



**IN DEFENCE OF CONJUGALITY:  
THE COMMON-GOOD CASE AGAINST  
SAME-SEX MARRIAGE**

**Briefing Paper || March 2012**

## SUMMARY

- The demand for gay marriage is a demand for equal treatment that requires marriage to be redefined and undermined. The conjugal idea of marriage as a union of a man and a woman open to children must be rejected in favour of another idea of marriage as merely an emotional or sexual bond between two people. In this idea of marriage, children are irrelevant.
- This is not an issue about equality. There is no human right recognised in this proposal. To give everyone equal access to marriage would require the state to cease to recognise marriage altogether.
- The state cannot be neutral about marriage. If it wishes to promote marriage, it must say what marriage is and for. If it is not conjugal, there is no reason for the state to promote one set of relationships over another.
- The state promotes marriage precisely because it provides the best possible environment for the begetting and nurturing of children. If the state renounces that idea, there will be consequences for children – and for society.
- Marriage is a social institution, rooted in nature, which belongs to civil society. It should be recognised, regulated and nurtured by state and Church, neither of which has a mandate to redefine it.

## Introduction

This paper, published as the Government announces the start of its consultation on redefining marriage in order to open it to same-sex partnerships,<sup>1</sup> sets forth the arguments against such a redefinition. It refers to a poll, published on 8 March, and published at the back, which was carried out for Catholic Voices by ComRes.

Although the paper draws on statements and articles by Catholic and other church leaders, it eschews theological or religious presuppositions in order to argue from natural-law or reason-based propositions.<sup>2</sup> The Government proposes to extend *civil* marriage to homosexual couples. Civil marriages lie outside the authority of the Churches (and faiths); exclusively religious objections to the proposed change are therefore at best irrelevant or inappropriate. As the Archbishop of Westminster says: “there is a clear and constant

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<sup>1</sup> ‘Equal civil marriage: a consultation’, Government Equalities Office, 15 March 2012.

<sup>2</sup> Although they are not responsible for its content, we are grateful to Archbishop Peter Smith, Richard Konicki, Charles Wookey, David Quinn & Neil Addison, whose briefings to the Catholic Voices Academy on this question have informed this paper.

argument from reason for defining marriage as being between a man and a woman, corresponding to the underlying pattern in our nature of the complementarity of male and female, their potential fertility and subsequent responsibility for the care of children.”

However, this does not mean that the Churches should be silent, for the proposal to change marriage as an institution will affect *every* marriage. The Government profoundly misunderstands marriage when it speaks of it as having two separate realities, civil and religious. In fact there is only one institution of marriage, a social institution rooted in the union of a man and a woman, which both Church and state recognise and regulate, providing access to it through religious and civil ceremonies. Marriage has not been created by either Church or state, and neither has the right to redefine it.

The Government insists that, under their plans, it will be illegal for religious organisations to solemnise religious marriages for same-sex couples; and that what is proposed is a reform to civil marriage alone. They have seemed baffled, at times, at the strong reaction from the Churches against redefining marriage, citing these safeguards as reasons for the Churches not to worry. The equalities minister, Lynne Featherstone, has even accused church leaders of “fanning the flames of homophobia” because of their strongly-expressed objections, seeking in this way to give the entirely false impression that the case against same-sex ‘marriage’ arises out of religiously-sanctioned disapproval of homosexuality.<sup>3</sup> This frame, which has been encouraged for obvious reasons by advocates of same-sex marriage, is false: gay rights and homosexuality are largely irrelevant to the discussion, which is about whether the conjugal definition of marriage should be redefined. The same debate would need to be held if the call were to permit, say, polygamous marriages.

It is also inadequate to assert, as does the gay rights lobby Stonewall, that “if Roman Catholics don't approve of same-sex marriage, they should make sure they don't get married to someone of the same sex.” The question of whether marriage should be redefined such that its meaning and nature cease to be conjugal is one which affects the whole of society; and a matter on which all people – whether gay or straight, married or unmarried, religious or unreligious – are entitled to express a view. Marriage has an intrinsic cultural and social meaning – a *conjugal* meaning – which is not specific to religious understandings of marriage, although religion gives it extra meaning. Whether entered by the religious or the civil route, marriage is marriage; its intrinsic conjugal meaning will need to be rejected in order to allow same-sex marriage.

