



# *Marriage Between Church and State*

**A REPORT ON CLERGY SERVING AS 'AGENTS OF THE STATE'**

**A REPORT OF THE COMMISSION ON THEOLOGY AND CHURCH RELATIONS  
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**I**N ITS 1981 REPORT *HUMAN SEXUALITY: A THEOLOGICAL PERSPECTIVE*, the LCMS Commission on Theology and Church Relations (CTCR) spoke of the important relationship between the divine institution of marriage and the *institutionalization* of marriage within earthly societies — its character as an “earthly estate.”<sup>2</sup> To state that marriage is a divine institution is to say that God Himself brings about marriage. He joins together the couple and thereby *effects* their marriage. But He acts by means of human beings and institutions. HS1981 reminded us that the “essence of marriage” — the source of its validity as a divinely instituted earthly estate — is mutual consent, the “commitment of a man and woman to a permanent sharing of their lives.”<sup>3</sup>

Such a commitment inevitably has a public dimension: It is recognized by others to be a marriage. Such public recognition means that marriage must meet particular customary expectations. For example, both Christians and non-Christians have ordinarily sought the blessing or approval of parents before being married.<sup>4</sup> This and many other customs and laws restrict what is and is not a marriage. In our context, legal restrictions clearly indicate that marriage is subject to civil authority. These restrictions

“ordinarily serve human well-being — a purpose for which God has established civil authority (ROM. 13:4A).” Their intent is to safeguard spouses and children, but they also “encourage thoughtful, reflective commitment and thus protect the interest not only of society but also of those who think they are in love.” For all these reasons, any cavalier or “unjustified disregard” for marriage laws is a sin against the Fourth Commandment.<sup>5</sup>

Therefore, although marriage is established by God, the 1981 report declares that marriage is not “primarily an ecclesiastical matter.” Indeed, in the first centuries of the church, marriage was viewed as a secular act. This does not negate the reality of marriage as a divine institution. Rather, it is a reminder that “as a divinely ordained earthly estate [marriage] can be legitimately contracted in the civil realm.”<sup>6</sup> However, the secular or civil aspect of marriage rightly does not in any way discourage the long-standing Christian practice of solemnizing the vows of marriage in the context of public worship with the Word of God and prayer. Such “consecration signifies that marriage is holy because it is God-ordained and that it can be received with thanksgiving (1 TIM. 4:5).”<sup>7</sup>

As a divine institution that God enacts by means of human authority, marriage stands firmly between the human and the divine, or, as we may put it today, between church and state. The church is responsible to God to uphold and teach rightly what He does in bringing together a man and woman in marriage. The state is responsible to God to order and safeguard marriage for the well-being of the individuals and communities under its authority. Christians, therefore, seek to obey both God and man with regard to marriage. To be obedient to God requires honor and obedience to the human authorities God establishes (ROM. 13:1–7). Such honor is a necessary concern in a Christian consideration of marriage.

<sup>1</sup> In correspondence dated April 22, 2015, LCMS President Rev. Dr. Matthew Harrison first raised the potential of a request for the CTCR to consider the matter of whether clergy should continue to serve as agents of the state in the matter of marriage. Since that time, the LCMS Southeastern District asked for guidance with regard to marriages that do not secure legal recognition (SED overture 02-18-09) and President Rev. Dr. Donald Fondow of the LCMS Minnesota North District also raised questions pertaining to this same matter (correspondence dated April 16, 2018).

<sup>2</sup> Commission on Theology and Church Relations, *Human Sexuality: A Theological Perspective* (St. Louis: The Lutheran Church—Missouri Synod, 1981), 10–11. Download the report at <https://files.lcms.org/wl/?id=clwPAaUhVLMUHnmahFbTvJtQUwji0yYS>. In 1981 the CTCR prepared *Human Sexuality*, a detailed report addressing foundational matters of gender, marriage and sexuality, as well as then-current problems facing the Christian understanding of those topics. (Hereafter abbreviated as HS1981). An update to the report is currently being undertaken by the Commission.

<sup>3</sup> HS1981, 10.

<sup>4</sup> HS1981, 13.

<sup>5</sup> HS1981, 10–11.

<sup>6</sup> HS1981, 11.

<sup>7</sup> HS1981, 11.

## Defining Marriage

As we review the 1981 report, several questions may emerge. The first is, who defines marriage? The obvious answer for Christians, as is evident throughout the 1981 report, is that God alone defines it. He does so “from the beginning” (MATT. 19:4, 8) in the simple assertion of Genesis: “Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh” (2:24).<sup>8</sup> In this verse, Scripture claims — even as we confess — that God Himself gives marriage as part of His primordial creating work. As the “therefore” in 2:24 makes plain, marriage comes from God the Creator. As He begins this world, He begins marriage. It is His act and, therefore, His alone to define.

The “definition” from Genesis 2:24 begins, importantly, with a man and a woman. It then stresses three elements — leaving parents, holding fast (“cleaving”) and becoming one flesh (physical union). God defines marriage by way of this description. That the definition endures is evident as our Lord Jesus affirms this very verse in Matthew 19, and His apostle, Paul, echoes the same words in Ephesians 5.

The definition of marriage in Scripture does not employ the kind of terminology used by law codes today. Scripture’s language is *descriptive* — emphasizing verbs as noted above. The verbs describe the actions that, cumulatively, result in the bond of a man and a woman in marriage. Does this *merely describe* a form of marriage in biblical times, like a reference to Aaron’s robe in Exodus 28:4, or does it *prescribe* an enduring pattern for marriage? Some Christians who support same-sex marriages and other redefinitions of marriage argue that Genesis 2:24 is only descriptive.<sup>9</sup>

Such a view does not square with the Lord’s teaching in Matthew 19:1–6. Jesus declares that what was true in the beginning, when God made male and female and joined them together, continues to be the case when He quotes the conclusive verse from Genesis 2:24 that begins with the term “therefore” (כֵּן לֵאמֹר), and then employs verbs with a continuing sense (SEE MATT. 19:5). The

continuing force of this standard for marriage is doubly certain when Jesus emphatically concludes His answer in verse 6: “So they are no longer two but one flesh. What therefore God has joined together, let not man separate.”

