (but not all) are called. Our canons further specify that equal access to a “place in the life, worship and governance of this Church” cannot be denied on the basis of marital status (Canon 1.17.5).

Yet a further question to consider is how the Church’s participation in civil marriage may contribute to marriage in the civil sphere more broadly. In what ways might that participation interface with our call to help transform unjust structures in that sphere?⁴² Our discernment process might consider, for instance, how health insurance and tax benefits are linked to civil marriage, how unevenly civil marriages are recognized by the states at present, and how profoundly that lack of recognition can impact the daily lives and basic needs of those who remain unrecognized. It is one thing for the Church to embrace the widespread discernment of vocations to Christian marriage, but how we interface with its civil recognition is a distinct matter.

6. Implications for Discernment: Ecclesiology and Mission

How we discern our call to interface with civil marriage down the road clearly emerges in important ways from our theology of marriage. Yet further theological considerations should also prompt our reflection.

⁴¹ Robinson, 144-45.

⁴² “To seek to transform unjust structures of society, to challenge violence of every kind and to pursue peace and reconciliation” is the fourth of the Five Marks of Mission which were adopted as strategic priorities at the 76th General Convention (D027) and reaffirmed at the 77th General Convention (A007). For more on the Five Marks of Mission, see <http://www.anglicancommunion.org/ministry/mission/fivemarks.cfm>

While our canons currently prohibit the solemnization of marriages that are not considered legal according to the laws of the state (Canon I.18.2), the two Task Force papers on biblical and theological dimensions of marriage suggest that our theology of Christian marriage does not emerge from marriage's civil status.

Discernment related to this question — of whether and/or how to serve as agents of the state — should arguably flow more fundamentally from our ecclesiology and understanding of mission. How might our theological understanding of the Church, and particularly of its vocation at its interfaces with the civil sphere, inform this discernment? This solemnization question challenges us to clarify how we are called to be agents of the Good News at the borders of the ecclesial and civil. Does our service as agents of the state enable us to be better agents of reconciliation and transformation in the world than we otherwise would be? Does it make us complicit in the furthering of injustices in that world? What if our participation catches us up in both? If that is the case, how might we discern not simply the lesser of two evils but instead the expansion of the greater good?

Whatever we ultimately discern, the clear mandate from our baptism to respect the dignity of every human being (1979 BCP, 305) calls us both now and in the long run to be consistent in our practice, regardless of the sex, sexual orientation, or gender identity and expression of the prospective spouses, just as we already should be with respect to their race, color, ethnic origin, national origin, disability, or age (Canon I.17.5). Should the General Convention decide in the future, for example, to limit the scope of the Church's engagement in marriage to its theological, liturgical, and pastoral facets and to canonically decouple Christian marriage from its legal, civil counterpart, we should engage this process with consistency across the demographic particularities of our communities. All of this calls for careful conversation, reflection, and prayer.

Works Cited

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