Understood as a lifelong commitment between a man and a woman, and for the creation and upbringing of children, marriage is an expression of our fundamental humanity. Its status in law is the prudent fruit of experience, for the good of the spouses and the good of the family. In this way society esteems the married couple as the source and guardians of the next generation. As an institution marriage is at the foundation of our society.<sup>4</sup>

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<sup>3</sup> *The Independent*, 15 March 2012.

<sup>4</sup> ‘A Letter on Marriage from the President and Vice-President of the Bishops’ Conference of England and Wales’, 11 March 2012 (first published in the *Daily Telegraph*, 7 March 2012)

As our ComRes poll shows, this belief is held by a huge majority of British people. The idea that marriage is, and should remain, a life-long union between a man and a woman is shared by seven out of ten Britons -- and is very far from being a uniquely religious conviction. The same survey shows that marriage itself is cherished: 68 per cent of British people believe it is important to society and should be promoted by the state. So, too, is the idea of marriage as a conjugal institution: an overwhelming 84 per cent of British people believe that a child raised by its mother and father has the best chance in life.

Most British people believe these propositions while at the same time believing in legal rights for same-sex couples: our poll shows 59 per cent support for the state recognising stable relationships between same-sex couples through the civil partnership scheme. Most British people, in other words, regard it as reasonable, consistent and coherent to favour granting legal rights and privileges to gay people while being resolutely opposed – as are many gay people – to the idea of ‘gay marriage’.

The role of the Churches in this debate, therefore, is a key one. Their organised and coherent opposition to gay marriage is mobilising civil society. The Churches are speaking for the silent majority of British people who regard marriage as a conjugal institution, hallowed by time and culture, which brings great benefits to society as a whole, and which it is the duty of the state to protect.

## **Not about equality**

It is asserted as blindingly obvious that redefining marriage to allow same-sex couples to enter it is a simple matter of equality – of overcoming discrimination, and allowing the expression of a right. The assertion is made as if it is simply unquestionable. Yet there is no discrimination involved in excluding people same-sex couples from marriage, as the European Court of Human Rights recently confirmed.<sup>5</sup>

The law already recognises various forms of stable partnerships - including same-sex ones. While many object, for a variety of reasons, to state support of same-sex relationships, the fact is that these already enjoy a practical and legal parity with heterosexual marital relationships. In passing the Civil Partnerships Act in 2004, the minister responsible, Jacqui Smith, told Parliament that its aim was to “mirror as fully as possible the rights and responsibilities enjoyed by those who can marry, and that uses civil marriage as a template for the processes, rights and responsibilities that go with civil partnership.”<sup>6</sup> The Civil Partnerships Act, in other words, has already delivered legal equality for same-sex relationships. That was its purpose. Extending marriage to same-sex couples will add nothing

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<sup>5</sup> *Gas and Dubois v France*, 15 March 2012. The judges noted in this case that the ECHR “does not require member states’ governments to grant same-sex couples access to marriage”, and that no discrimination is involved in excluding them.

<sup>6</sup> *Hansard* 9 Nov. 2004 col. 776

by way of legal privileges, and is an entirely symbolic, political objective which will have the effect, intended or otherwise, of altering the very nature of marriage itself.