All of this, of course, is in answer to a hypothetical question about divorce that the Pharisees have devised to trick Him. Jesus’ answer indicates that, far from being merely descriptive, Genesis 2:24 has enduring validity in its understanding of marriage. Rather than allowing for modifications to a merely descriptive view of marriage long ago, Jesus instead takes people back to that description so that they will understand the enduring essence of marriage. The following verses in Matthew 19 (vv. 7–12) include Jesus’ condemnation of divorces that reflect only the hardness of heart of humanity, and not any propensity for God to redefine marriage.

Paul echoes the same words from Genesis 2:24 in Ephesians 5. His discussion of marriage in verses 22–33 views earthly marriage in parallel with the marriage of Christ and His Bride, the Church. As Christ and His Bride are, so the husband and wife are to be. Again, this is not merely descriptive, for how could it be when every earthly marriage includes a fallible, sinful husband and a fallible, sinful wife? No, the emphasis here is entirely prescriptive. The husband is to pattern his care and conduct toward his wife according to Christ, just as the wife is to pattern her marital relationship according to Christ’s holy Bride.

Consequently, on the basis of the words of our Lord, we must echo and reaffirm the understanding of HS1981 regarding the Bible’s view of marriage: “Marriage is the lifelong union of one man and one woman entered into by mutual consent.”<sup>10</sup> Ephesians 5 reminds us of God’s will for how this lifelong union is to be lived out in the lives of men and women in whom the Holy Spirit’s sanctifying power is at work.

## The State and Marriage

Where does “the state” fit into the words of Genesis 2:24? As HS1981 shows, by obliging us to honor and obey parents, God also obliges honor and obedience to other human “authorities.” As the 2017 edition of the Small Catechism explains: “Other authorities (legal guardians, pastors, teachers, employers, government officials) also serve as God’s representatives for the support and pro-

<sup>8</sup> כָּן is the Hebrew verb translated “shall leave” in the ESV; וַיִּשְׁמְרוּ is the verb translated “hold fast”; and וַיִּשְׁמְרוּ is translated “shall become.” The verbs are in the imperfect (similar to future) tense.

<sup>9</sup> For example, Austen Hartke and Emmy Kegler, *Reconciling Scripture for Lutherans* (ReconcilingWorks: Lutherans for Full Participation, 2019). The CTCR website provides two separate responses by individuals to this booklet. See Thomas Egger’s (<https://files.lcms.org/wl/?id=jUl77cQeBrkotQcoTWvmS4DgkKuTPsIj>) and Timothy Saleska’s (<https://files.lcms.org/wl/?id=UIwSl1gWZ9rcsl22eX4cGqxBUVkmrK9y>) reactions.

<sup>10</sup> HS1981, 10.

tection of our life on earth.”<sup>11</sup> In the Large Catechism, Luther speaks of the distinctiveness of honor: “Honor includes not only love, but also deference, humility, and modesty directed (so to speak) toward a majesty concealed within them.”<sup>12</sup> Then he applies the Fourth Commandment not only to “fathers by blood,” but also to “fathers of a household, and fathers of the nation” and then to “spiritual fathers” (economic, governmental and pastoral authorities respectively).<sup>13</sup>

This means that, since God has instituted marriage as a *human* institution, temporal authorities may shape various aspects of that institution.<sup>14</sup> We might say that God’s *primary* definition of marriage — a man and woman who consent to a lifelong union — may be supplemented by secondary, humanly defined elements. Humans, therefore, also define marriage, but only in a secondary way. This distinction between “primary” and “secondary” definitions should not be misunderstood. We note that marriage as a divine institution does not depend on special revelation. Rather, natural law leads all of humanity to marriage. Although marriage may differ in some ways, according to various times and cultures, nevertheless men and women have consented to marital bonding in a manner that is recognized publicly (by a tribe, a community, a nation, etc.). Despite great variety, marriage is nevertheless marked by public acts that enable its acknowledgement as such within an individual

society.<sup>15</sup> Our nature itself — as created by God — leads humanity into marriage according to right reason. The great variety within marriage, however — how it is contracted, what it implies regarding property, and so forth — is an indication that in a fallen world reason’s guidance is never infallible. Hence, many secondary elements accrue to marriage in its various cultural manifestations and may or may not be beneficial.

Some kinds of secondary definitional elements are purely cultural in nature. The kinds of garments and accoutrements expected to be worn for a wedding (SEE IS. 61:10; MATT. 22:11–12) are one example. More importantly, certain rituals are typically part of localized, secondary definitions of marriage.<sup>16</sup> The provision for the exchange of a dowry is a significant example because it was (and is) so often included in marriage customs. But, in addition, the employment or absence of verbal commitments, the specific commitments that might occur between husband and wife and their respective families, rules about divorce, and many other aspects of marriage have varied over time.<sup>17</sup> Among the more significant changes that have taken place is that, while throughout nearly all human history marriage was understood primarily as an economic tie between families, only in the past few centuries (and especially in the western world) has marriage come to be understood primarily from a romantic standpoint.<sup>18</sup>

<sup>11</sup> *Luther’s Small Catechism with Explanation* (St. Louis: Concordia, 2017), 81 (Question 54).

<sup>12</sup> LC I 106; KW 401. References to the Lutheran Confessions are from Robert Kolb and Timothy J. Wengert eds., *The Book of Concord: The Confessions of the Evangelical Lutheran Church* (Minneapolis: Fortress, 2000), with the specific confession abbreviated, the section and paragraph numbers, and the page in the volume following the abbreviation KW.

<sup>13</sup> LC I 158; KW 408.

<sup>14</sup> Note the valuable role that governments ought to play in human society — a role that God has given to them. On this, see Page 6 of the Commission’s *Guidelines for Crucial Issues in Christian Citizenship* (1968): “Civic order is not to be thought of in static terms. It is rather to be conceived of as that condition of society in which the many and varied tensions inherent in any kind of community life are kept in creative balance to provide opportunity for fulfillment in terms of both personal life and group enterprise. These are the conditions which constitute that ‘quiet and peaceable life in all godliness and honesty’ to which the apostle refers in 1 Timothy 2:2.” (Available online at <https://files.lcms.org/wl/?id=0jF0zbZTx87Q5UNMhO5z-ThuSVpPMyp5Y>.)

