

BY THE POWER VESTED IN ME:
A DEFENSE OF THE VALIDITY OF MARRIAGE
APART FROM STATE RECOGNITION

A Position Paper
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What constitutes a valid marriage? Many Christians take for granted that couples should seek and obtain a civil marriage, but some governments recognize “marriages” that the Bible expressly prohibits, and others may prohibit marriages that the Bible condones. After considering arguments in favor of the necessity of obtaining civil recognition in order to have a valid marriage, I will argue that marriage, because it was instituted by God at creation, exists independently of the state and therefore couples are not morally bound to obtain state recognition in order to be truly married, though obtaining state recognition is generally desirable.

BY THE POWER VESTED IN ME

Introduction and Thesis

In 2014 a Sudanese woman was sentenced to death for apostasy and adultery because the government considers both her conversion to Christianity and her Christian marriage unlawful under Sharia law.¹ Is her marriage valid in spite of her country's laws and court rulings to the contrary? In the United States, Jorge and Carla celebrate their wedding with family and friends while a Baptist minister solemnizes their union. He does not utter the words, "By the power vested in me by God and the state of Indiana..." because neither the groom nor the bride, both illegal immigrants, had the necessary identification required to obtain a marriage license. Do they have to comply with the Indiana Code in order to truly be married? Did the pastor do wrong by presiding over the ceremony? What about an interracial couple living at a time when laws explicitly prohibited their marriage?

Most Christians would agree that believers are generally obligated to follow the laws of the governing authorities over them. Exceptions to this rule derive from the principal that "We must obey God rather than men," (Acts 5:29, ESV).² However, Christians disagree on when and how they should disobey these laws. As same-sex "marriage" continues to challenge faith groups that maintain marriage can only exist between a man and a woman, civil and religious understandings of marriage will continue to clash. The examples above show that questions

¹Nima Elbagir and Laura Smith-Spark, "Sudanese Christian Woman: 'There's a New Problem Every Day,'" *CNN*, July 1, 2014, accessed July 13, 2014, <http://www.cnn.com/2014/07/01/world/africa/sudan-apostasy-case/index.html>.

²Scripture quotations are from The Holy Bible, English Standard Version® (ESV®), copyright 2001 by Crossway. Used by permission. All rights reserved.

about marriage are not limited to the sex of the individuals involved. The matter of marriage requires an examination of a couple's duty to God concerning submission to human government and the institution of marriage as established by God.

After considering arguments that Christians are obligated to fulfill the legal requirements and obtain a civil marriage, I will argue that marriage exists independently of the state and therefore couples are not morally bound to obtain state recognition in order to be truly married.

The Case against Marriage Apart from State Recognition

In cases where members of the clergy are authorized to solemnize marriages on behalf of the state, considering marriage to exist where the civil authorities do not may seem like a violation of the Christian's duty to submit to their governing authorities, which God has established. It also puts families, particularly children, at unnecessary risk by denying them the protections and privileges granted to marriage when it accords with the laws of the state. Additionally, marriage apart from state recognition may appear to further undermine the significance of marriage in societies that already have "no fault" divorce laws and homosexual "marriage."

A Lack of Obedience

The New Testament consistently maintains the expectation that believers obey their governing authorities. "Render unto Caesar that which is Caesar's," a common refrain in Evangelical circles, was originally uttered by Jesus. The argument for submission to government usually finds its strongest support in Romans 13:

"Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. ² Therefore whoever resists the authorities resists what God has appointed, and those who resist will incur judgment," (Rom 13:1-2).

A cursory reading of these verses and those that follow shows that obedience to the

state equates to obedience to God. The argument goes that Christians must comply when the state regulates and sets boundaries for marriage. Perry Dane, a professor at the Rutgers School of Law, writes that “the most prevalent and influential religious understandings of marriage in the United States hold that, while marriage is an institution ordained by God, only the state has the juridical authority to ‘marry’ a couple...”³ Father Alvian Smirensky, writing for the Orthodox Church in America, Diocese of New York and New Jersey, takes this view when he writes, “Everyone knows that a marriage does not take place without a license.”⁴ Churches in his diocese require a civil marriage license before couples may have a church wedding. C.S. Lewis, who suggested civil and religious marriage should be separated, did not comment whether Christian marriage would then constitute an addition to or replacement for civil marriage.⁵

Most states have laws criminalizing the solemnization of marriage apart from the civil process,⁶ but it is questionable whether states intend to prosecute marriage ceremonies performed solely as a religious observance. Two Unitarian ministers in New York were charged with illegally solemnizing gay marriages in 2004 when same-sex “marriage” was not then legal in the state, but the prosecuting attorney made it clear they were charged for “their intent to perform civil marriages under the authority invested in them by New York State law, rather than performing purely religious ceremonies.”⁷ Ultimately the charges were dropped, but the point remains that, at least in New York, the state recognizes a difference between weddings performed

³Perry Dane, “A Holy Secular Institution,” *Emory Law Journal* 58, no. 5 (2009): 1129, Academic Search Premier, EBSCOhost, accessed July 17, 2014.