The Equalities' Minister, Lynne Featherstone, continually refers to gay partners' "right to marry". No such right exists in any established international treaties or charters of human rights. Equally fictitious is the notion that reserving the institution of marriage to a man and a woman might be 'discriminatory'. Discrimination occurs when a person or group who *should* be treated the same way are treated less favourably. If the cause of that different treatment is reasonable -- such as excluding people under 65 from receiving a pension -- no discrimination occurs. It is reasonable to exclude same-sex couples from marriage because marriage is a conjugal institution, one designed to encourage and foster the union of a man and a woman who have the possibility of begetting and rearing their natural children. "Our present law does not discriminate unjustly when it requires both a man and a woman for marriage. It simply recognises and protects the distinctive nature of marriage."<sup>7</sup>

Some gay-marriage advocates dismiss this point in order to claim that opening up marriage to gay people would be a 'signal' or 'symbolic' gesture -- sending "a clear signal that we do not regard [gay people] as second-class citizens".<sup>8</sup> This is the primary reason which Stonewall advances in favour of gay marriage:

By insisting that marriage and civil partnerships must be kept separate and distinct opponents of equality regrettably still perpetuate the offensive notion, even if inadvertently, that relationships between same-sex people are not as stable, rich or valid as those between heterosexual couples. It is clear that these views impact negatively on public attitudes towards gay people themselves.<sup>9</sup>

This seems, on the face of it, a remarkable claim, for which no evidence is advanced; nor is there any evidence from countries and states which have legislated for gay marriage that gay people suffer less discrimination as a result. But even if such a link could be established, the question must still be addressed of whether radically redefining a major public social institution is the correct means of overcoming attitudes of prejudice. As the Archbishop of Canterbury notes, it is an abuse of power to use the law "proactively to change culture"; human rights laws "falls short of a legal charter to promote change in institutions". If it is true that stigma or marginalisation are reinforced or justified by not legislating gay marriage, says Dr Williams, these "have to be addressed at the level of culture rather than law."

The Government's consultation document mentions that when making a declaration of marital status to an employer, public authority or other organisation, "an individual who is either married or in a civil partnership will often be declaring their sexual orientation at the

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<sup>7</sup> 'A Letter on Marriage from the President and Vice-President of the Bishops' Conference of England and Wales', 11 March 2012 (first published in the Daily Telegraph, 7 March 2012)

<sup>8</sup> Ken Livingstone, 'Gay marriage will make us a beacon of equality', Pink News 21 February 2012.

<sup>9</sup> 'Marriage and civil partnership', [http://www.stonewall.org.uk/media/current\\_releases/5715.asp](http://www.stonewall.org.uk/media/current_releases/5715.asp).

same time.”<sup>10</sup> The paper asserts this without further comment, as if this were reason enough. But why should it be problematic, in a tolerant society, for a person to declare their sexual orientation? If the fear is of prejudice, then how can keeping secret a person’s sexual orientation help to counter that prejudice?

Most relationships in society- between friends, siblings, carers, relatives, etc. - do not qualify for marriage; does this mean they are regarded, as a result, as lesser? And if so, should marriage also be redefined to admit such relationships, in order to establish that they, too, are equivalent?

Our poll shows that most British people favour civil partnerships, while at the same time believing that the current definition of marriage as between a man and a woman should not be changed. Equality issues will continue to be debated; but the Government’s proposal to redefine marriage on grounds of equality makes no practical or legal sense.

## **An impoverished vision of marriage**

When the Prime Minister, David Cameron, last year addressed his party’s conference, his justification for legalising gay marriage differed from that of his Equalities Minister. “Yes, it’s about equality,” he said, “but it’s also about something else: commitment. Conservatives believe in the ties that bind us; that society is stronger when we make vows to each other and support each other.” This frame allowed him to claim that he did not support gay marriage “despite” but “because of” being a Conservative.

This vision of marriage is very close to that of the liberal-conservative *Economist* magazine, which asserted that “the real nature of marriage ... is a binding commitment, at once legal, social and personal, between two people to take on special obligations to one another.” The magazine went on to ask: “If homosexuals want to make such marital commitments to one another, and to society, then why should they be prevented from doing so while other adults, equivalent in all other ways, are allowed to do so?”

This same thinking underlies the Government’s consultation paper, which gives as one of its “principles for change” the following statement: “The Government recognises that the commitment made between a man and a man, or a woman and a woman, in a civil partnership is as significant as the commitment between a man and a woman in a civil marriage.”