<sup>15</sup> In much of human history, marriage is not subject to the sort of civil authority to which we are accustomed. Nevertheless, even in preliterate cultures without any written law codes, marriage exists and does so under the authority of cultural or customary restrictions that have a force equal to written law. The human authorities that administer and support such customs thus hold their “office” from God (Rom. 13:1–7) as much as any other governing authority. This reality testifies to the natural law — the law written on the human heart (Rom. 2:12–16).

<sup>16</sup> Note this line from Luther’s *Marriage Booklet*: “So many lands, so many customs,” says the common proverb. For this reason, because weddings and the married estate are worldly affairs, it behooves those of us who are ‘spirituals’ or ministers of the church in no way to order or direct anything regarding marriage, but instead to allow every city and land to continue their own customs that are now in use.” See *Marriage Booklet* 1; KW 367–68.

<sup>17</sup> Stephanie Coontz shows some of the various understandings of marriage and how it has developed worldwide through the centuries. See *Marriage, A History: How Love Conquered Marriage* (New York: Penguin Books, 2005).

<sup>18</sup> “For most of history it was inconceivable that people would choose their mates on the basis of something as fragile and irrational as love and then focus all their sexual, intimate, and altruistic desires on the resulting marriage” (Coontz, *Marriage*, 15). She notes this does not exclude love between spouses (which clearly often developed within marriage) or imply that people did not fall in love. She does, however, cite widespread examples of the prevailing bias against marriage for love and, in some cases, against too much affection between spouses (17–23).

Differences of marriage customs and in the understanding of marriage are widespread as one considers it in the great variety of human cultural contexts. But even within the narrower world of Holy Scripture, marriage *customs* have varied significantly. David Instone-Brewer provides helpful background on the understanding of marriage in the Ancient Near East, the biblical world itself and also rabbinic Judaism.<sup>19</sup> In the biblical context, no marital variation is more significant than the widespread evidence for polygamy in the Old Testament contrasted with the New Testament's perspective on marriage, which clearly has in view one man and one woman in a lifelong commitment.<sup>20</sup>

It may be helpful to compare the Bible's descriptive definition with other definitions of marriage. For example, Samuel Johnson defined marriage in 1755:

Marriage is a contract both civil and religious, by which the parties engage to live together in mutual affection and fidelity, till death shall separate them. Marriage was instituted by God himself for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and

education of children.<sup>21</sup>

Johnson's definition of marriage speaks in terms of a lifelong civil and religious contract between the two sexes with an emphasis on affection and fidelity, the prevention of sin, the promotion of happiness and the care of children.

A legal definition of marriage from 1856 explicitly denies marriage to slaves and does not address any purposes for marriage. It includes no mention of marriage as a religious contract, nor does it specify how it is contracted beyond a reciprocal engagement. It reads as follows:

A contract made in due form of law, by which a free man and a free woman reciprocally engage to live with each other during their joint lives, in the union which ought to exist between husband and wife. By the terms freeman and freewoman in this definition are meant, not only that they are free and not slaves, but also that they are clear of all bars to a lawful marriage.<sup>22</sup>

Already in 1961 one could find mention of same-sex relationships as a form of marriage. *Webster's Third Dictionary* from that year defines marriage, emphasizing it as "consensual and contractual," but without mention of a religious dimension. In addition, it specifies that the relationship be legally recognized, but also allows for the use of the term "marriage" in relationships without legal recognition, such as same-sex relationships, that are "like marriage." It reads:

1a (1) the state of being united to a person of the opposite sex as husband or wife in a consensual and contractual relationship recognized by law (2): the state of being united to a person of the same sex in a relationship like that of a traditional marriage.<sup>23</sup>

In the 1980s and afterward, with rising attention to and greater support for legitimizing same-sex relationships, the initial reaction was a reaffirmation that

<sup>19</sup> David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids: Eerdmans, 2002). He provides ample background on the marriage contracts from these periods. While some contracts were written (typically when the dowry was very large), the evidence indicates that even without a document, the unwritten understanding of marriage included the same expectations as one would find in contemporary written contracts. Marriage contracts from the period include dowry details and also details regarding divorce, if the marriage should end in divorce. While there are indications also that a verbal formula was involved in marriage — with the husband saying, "Be my wife," and the wife, "Be my husband" — marriages were not egalitarian in any modern sense. He adds: "There is a general understanding throughout the ancient Near East that a wife can be divorced at will by a husband and have her dowry returned, but, if she has done wrong, she does not receive her dowry. There is also some evidence that wives were able to divorce their husbands in some situations" (19). With regard to women divorcing husbands in the Old Testament period, Instone-Brewer says the evidence is "sparse" (19). However, this was no longer the case under Rabbinic Judaism. Although they still could not divorce at will as could their husbands, marriage customs then clearly allowed women to petition a court to invoke fines against the husband when he had violated the terms of the marriage contract, effectively compelling him to grant her a divorce (85–87).

<sup>20</sup> Polygamy is never explicitly condemned in the Hebrew Scriptures. Indeed, the most prominent figures of the Old Testament such as Abraham, Moses and David had more than one wife. The 12 sons of Israel result from a combination of polygamy and concubinage (Gen. 29:31–30:24; Gen. 35:16). However, while not condemned, the OT reveals that polygamy often resulted in family discord (e.g., Gen. 21; Gen. 29–30) and, in the case of Solomon, in idolatry (1 Kings 11:1–8). Moreover, near the end of the prophetic period of the Old Testament, the Lord, through Malachi, condemns Israel for treachery against "the wife of your youth" (Mal. 2:14–15).

<sup>21</sup> *Dictionary of the English Language* by Samuel Johnson (1755), reference from Dennis Baron, "So How Do Dictionaries Define Marriage Anyway?" *The Web of Language* (April 29, 2015), accessed Jan. 22, 2021, <https://blogs.illinois.edu/view/25/163789>.