⁴Alvian Smirensky, “Marriage and Civil Law,” *Jacob’s Well*, The Orthodox Church in America Diocese of New York and New Jersey, 1998, accessed July 16, 2014, http://www.jacwell.org/special%20features/marriage_and_civil_law.htm.

⁵C.S. Lewis, *Mere Christianity*, (New York: HarperCollins, 1980), 112.

⁶Dane, “A Holy Secular Institution,” 1170-1171.

⁷Jonathan Wald, “Ministers who married same-sex couples charged,” *CNN*, May 6, 2004, accessed July 18, 2014, <http://www.cnn.com/2004/LAW/03/16/gay.marriage.ny/index.html>.

under the authority of the state and weddings that do not pretend to confer the protections and privileges granted by the state. Therefore, while other reasons for seeking civil recognition of marriage may exist, under circumstances where religious ceremonies apart from the law are not expressly prohibited, believers are not morally obligated to seek civil recognition in order to submit to the law.

When the governing authorities expressly prohibit private recognition of marriage outside of the legal procedures established in law, one must question whether such prohibitions are unjust and violate God's law. If so, one must ask whether believers are still obligated to comply with those laws. Religious communities that understand the state to have sole authority to regulate marriage face another ethical dilemma if they treat same-sex "marriage" as a legal fiction that does not correspond to reality if their state recognizes such unions. One minister, albeit one in favor of gay "marriage," stated, "I would like to believe that my authority to perform religious ceremonies does not come from the state but derives from the vows of my ordination and my commitment to God."⁸ Perhaps as more ministers find themselves at odds with their state's recognition of same-sex marriage they will find themselves agreeing with him, though for different reasons. Acts of the state against "lawbreakers" who observe religious marriages apart from the law's requirements, such as in the case of Sudanese woman or an interracial couple in the South prior to 1967, are better understood as persecution rather than justice.

A Lack of Meaning

Moving on from matters of law, opponents may question whether marriage has any meaning if it lacks state recognition. A woman wrote to Come Reason Ministries, a Christian apologetics group, asking for advice on how to address her eighteen-year-old son who was

⁸Howard Moody, "Sacred Rite or Civil Right?," *Nation* 279, no. 1 (2004): 28, MasterFILE Premier, EBSCOhost, accessed July 17, 2014.

having sex with his girlfriend of two years. He justified his behavior because they had made vows to each other and considered themselves married in God's eyes. The group responded in part that "in order to give marriage proper honor and to render the proper respect to the governing authorities, legal marriage is both required and appropriate."⁹ Their argument differs from the one above because they focus on a lack of honor to marriage and a lack of respect for the law rather than a lack of obedience to the law.

In this case, these two teenagers have avoided the accountability of their community and state as well as the responsibility to "leave and cleave" by supporting themselves and living independently of their parents. Also common today, some elderly couples avoid civil marriage in order to continue receiving survivor's benefits from a former spouse's employer that would be forfeited upon remarriage.

Besides accountability, the law confers benefits and protections to couples and their offspring. *The New York Times* interviewed a lawyer who specializes in family law for an article on marriages that failed to meet all the requirements of their state. He said, "If you don't have a legally recognized marriage, then your ability to get relief in the event of a divorce goes away."¹⁰ The article continues, "Inheritance rights could also be in jeopardy, and couples could have trouble with the I.R.S. if they filed joint tax returns."¹¹

The desire to avoid responsibility and accountability for marriage both dishonors the institution of marriage and shirks the law. Got Questions Ministries, speaking to the scenario of an elderly couple above, also condemns this attitude: "We are not to seek loopholes that allow us

⁹"Must Marriage be Legal to be Blessed by God?," Come Reason Ministries (no date), accessed July 16, 2014, http://www.comereason.org/soc_culture/soc020.asp.

¹⁰Devan Sipher, "Great Wedding! But Was It Legal?," *The New York Times*, August 5, 2007, accessed July 16, 2014, <http://www.nytimes.com/2007/08/05/fashion/05marry.html>.