These definitions of marriage as merely an expression of commitment between two individuals are severely truncated: as Archbishop Vincent Nichols has pointed out, “equality and commitment do not amount to marriage”. The quotes above make no reference to the key element in the conjugal understanding of marriage which has permeated our culture and history and which – as our poll shows – remains widespread. Unlike the Prime Minister, most people see marriage as a union of a man and a woman for the sake of the bearing and nurturing of children (even if children do not always result). This conjugal understanding of marriage is not just marriage’s real meaning; it is also the reason it is respected and promoted

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<sup>10</sup> ‘Equal Civil Marriage’, p. 5

by the state. Yet remarkably, the Government's consultation paper makes not one reference to children: the cornerstone of marriage – the biological union of a man and a woman – has been simply eradicated.

## Why the state promotes marriage

The Government's proposals do not just undermine marriage; they make a nonsense of the state's reasons for recognising and promoting marriage.

The case for same-sex marriage cannot be made on non-judgmental grounds. It depends on a conception of the *telos* of marriage – its purpose or point. If marriage were a purely private matter, in which the state has no interest, the debate would not arise. However, the state promotes marriage because it is important to society; and as our poll shows, people believe it should continue to. This means that the meaning of marriage must be confronted. As Michael Sandel observes in his book *Justice*: “The debate over same-sex marriage is fundamentally a debate about whether gay and lesbian unions are worthy of the honour and recognition that, in our society, state-sanctioned marriage confers.”<sup>11</sup>

Marriage's importance to society rests on three premises:

1. The family is the founding unit of civil society
2. At the heart of the family is the sexual union of a man and a woman given to each other for their sake and for the good of their children;
3. Marriage provides the ideal, irreplaceable environment for the raising of children, who benefit psychologically, emotionally, and in countless other ways by being brought up by their mother and father.

Marriage has many “goods” – emotional commitment and stability among them. But the reason the state promotes marriage is because of its link to, and benefits for, children. These benefits are inextricably bound up with the conjugal union of man and a woman, who become mother and father to the children they generate. Other arrangements for bringing up children are not promoted and legitimised by the state because, however loving the carers, they are far less beneficial. Children brought up by divorced or single parents, by adopted parents or by relatives, by same-sex couples or in foster homes, are all missing something essential to their well-being; and that is why society (and the state) do not promote and institutionalise such arrangements. For while there are bad marriages and bad families, and sad cases where children are abused by their parents, the overwhelming, unchanging norm is that a child raised by his or her mother and father stands the best chance in life. It is not simply the presence of two parents of opposite genders, but the presence of two *biological* parents, that best supports children's development – and this is something recognised, as our survey shows, by 84 per cent of British people.

Although marriage is indissolubly linked to children, it is not simply a means for procreation. Couples who cannot for some reason reproduce can still be married: both Church

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<sup>11</sup> Michael Sandel, *Justice: what's the right thing to do?* (Allen Lane 2009) p. 253.

and state accept that a marriage exists as long as it can be consummated – that is, as long as the behavioural conditions for procreation can be fulfilled.

Marriage is singled out and promoted by state, religion, and civil society, because it serves a far-reaching social good – the welfare of children. No compelling case exists for the state recognising same-sex (or other, non-marital) relationships in the same way as it supports marriage.

## **What marriage means**

Most people acknowledge that marriage involves a union of a man and a woman, a special link to children, and norms of permanence, monogamy and exclusivity. These characteristics are not social and legal constructs, but intrinsic to the nature of marriage. Church and state did not create them, but have sought to recognise, reinforce and legitimate these characteristics.

Put simply, marriage is anterior to the state. “Marriage is a fundamental social institution and neither the State nor the Church has the right to redefine its meaning.”<sup>12</sup> The state’s bid to alter marriage in one of its essential aspects – the biological union of man and woman – amounts to a vast expansion of state power and a quasi-totalitarian attempt to alter the architecture of civil society. This sense has been reinforced by the way in which the Government has set about introducing the measure – by means of a consultation on how, not whether, to change the law, despite there being no hint of the proposed changes in any of the pre-election manifestoes, and it forming no part of the 2011 election campaign. The Government has also made it clear that the numbers of responses it receives to the consultation, only the points raised, will not be taken into account. This looks, and feels, like a wholly undemocratic imposition by the state on society.