<sup>22</sup> "marriage." (n.d.) *A Law Dictionary, Adapted to the Constitution and Laws of the United States* by John Bouvier, (1856), accessed Jan. 22, 2021, <https://legal-dictionary.thefreedictionary.com/marriage>. Although this definition is generally consistent with other definitions in this section, its repugnant denial of marriage to slaves is theologically illegitimate and contrary to the Word of God. Where enacted legally, the state would thereby be guilty of invalidating marriage for such people and making a biblical understanding of marriage illegal for them.

<sup>23</sup> *Webster's Third New International Dictionary of the English Language, Unabridged*, ed. Philip Babcock Gove (New York: G. and C. Merriam, 1961).

marriage is *only* between a man and a woman. Perhaps the best example of this reaffirmation was the Defense of Marriage Act of 1996:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife.<sup>24</sup>

There is an obvious consistency in these representative definitions. In each case, marriage is understood as a contractual relationship between the sexes — that is, between a man and a woman — that has legal (civil) standing. That the relationship is consensual is either implied or explicit. It may be noted that how the marriage achieves its legal or civil standing is not articulated — thus allowing that so-called common-law marriage is by no means excluded.

### Excursus: Common-Law Marriage

In HS1981, the CTCR addressed the matter of common-law (or *de facto*) marriage after having first argued two related points. First, the Commission stated that the “essence of marriage” is not a legal or ecclesiastical matter. Rather, “the consent of the partners belongs to the essence of marriage.”<sup>25</sup> Second, we note that the CTCR’s focus on consent did not deny that marriage is “a divine institution given by God.”<sup>26</sup> The “consent” under consideration is a “commitment to a complete, lifelong sharing of life in marriage,” without which any “sexual relations are contrary to God’s will.”<sup>27</sup>

Only then does the report consider common-law marriage.

Because marriage is not essentially a legal or ecclesiastical matter, it is possible, however, for a man and woman to give themselves physically to each other, affirming to each other and to the

public their consent to share their future lives in a permanent union, recognizing that their union might be fruitful and to do this without a public ceremony. Such a relationship in reality constitutes marriage (common-law marriage) and cannot be called fornication.<sup>28</sup>

Note, however, that despite this caveat, the Commission did not endorse or encourage common-law marriage. Rather, the report continues:

While not a violation of the Sixth Commandment, such a way of proceeding may involve an element of deceit in that it implies that the individuals involved are living in a single state, a condition which does not in fact exist and which may cause offense to some. Moreover, this relationship sets aside the regular societal safeguards which have been established for the protection of the rights and interests of all the parties involved, and in some states it is a violation of the legal requirements for marriage.<sup>29</sup>

Here we should add that the 1981 consideration of common-law marriage did not envision a circumstance in which couples might live together without securing a marriage license from civil authorities as an act of protest against changes in marriage law. We consider that possibility below in the section titled “*Should Christians Decline Legal Marriage? or Can Christians Conscientiously Object to Legal Marriage?*”

### Marriage after Obergefell

The understanding that *legal* marriage was always between a man and a woman was ruled unconstitutional in the Obergefell v. Hodges decision of June 26, 2015. Central to the argument of Obergefell were previous changes in marriage law. Its examples were “the decline of arranged marriages and the abandonment of the law of coverture.”<sup>30</sup>

<sup>28</sup> HS1981, 12.

<sup>29</sup> HS1981, 12.

<sup>30</sup> Obergefell v. Hodges, 576 U.S. 644 (2015); Syllabus of the Opinion, 2. The law of coverture (or *couverture*) was a common law provision that a married woman did not have a separate legal existence from her husband since they were, legally, one person (grounded in Genesis 2’s “one flesh”). The law was abolished on a state-by-state basis in the late 1800s with women’s property rights legislation. S.v., *coverture* (n.d.), *West’s Encyclopedia of American Law, edition 2* (2008), last accessed Jan. 22, 2021, <https://legal-dictionary.thefreedictionary.com/coverture>. We should note that in the brief survey of definitions herein, there is no mention of arranged marriages or the law of coverture — or any other specific marriage customs having to do with how marriages take place.

<sup>24</sup> U.S. Code § 7. Definition of “marriage” and “spouse” (Pub. L. 104–199, § 3[a], Sept. 21, 1996, 110 Stat. 2419) as quoted by the Legal Information Institute, Cornell Law School, <https://www.law.cornell.edu/uscode/text/1/7> (last accessed Jan. 21, 2021). This definition with its explicit references to “one man and one woman” was a result of the Defense of Marriage Act, signed by President Bill Clinton in 1996.

<sup>25</sup> HS1981, 11.

<sup>26</sup> HS1981, 11.

<sup>27</sup> HS1981, 12.

In the thinking of the majority, the fact that such changes occurred through time meant that the understanding of marriage itself is subject to change with respect to its basic foundation as a man-woman relationship. The majority claims the validity of its novel definition even though it affirms the timeless, “transcendent” importance of marriage and acknowledges that its history reveals it to be “a union between two people of the opposite sex.”<sup>31</sup> Nevertheless, the court ruled that this stipulation ought to be changed to preserve freedom of choice, arguing that the Fourteenth Amendment to the U.S. Constitution ensures “the right to enjoy liberty as we learn its meaning.”<sup>32</sup>

A post-Obergefell definition from Wex<sup>33</sup> completes this survey of marriage definitions.

[Marriage:] The legal union of a couple as spouses. The basic elements of a marriage are: (1) the parties’ legal ability to marry each other, (2) mutual consent of the parties, and (3) a marriage contract as required by law.<sup>34</sup>

We note that marriage is still a legal union between two parties involving their mutual consent, but the significant difference, of course, is the removal of the clear references to male and female persons in previous definitions. Now the reference is merely to “a couple” in the current legal definition. For that reason, while all of the earlier definitions are largely consistent with the biblical definition, the final definition is not.

## When the State’s Understanding of Marriage Differs from God’s

What is the faithful Christian or the church itself to do when the state’s definition of marriage is inconsistent with or contrary to God’s own teaching about marriage as found in Holy Scripture?