¹¹Devan Sipher, "Great Wedding!"

to escape the demands of the law.”¹²

Yet these scenarios do not represent all situations. Couples may opt for a religious ceremony devoid of civil recognition for other reasons, such as to avoid fornication and to invite the community to bear witness to the marriage. Joel A. Nichols, a professor at the University of St. Thomas School of Law, observes that within marriage, “sometimes the ‘unofficial law’ of the community has a stronger hold on individuals and communities than the sanctioned official civil law of the polity.”¹³ Although a community is helpless to force a couple to take responsibility in the event the marriage dissolves, it may use other means to pressure them to keeping those vows or ostracize them for breaking them.

Whereas obtaining civil recognition of one’s marriage is both wise and good in most circumstances, it is not obligatory for a couple to be truly married. In cases where lack of legal residency status—a separate ethical issue altogether—persecution, or discrimination precludes civil recognition of marriage, seeking the community’s recognition still honors the sanctity of marriage. Got Questions Ministries highlights a salient point:

“Biblically, marriage is the joining of a man and a woman in a spiritual and physical covenant for life. *That joining is cause for celebration and deserves our respect. A state-issued license does not make a couple married. The covenantal oath before God and witnesses is what binds them,*” (emphasis mine).¹⁴

The Case for Marriage Apart from State Recognition

Government does not serve as the prerequisite for marriage. Biblically, marriage forms the prerequisite to government. Homosexual couples and their supporters continue to challenge the basic assumption that marriage solely exists between opposite-sex persons. Yet when

¹²“Is the Idea of a Spiritual Marriage Biblical?,” Got Questions Ministries (no date), accessed July 13, 2014, <http://www.gotquestions.org/spiritual-marriage.html>.

¹³Joel Nichols, “Marriage: Civil, Religious, Contractual, and More,” *Family Court Review* 50, no. 2 (2012): 223, Academic Search Premier, EBSCOhost, accessed July 17, 2014.

¹⁴“Is it Allowable for a Christian to have a Life Partner without a Civil Marriage?,” Got Questions Ministries (no date), accessed July 13, 2014, <http://www.gotquestions.org/Christian-life-partner.html>.

politicians and courts rewrite the definition of marriage in the law books, Christians who reject same-sex marriage deny that any fundamental change actually occurs to marriage itself.

“Marriage is, of course, more than a matter of statecraft,” writes Russell Moore, President of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, “That’s the reason we deny that the state can, for instance, call marriages into being without creational essentials such as sexual complementarity.”¹⁵ Couples may truly marry in the sight of God so long as they meet his definition of marriage, whether or not they chose to comply with the requirements for state recognition.

Marriage is Instituted by God

The creation account in Genesis records the God’s institution of marriage when he creates Eve out of Adam’s rib and gives her to Adam as a companion. The account breaks for a moment to include commentary on this event: “Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh” (Gen 2:24). Jesus quotes this passage in Mark 10 to assert that divorce falls outside God’s intention for marriage. John Piper, former pastor of Bethlehem Baptist Church in Minneapolis, Minnesota, and founder of Desiring God, points to the implications of this passage in his book *This Momentary Marriage*,

“[Jesus] says in verse 9, ‘What therefore God has joined together . . .’ So even though two humans decide to get married, and a human pastor or priest or justice of the peace or some other person solemnizes and legalizes the union, all of that is secondary to the main actor, namely, God. ‘What *God* has joined together . . .’ God is the main actor in the event of marriage” (emphasis original).¹⁶

Piper’s conclusions warrant further application to the matter of state recognition of marriage. He considers the act of solemnizing and legalizing the marriage secondary to the act of God in bringing the two together. Since God is primary, no human court or law or government

¹⁵Various, “The Church and Civil Marriage,” *First Things*, The Institute on Religion and Public Life, April 2014, accessed July 16, 2014, <http://www.firstthings.com/article/2014/04/the-church-and-civil-marriage>.

¹⁶John Piper, *This Momentary Marriage: A Parable of Permanence*, (Wheaton: Crossway, 2009), 161.

can overrule him. In fact, the union of Adam and Eve as husband and wife not only instituted marriage, it instituted the first human government. As the Apostle Paul states in 1 Corinthians 11:3, “But I want you to understand that the head of every man is Christ, the head of a wife is her husband, and the head of Christ is God.” This government arose out of the marriage between Adam and Eve, and all government is founded on marriage and family, not the other way around.