Because the state regulates civil marriage (as the Church does religious marriage) it is not entitled to do violence to the institution of marriage by altering its essential, unchanging characteristics. Marriage is a partnership between two (and only two) people, a man and a woman, freely undertaken, for life; a sexual partnership, requiring sexual exclusivity, brought into being by consummation; and oriented to and uniquely apt for, the coming to be and rearing of children, even if children do not result.

Attempts to subtract from or add to these characteristics harm the nature of marriage. The regulations set by the British state over the past 200 years – concerning minimum age, free consent, and so on – are designed to protect and guarantee those inherent characteristics. The state has a mandate to regulate, but not radically alter, marriage. The conditions the state sets are not discriminatory, because, given the conjugal nature of marriage, they are reasonable; the good which marriage brings both to those involved and to society would be undermined by changing them.

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<sup>12</sup> Archbishop Peter Smith, statement, 20 February 2012.

Those who oppose the attempt to create 'gay marriage' are sometimes lumped with opponents of interracial marriage in 1950s America.<sup>13</sup> The analogy is both ludicrous and offensive: it is in the nature of marriage that any man and woman can enter it, beyond barriers of race and class and culture. The grotesque anti-miscegenation laws seeking to outlaw interracial marriage sought to redefine marriage by adding to it the element of race, in the same way that proponents of 'gay marriage' are seeking to redefine it by eliminating the key element of male-female complementarity.

## Abandoning marriage

In any debate about same-sex marriage, its advocates often ask: "how are heterosexual people or society at large affected if gay people are given the right to marry?" The question presupposes that expanding marriage to allow same-sex couples to enter it is merely a question of accommodating a minority need or demand. A small "concession" to a minority, it is contended, would not change anything for the "majority".

Advocates point to those countries where gay marriage has been legalised in the past 10 years – Netherlands (2001), Belgium (2003), Canada & Spain (2005), South Africa (2006), Portugal and Argentina (2010) – and challenge opponents to produce evidence of harm. But of course, establishing such evidence is all but impossible; it would be extremely hard, for example, to correlate the rise in the Spanish divorce rate since 2005 to the introduction of gay marriage. The impact on culture is likely to be far more deep-seated and far-reaching than any 10-year period could demonstrate.

Yet one thing is clear: the redefinition which the Government proposes would require the state renouncing the conjugal understanding of marriage. Because society takes its cue from laws and the state, that redefinition will send a clear message that the state no longer holds to that conjugal understanding. The implication will be that the union of husband and wife is not, after all, a privileged context for the creation and upbringing of a child, and the state will have renounced the promotion of marriage as providing that optimum context.

To suggest that marriage between a man and a woman offers the best possible environment for a child will over time come to be considered narrow-minded and intolerant. The very terms "husband and wife", "mother and father", would need to disappear from public and educational literature to avoid "exclusive" or "intolerant" language. The redefinition of marriage will require the cultural dethroning of the conjugal ideal. This is not a smaller matter for future generations of children, whose interests risk being sacrificed on the altar of an ideological view that same-sex relationships are as worthy as heterosexual ones of being upheld by the state. "Redefining marriage will have huge implications for what is taught in our schools, and for wider society. It will redefine society since the institution of marriage is one of

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<sup>13</sup> "Until the late 1960s, in some American states it was illegal for black adults to marry white ones, but precious few would defend that ban now on grounds that it was 'traditional': 'Equal rights: the case for gay marriage', *The Economist*, 26 February 2004.

the fundamental building blocks of society. The repercussions of enacting same-sex marriage into law will be immense.”<sup>14</sup>

Losing the idea of gender complementarity as necessary for children will also have consequences. As the columnist Matthew Parris, who is gay, writes: “I am glad I had both a mother and a father, and that as after childhood I was to spend my life among both men and women, and as men and women are not the same, I would have missed something if I had not learned first about the world from, and with, both a woman and a man, and in the love of both.”<sup>15</sup>

Finally, once we remove from our understanding of marriage the idea of complementarity – the sexual union of a man and a woman – we are left with no ground of reason to resist pressure to remove any of the other conditions of marriage. Why should marriage be sexually exclusive? Why should it be confined to two people? If the state renounces conjugality as an essential feature of marriage there can be no coherent basis for refusing other groups – relatives, bigamists, polygamists – an equal right to marry. The prospect may, for the time being, be unlikely; but it serves to illustrate that, in legislating for gay marriage, the state must abandon any coherent notion of marriage at all.