It may be helpful to ask that question of another time regarding another matter of inconsistency. If we turn to

the Old Testament, we do not see the full equivalent of the modern nation state, but we do see examples of the “left-hand kingdom” or something akin to “civil law.” That is the case both when we look at Israel’s existence under various alien powers such as Egypt, Babylon and Assyria, but also when we look at Israel’s “theocratic” period during the period of time from Moses through the judges and the kings. During that theocratic period, we have the Torah/Law of Moses, and with it the benefit of knowing the laws that not only guided the spiritual life of Israel (in its worship, cleanliness and diet), but also laws that were roughly comparable to civil or state law today, guiding matters of life, property, family and marriage.

With regard to marriage, the creation narratives on the opening pages of the Torah provide, as we have seen, the standard for how marriage was created and how it is intended by God to continue to be practiced. However, under the Law of Moses, given by God at Sinai, we also see reflections of a certain inconsistency between the practices of Israel and the Bible’s foundational view of marriage given at Creation. This is the case because the Law of Sinai provides both for divorce (DEUT. 24:1-4; EX. 21:8) and polygamy (DEUT. 21:15-17; 25:5-10). What are the faithful to do in light of this?

First, we must recognize the fall, and with it recognize that provisions in the Law addressing things like divorce and polygamy serve the purpose of mitigating their damaging effects. They are not endorsements of either polygamy or divorce — as if the Law of Moses encourages such practices or presents them as inherently good. Jesus adopts this perspective when He addresses the matter of divorce in Matthew 19. After establishing the foundational understanding of marriage from Genesis 2:24 with its necessary implication of permanence, He brushes aside the Pharisees’ ineffectual objection that Moses (the Law) permitted divorce. With His emphasis on the two becoming one, Jesus effectively rejects polygamy as also inconsistent with the Creator’s original intent for marriage, saying, “Because of your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. And I say to you: whoever divorces his wife, except for sexual immorality, and marries another, commits adultery” (MATT. 19:8-9).

Divorce does occur in a fallen world. The laws in the Torah concerning divorce lessen its damage. The same can be said with regard to polygamy. Like divorce, it exists only after the fall, and it occurs not because it is prescribed for God’s chosen people, but because they, in their fallen nature, easily fall into the patterns and

<sup>31</sup> Obergefell, 3 and 4.

<sup>32</sup> Obergefell, 11. The Court identifies four rationale for its decision: (1) personal choice in marriage, (2) marriage’s unique importance for the intimate association of two committed individuals, (3) the protection from humiliation afforded by marriage for children of same-sex couples, and (4) that marriage preserves social order. Syllabus Pages 3-4.

<sup>33</sup> Wex is a free, collaborative legal dictionary prepared by legal experts and sponsored and hosted by Cornell Law School. See Cornell Law School Legal Information Institute, <https://www.law.cornell.edu/wex#:~:text=Wex%20is%20a%20free%20legal,found%20in%20the%20Wex%20FAQ>.

<sup>34</sup> See “Marriage” in Wex, <https://www.law.cornell.edu/wex/marriage#:~:text=Definition>.

practices of the surrounding nations and peoples. Old Testament laws pertaining to polygamy protect the women who may so easily be victimized by it. It seems completely valid to include here also something akin to Jesus' judgment in Matthew 19:9. "Because of your hardness of heart Moses allowed [polygamy], but from the beginning it was not so."

So, we return to the question: What are faithful believers to do when laws allow for practices we know are contrary to God's perfect will? We should, like Israel, first realize that in a fallen world among heart-hardened men and women, God's will *is* violated. With that, we, too, must recognize the many ways in which we all stand convicted of sin and need to practice and encourage repentance — for all stand convicted. And, sadly, we must recognize that even with repentance, sin's consequences are such that they cannot always be made right. On the practical level, we have to accept — with bitter acquiescence — that sometimes life in a fallen world will oblige a society to have laws that allow certain sins to occur, all the while seeking as much as possible to mitigate their consequences.

It is just such an accommodation that Christians have acknowledged, to various degrees, regarding divorce. No faithful, biblical view of marriage can ever view divorce as an inherent good. Having affirmed the God-given purposes of marriage — as a union of mutual love with the hope of children and the intention to help one's spouse in his or her battle against sin — HS1981 reminded us of the reason marriage requires permanence: "It gives rise to a set of hopes and expectations which ought not be disappointed, not only because we have a commandment to the contrary, but because to disappoint them is to fail in a fundamental human commitment answering to an equally fundamental human need."<sup>35</sup>

So, we accommodate divorce, but without any endorsement of it as inherently good. We acknowledge times when it is unavoidable, even for Christians. However, within the church we ought rightly to restrict divorce far more than in the wider culture. Aware of the brokenness of the world and the need to deal with the realities there, the church nevertheless always honors and strives for the ideal of God's will for marriage as a lifelong union.<sup>36</sup> In addition, the church may also take issue with specific aspects of

<sup>35</sup> HS1981, 25.

<sup>36</sup> Note two CTCR reports: *Divorce and Remarriage* (1987), [www.lcms.org/Document.fdoc?src=lcm&id=318](http://www.lcms.org/Document.fdoc?src=lcm&id=318), and *The Creator's Tapestry* (2009), [www.lcms.org/Document.fdoc?src=lcm&id=310](http://www.lcms.org/Document.fdoc?src=lcm&id=310) (see Pages 46–48). See also Question 74 and its answer in *Luther's Small Catechism* (Page 100).

divorce law. Christians may question with good reason the notion of "no fault" divorce, at least from a moral standpoint, for divorce can only occur because of sin. It is *always* the result of human fault and failure and unfaithfulness of one sort or another. Accommodation is not approval or endorsement, but it is unavoidable in the matter of divorce in certain situations.