The state may pass laws that block access to marriage, but since the state depends on marriage and marriage depends on God, the state has no authority over marriage beyond what God has stated in his word. Even ministers who would hold marriage as solely within the power of the state betray their inner belief in God’s ultimate authority over marriage when they deny the reality of legally sanctioned same-sex marriages or when they use the phrase “By the power vested in me by God and the state of...” Placing God in the first position bears witness that God has the definitive right to recognize two people as married.

Norman Geisler, in his book *Christian Ethics*, makes another observation about the institution of marriage in the creation account. He says that “God has ordained marriage for non-Christians as well as Christians. And he is the witness of all weddings, whether invited or not. Marriage is a sacred occasion whether the couple recognize it or not.”¹⁷ In other words, even when parties seek a civil marriage with no intent to invoke God’s blessing, he still bears witness to their union. Not even the state can claim sole jurisdiction over purely secular marriages, since, in God’s eyes, no marriage is merely a secular affair.

That God alone rules over marriage makes sense when the history of civil marriage comes into view. The Protestant Reformers pushed for civil government to judicial authority over marriage because of abuses that occurred when the Roman Catholic Church operated as the sole arbiter of marriage.¹⁸ Cognizant of the abuses of powerful church-state unions, the early Puritans

¹⁷Norman L. Geisler, *Christian Ethics: Options and Issues*, (Grand Rapids: Baker Books, 1989), 279.

¹⁸Dane, “A Holy Secular Institution,” 1154.

in New England barred church officials from solemnizing marriages, leaving the matter to the civil authorities.¹⁹ Recent history shows, however, that the state is equally capable of abusing its power over marriage. Laws prohibiting interracial marriage still operated in many jurisdictions in the United States up through 1967, proving that “the state is no more infallible than the church in its judgments.”²⁰ Because God instituted marriage, he owns it, and the state does not ultimately serve as the sole judge of what constitutes true marriage.

Marriage is Defined by God

Because God instituted marriage and thus “owns” marriage, human government has no authority to redefine this institution to suit its purposes. As Dr. Moore contends that the state cannot “call marriages into being” that fall short of the definition established in the Bible (i.e. between same-sex couples),²¹ so also the state cannot negate the existence of marriages that meet this definition.

Genesis 2:24 calls attention to specific characteristics of God-designed marriage. Marriage involves a clear separation in the parent-child relationship and a new union between a man and a woman. Jesus further clarifies in Mark 10 that God brings these two parties together without reference to the state. The same-sex “marriage” debate has brought the focus in Western society to the “man and woman” part of this definition. However, as these passages make clear, marriage involves more than just the sex of each party. It involves a commitment by these parties to be married.

Couples may demonstrate their commitment to marriage in a number of ways including, but not limited to, civil marriage. Got Questions Ministries notes: “In every culture

¹⁹Dane, “A Holy Secular Institution,” 1154-1155.

²⁰Howard Moody, “Sacred Rite or Civil Right?”

²¹Various, “The Church and Civil Marriage.”

there is an event, action, covenant, or proclamation that is recognized as declaring a man and woman to be married.”²² The concept of making a declaration of intent to be and subsequent action to live as husband and wife aligns with this definition. The basic requirements of common-law marriage (which only a few states recognize) capture the biblical definition of marriage:

“(1) capacity to marry (not being involved in any other marriage) (2) mutually expressed desire (either verbal or written) to marry (3) a public expressing to others of that desire by referring to themselves as ‘Mr. and Mrs. ...,’ etc., and (4) continually cohabiting.”²³

Conclusion

Nothing I have written here should suggest that couples should seek marriage apart from the state’s recognition. In general, believers should make an honest attempt to satisfy the requirements set forth by law in order to have their marriage recognized and honored by all. Having one’s marriage recognized by the state usually confers many benefits and protections to a family, so the decision to not fulfill the states requirements when couples are otherwise able to do so warrants careful consideration of their motives and convictions. The desire to evade accountability may not deny the reality of one’s marriage, but the same God who instituted marriage also judges the thoughts and intentions of all people (cf. Heb 4:12).

Couples that cannot satisfy the requirements of the law despite their best efforts must commit to meeting the requirements set forth in God’s word for marriage. They must also understand the potential consequences of having few or none of the rights afforded to legally married couples. By abiding by their marriage commitment, even when the law has no means of holding them accountable, they demonstrate the validity of their vows.

²²“What Constitutes Marriage According to the Bible?,” Got Questions Ministries (no date), accessed July 13, 2014, <http://www.gotquestions.org/marriage-constitutes.html>.

²³“What does the Bible say about the Concept of a Common Law Marriage?,” Got Questions Ministries (no date), accessed July 13, 2014, <http://www.gotquestions.org/common-law-marriage.html>.

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