## Conclusion

The normal approach taken by Government wishing to introduce a major reform to social policy is to begin with a Green Paper, then a White Paper. Yet this new policy has sprung from nowhere, announced at the 2011 party conferences with no previous warning, let alone being indicated in any of the party manifestoes prior to the May 2010 general election.

It is a mistaken policy, which contains at its heart a serious misunderstanding of the idea of equality and discrimination. It also contains a deliberate, if unconscious, intention on the part of the state to remove from the key element of marriage – its conjugality. As this paper has argued, marriage, whether civil or religious, is a fundamentally conjugal institution which at its heart contains the biological union of a man and a woman capable, by virtue of that fact, of begetting and nurturing children. So fundamental is that understanding, so vital to the welfare of society and above all of children, that any Government wishing to overturn it must face, as this Government surely will, an impassioned response from civil society.

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<sup>14</sup> Cardinal Keith O’Brien, ‘We cannot afford to indulge this madness’, *Sunday Telegraph* 4 March 2012.

<sup>15</sup> Matthew Parris, ‘Did *The Spectator* prompt the new consultation on gay marriage?’ 15 October 2011



## **SURVEY ON ATTITUDES TO MARRIAGE**

by ComRes for Catholic Voices

(*Methodology Note:* ComRes surveyed 2,004 members of the public in GB online between 23rd and 24th February 2012. Data were weighted to be representative demographically of all GB adults.)

### **RESULTS SUMMARY**

*Do you agree or disagree with each of the following statements?*

|  | Agree (%) | Disagree (%) | Don't know (%) |
|--|-----------|--------------|----------------|
| Although death or divorce may prevent it, children have the best chance in life if raised by their own mother and father in a stable, committed relationship | 84        | 9            | 7              |
| Marriage should continue to be defined as a life-long exclusive commitment between a man and a woman   | 70        | 22           | 9              |
| Marriage is important to society and should be promoted by the state   | 68        | 19           | 13             |
| Stable relationships between same-sex couples should be legally recognised through the civil partnership scheme  | 59        | 23           | 18             |

*Observations (by ComRes):*

- There is strong support for the institution of traditional marriage, with large majorities of people agreeing that marriage is important to society and should be

promoted by the state (68%) and that marriage should continue to be defined as a life-long exclusive commitment between a man and a woman (70%);

- Women (64%) are more likely than men (54%) to agree that stable relationships between same-sex couples should be legally recognised through the civil partnership scheme, although it is worth noting that a majority of both do support it;
- There is a general trend by age group in response to these statements, with older people (ie those most likely to vote) more likely to be supportive of traditional marriage, more likely to agree that children have the best chance in life if raised by their own mother and a father, and less likely to agree that same-sex couples should be legally recognised through the civil partnership scheme;
- A similar trend is apparent by marital status; 83% of married/co-habiting people agree that marriage is important to society and should be promoted by the state, compared with just 55% of single people;
- Parents with children aged 18 or under (85%) are no more or less likely than those from the population as a whole (84%) to think that children have the best chance in life if raised by their own mother and a father in a stable committed relationship. However, people with children are more likely than those without to agree that marriage should continue to be defined as a life-long exclusive commitment between a man and a woman.

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*\*\*\*ComRes interviewed 2004 GB adults online on 23-24 February 2012. Data were weighted to be representative of all adults. ComRes is a member of the British Polling Council and abides by its rules. Full tables at [www.comres.co.uk](http://www.comres.co.uk) from 00.01 Thursday 8 March.*