Similarly, no faithful Christian can endorse polygamy. Even with its prevalence among great figures in the Old Testament narrative, the Hebrew Bible consistently implies that faithful monogamy, not polygamy, is the ideal for God's people.<sup>37</sup> This implication is made explicit in the New Testament.<sup>38</sup>

As a result, the practice of polygamy is not an immediate problem in the western church today.<sup>39</sup> That is not the case for churches in certain missionary settings, however. While most Christian churches have discouraged or forbidden polygamy as a marital option for baptized Christians, the case has been more challenging for polygamists who are converted. While some churches have required such men to release any wives other than their first wife, others have accommodated polygamy for that generation lest the other wives of a polygamist (and any children) be left in a hopeless circumstance without care or provision and subject to scorn and abuse.<sup>40</sup>

## The Challenge of Same-Sex Marriage

Several questions are helpful in considering the current challenge of how Christians should address themselves to a matter such as legalized same-sex marriage in the western world today.

### 1. Does the state's definition invalidate biblical marriage or make it illegal or subject to penalty?

In the Soviet Union, the Communist party attempted during a brief period of time to abolish marriage.<sup>41</sup>

<sup>37</sup> See Psalm 128:3; Proverbs 12:4; 18:22; 19:14; 31:10–31; Isaiah 50:1; Ezekiel 16:8; Malachi 2:14.

<sup>38</sup> Matthew 19; 1 Corinthians 7; Ephesians 5:22–33; 1 Timothy 3:2, 12; 5:9; Titus 1:6.

<sup>39</sup> Given America's rapidly changing sexual climate, one cannot discount the possibility that polygamy may become a pressing problem for the church to address. Obergefell has, arguably, opened the door to legalization of polygamy. Moreover, the practice does exist in segments of Mormonism and elsewhere.

<sup>40</sup> See, for example, Laura Rademaker, "The Polygamy Question: Missions, Marriage, and Assimilation," *The Journal of Religious History* 43 (2) (2019): 251–68, <https://doi.org/10.1111/1467-9809.12585>.

<sup>41</sup> See Anonymous, "The Russian Effort to Abolish Marriage," *The Atlantic*, July 1926, <https://www.theatlantic.com/magazine/archive/1926/07/the-russian-effort-to-abolish-marriage/306295/>.

This repudiation of married life may serve as an extreme example of how civil law might thoroughly corrupt the understanding of marriage. Any state that would endorse such a repudiation would create a moral crisis of monumental proportion for faithful Christians, who would be compelled to retain the substance of marriage even though they *could not* retain it in any legal manner. They would, thereby, be compelled by conscience to engage in a form of civil disobedience. A faithful church would also, of necessity, be required to make this a matter of public confession and action as it supported, enabled and encouraged men and women to make lifelong vows of fidelity and love. And, while engaging in such acts of civil disobedience, both individuals and churches should, if necessary, willingly suffer the consequences of such confession and practices.

In our judgment, the current understanding of marriage in the U.S. as illustrated above from Wex (see page 7) is not a complete rejection of marriage. The marriage of a heterosexual couple is fully consistent with it, although from a Christian perspective the definition certainly confuses marriage by allowing same-sex couples to be married. It does not, however, *require* a heterosexual couple who wish to marry to disobey civil marriage law in order to uphold biblical teachings and practices.

A marriage according to a biblical understanding would not be invalid, nor would it be subject to penalty under this view of marriage. Indeed, the marriage of a Christian couple would continue to enjoy legally insured benefits under U.S. marriage law, such as reduced taxes and provisions for easy inheritance, sharing in pensions and Social Security, and other benefits. It is important to realize that none of those benefits changed for the heterosexual couple when homosexual couples were given access to them. This legal understanding, regrettable as it is, does not require a Christian couple to engage in civil disobedience in order to marry.

## **2. Does the state prescribe or impose invalid marriages upon individual Christians?**

It seems completely unrealistic that any current jurisdiction in the United States would impose marriage under any circumstances. When marriages have been imposed in the recent past, that has typically occurred in cases when an unmarried girl or woman became pregnant and marriage between her and the man who impregnated her was imposed by parents or communities, but not by force of civil law or statute.

## **3. Does the state prescribe unbiblical definitions of marriage for the church,<sup>42</sup> impose any unbiblical practices upon the church, or in any way seek to prevent the church's obedience to God in the church's marriage practices?**

Again, the answer to the question is no, but we answer here with somewhat less confidence. We are thankful that, despite some threatening signs, no church or Christian minister has yet been compelled to go against conscience in performing weddings. That seems unlikely in the near term, but the threat of state sanctions against churches or ministers who refuse to allow same-sex weddings or refuse to perform them is by no means unrealistic in the long term.

## **Should Christians Decline Legal Marriage? or Can Christians Conscientiously Object to Legal Marriage?**

The Christian citizen may well have strong objections to the post-Obergefell understanding of marriage that has been imposed on the United States. However, what does such a change imply for how we, as Lutheran Christians, engage in marriage? If the legal understanding of marriage has changed, shall we encourage laity to continue to secure licenses for their marriages? Shall we encourage clergy to continue to perform marriage ceremonies only for couples who have secured a license?

In the view of the Commission, any decision to refuse to secure a marriage license at this time is both unwarranted and unwise.<sup>43</sup> Because of our answers in the preceding section, we believe that it is unwarranted for Christian couples to refuse to secure legal marriage on the grounds that the definition of marriage *has changed* in the U.S. and elsewhere. While the definition has changed, it is not redefined in such a way that it excludes a positive Christian understanding of marriage. We cannot endorse any convincing moral argument for a couple to refuse licensure.

There may be Christian couples who decide not to secure a marriage license according to their own consciences. While no one can bind consciences, we

<sup>42</sup> "Church" in this context does not mean only the LCMS. It refers to all religious bodies that confess the Christian faith in the Triune God. Church is, in this context, the whole Christian church on earth as it lives under a particular state — the various "denominations" and "non-denominational" churches who share a creedal understanding of God.

<sup>43</sup> We realize that in some states one can secure a legal marriage apart from a license where common-law marriage or another form of marriage registry apart from a license is possible.

cannot encourage a refusal to marry legally. Rather, to such a couple we believe a strong caution is in order. First, the Fourth Commandment enjoins all Christians to obey governing authorities *unless obedience results in disobedience to God*. Second, we note that the purpose of marriage laws is to preserve and protect those who marry. Marriage laws provide legal protections against abuses of marriage in matters such as inheritance and divorce and are intended to provide some benefits and protection also for the children that are born or adopted in a marriage. They also make provisions for other important benefits, such as reduced taxation and shared Social Security and pension benefits, that enable a couple to live more economically and help surviving spouses to meet their own and their children's needs at the death of a spouse.

Such a refusal to secure legal marriage not only foregoes important protections, but it also imposes significant obligations. Here we simply repeat what the Commission said in 1967 after acknowledging that there are times when a Christian might engage in civil disobedience:

However, when a Christian disobeys a law which he considers to be in conflict with the higher law of God, he should:

1. be quite sure that all legal means of changing the law have been exhausted;
2. consult with men of good conscience to test the validity of his judgment;
3. carry out his act of disobedience in a nonviolent manner;
4. direct his act of disobedience as precisely as possible against the specific law or practice which violates his conscience;
5. exercise restraint in using this privilege because of the danger of lawlessness.<sup>44</sup>

The couple that refuses to secure a marriage license on the grounds of conscience is essentially engaged in an act of civil disobedience. They are refusing to acknowledge the state's laws for marriage. They should, therefore, accept the necessary consequences for their disobedience. That is, they must not claim to be a married couple for tax purposes, for pension or Social Security benefits, or in order to claim other marriage benefits unique to their state.

<sup>44</sup> *Civil Obedience and Disobedience* (1967), 5, <https://files.lcms.org/wl/?id=qksptPOPO8oTohSek2uLXF63da5XxfE>.

They should also be aware that if they portray themselves as a married couple, they risk confusing others and perhaps causing offense — especially among other Christians. Moreover, in this fallen world divorces sometimes occur even in the marriages of deeply committed Christians. Without the benefit of legal marriage, a couple that is legally unwed foregoes any of the important legal protections afforded by the state for themselves and any children.

Just as Christians have had to accept the necessity of divorce laws, and perhaps even divorce laws that we believe are erroneous in their concepts (e.g., no fault divorce), so also it seems that we cannot avoid the reality of changing marriage law. However, just as divorce laws did not require the church to change its teaching about marriage and divorce, so also the adoption of same-sex marriage requires no change in doctrine or practice (at this time). *We believe that securing a marriage license from civil authorities is not sinful and that it cannot rightly be interpreted to mean that a couple has endorsed same-sex marriage or any other unbiblical understanding of marriage. And for those reasons, we strongly encourage all Christians to continue to secure a license or its equivalent from civil authorities before any marriage ceremony is conducted.*

## Clergy as 'Agents of the State'

While the foregoing discussion addresses the matter of a Christian couple that considers a conscientious decision to forego legal licensure of their marriage, it does not answer the matter of clergy serving as "agents of the state," which they do when they perform weddings in accord with state law. Here it is important to note, however, that clergy are serving the state only on a case-by-case, voluntary basis, not as full-time agents of the state. In other words, the incidental act of an occasional marriage service limits the degree to which a pastor is an agent of the state. He takes no oath of office as a justice of the peace, judge or others would do who serve the government directly at all times and have, as one part of their duty, the task of solemnizing marriages. This distinction is all-important because it means that a minister cannot be compelled by the state to perform any wedding.<sup>45</sup>

<sup>45</sup> The practice of clergy conducting marriage ceremonies is an allowance granted by the state, not a right. It is perhaps more likely that at some point in the future a state would not allow clergy to solemnize the marriage of a couple that has obtained a valid license. That is only a theoretical possibility, of course, and it is not the case in any U.S. jurisdiction presently. However, were it to take place, clergy would no longer in any sense be "agents of the state."

### 1. Should a Christian pastor officiate at a public marriage ceremony for a couple that has decided they cannot in good conscience secure a license?

As only a voluntary, occasional servant of the state with respect to marriage, a pastor officiates only for those couples he has agreed to serve. Therefore, clergy have not been compelled to perform any marriage in the U.S. Pastors are instead able to follow the teachings of their church body. In our judgment, an LCMS pastor should *not* officiate at a public marriage ceremony for a couple that has refused to secure a marriage license from civil authorities. To do so would inevitably be a form of ecclesial endorsement of the couple's act of disobedience to authority. While the Synod recognizes the rights of the individual conscience, it cannot go against its own doctrine. Scripture is plain about the responsibility to honor and obey the governing authorities (ROM. 13:1–6; SEE ALSO 1 PETER 3:13–14; 1 TIM. 2:1–2). Our confessions also uphold the importance of obedience to those “whose duty it is to command and to govern.”<sup>46</sup> They acknowledge the legitimacy of the processes of government.<sup>47</sup>

Therefore, in our judgment, a minister is not bearing false witness or acting in any way contrary to the teachings of Scripture and the Confessions when he conducts the wedding service of a heterosexual couple. This is *not* an implicit endorsement of the current legal definition of same-sex marriage. As much as the CTCR, together with our church body,<sup>48</sup> objects to the legal widening of marriage to include same-sex relationships, the Commission does not believe that this expanded definition excludes the understanding of marriage we hold that is based on biblical teaching. Therefore, we conclude that for a pastor of the Synod publicly to endorse disobedience to state marriage statutes would be confusing and misleading and may lead to a misperception of the Lutheran Church's support for governing authority. Unless and until the Synod itself determines that it is impossible to be obedient to current marriage law without being disobedient to God, our pastors should not give public endorsement to civil disobedience in this matter.

<sup>46</sup> LC I 141; KW 405; see also Ap XVI 1, 3, 6; KW 231.

<sup>47</sup> Ap XVI 7; KW 232.

<sup>48</sup> See, for example, 2004 Res. 3–05A, 2010 Res. 3–01A, 2013 Res. 2–07A, 2016 Res. 14–02A and Res. 14–04, and 2019 Res. 11–02A.

### 2. Ought a Christian pastor refuse to serve as an agent of the state in the matter of marriage when the state has redefined marriage in such a way that it now includes as “marriage” same-sex relationships (or, potentially, other non-biblical marriages)?

Although this is a slightly different question, we believe the previous answer addresses this concern. No, we do not believe a pastor of the LCMS should refuse to serve as an agent of the state in the solemnization of the marriages of heterosexual couples. We recognize that here, too, the matter of individual conscience might be invoked. A pastor of the Synod might say that he cannot in good conscience any longer serve as an agent of the state in performing marriages. While that may indeed be true — we cannot determine what an individual's conscience may dictate and we must respect it — individual conscience does not allow a Synod pastor to impose his conscience upon his flock. If he refuses to conduct marriage services for members who themselves have no conscientious objection to securing a marriage license, he is allowing his individual conscience to “lord it over” the flock (1 PETER 5:3) unless he provides some appropriate means for them to follow their own conscience.<sup>49</sup>

### 3. Ought a Christian pastor perform a marriage for a same-sex couple?

The fact that our Synod accommodates divorce in some manner may lead others to ask whether some such accommodation should be possible for a same-sex couple. No biblical or confessional church can accommodate same-sex marriage in the manner that it accommodates divorce among members. Divorce must always be understood as a failing that results from sin — for promises have been violated by at least one party to the marriage. However, there is a biblical warrant for recognizing that at times there is no alternative to suffering a divorce in circumstances such as adultery and malicious desertion.<sup>50</sup> Moreover, “the Bible allows for the possibility of divorce and remarriage in these circumstances.”<sup>51</sup>

<sup>49</sup> In such a case, the pastor may have other options. For example, he might ask the couple to go to a fellow Synod pastor who does not share his objection. He might also counsel the couple to secure their legal marriage from a justice of the peace or similar civil servant and then schedule a “Blessing of a Civil Marriage” (see LSB *Agenda*, 71). Moreover, before a pastor reaches such a conscientious conclusion, he ought most certainly to discuss his concerns in the counsel of his peers and his ecclesiastical supervisors.

<sup>50</sup> For discussion of these exceptions, see the 1987 CTCR report, *Divorce and Remarriage: An Exegetical Study*, at <https://files.lcms.org/wl/?id=vYacb8D5XILSfs2tYNYK9f3fsjdWo2Pq>.

<sup>51</sup> *Luther's Small Catechism*, 100.

There are no similar grounds for accommodating same-sex marriage. It implies an endorsement of sexual acts that are inherently sinful and contrary to creation as man and woman (see ROM. 1:26–27). Therefore, the Synod has consistently expressed its understanding that Scripture and the Confessions forbid our church from any endorsement or sanction of same-sex marriage as well as any participation by a Synod pastor in such unions or marriages.<sup>52</sup> Here the answer is a straightforward no, as we have already indicated in the first question of the previous section. The Synod itself has addressed this by stating unequivocally in 2016 Res. 14–04 that “no LCMS pastor shall consent to officiate or participate in any ceremony sanctioning the union of a same-sex couple.”

#### 4. What about the particular case of military and institutional chaplaincy?

We give thanks that, although chaplains often serve under governmental authority either directly or indirectly, their freedom to act according to the teachings of their church body is retained. Although no one can guarantee that such freedom will continue, it is the case at the present time.

#### 5. Should a Christian pastor officiate at a public marriage ceremony for a couple that has decided that a legal marriage would cause a financial hardship?

The foregoing paragraphs do not address other circumstances in which couples may seek a “church wedding” without securing a marriage license. One example is individual couples who discover that if they marry, they will lose financial resources that they depend on to meet their needs. This has been the case at times when mothers receiving aid for their dependent child(ren) will no longer receive certain benefits, or will have the amounts of those benefits reduced, if they marry.<sup>53</sup> Such a couple may sometimes seek a “church marriage” or some kind of religious blessing for their relationship but decline to secure legal marriage.

Somewhat similar is the increasingly common number of older, cohabiting, retired couples who have chosen not to be legally married because there is a financial benefit to remaining unmarried. Such couples

may choose this course because they discover that if they marry one party will lose a pension or other retirement benefit from a previous marriage. Such couples have also sometimes asked to have a religious marriage ceremony and recognition as husband and wife by the church while they remain unmarried in the eyes of the state.

These circumstances present significant pastoral challenges. On the one hand, pastors and other Christians cannot glibly ignore the very real financial dilemmas that may discourage marriage. Christians have rightly exercised our responsibility for free speech in matters such as same-sex marriage. We ought also to make our voices heard when tax laws and other governmental policies impose financial burdens that discourage marriage. In addition, while the church does not have the financial resources of the government, it is certainly reasonable to seek to extend some measure of financial support — insofar as the church is able — for couples that want to marry but face legal or other economic requirements that discourage marriage. Of course, it may also be necessary for the two Christians to accept that God is, at the present time, requiring them to forego marriage and remain celibate, unmarried individuals.

On the other hand, pastors are morally bound not to conduct a “wedding ceremony” for a couple that is refusing to marry legally for financial gain. As sympathetic as one must be toward those facing such financially difficult circumstances as we have described, it is an act of deceit for a couple to portray themselves as married by the church when they have refused to abide by marriage laws. The church must not be complicit in that deceit.

Instead, our churches and pastors are duty-bound to teach that obedience to God is more important than securing financial benefits or other earthly gains. Just as Christian obedience to God may at times compel a costly *disobedience* to human authority, there are other times — like this — when obedience to God compels *obedience* to human authority no matter how inconvenient or costly that obedience may be. And, finally, we should note that it is particularly important to impress on older Christians that the example they set is one that their children and grandchildren will likely emulate.

## Conclusion

The foregoing discussion indicates the appropriateness of the title of this report. Marriage truly does stand *between* church and state. It is both sacred and secular. It is God’s institution and holy work, but one that He

<sup>52</sup> See LCMS 2016 Res. 14-04; note also 1998 Res. 3-01, 2004 Res. 3-04A, 2010 Res. 3-01A, 2013 Res. 2-07A and 2019 Res. 11-02A.

<sup>53</sup> See Elaine Maag and Gregory Acs, “The Financial Consequences of Marriage for Cohabiting Couples with Children” *Urban Institute* (September 2015), <https://www.urban.org/sites/default/files/publication/65776/2000366-The-Financial-Consequences-of-Marriage-for-Cohabiting-Couples-with-Children%20.pdf>.

enacts by means of earthly authorities and instruments such as laws and customs. Marriage, by God's own created design, is subject to earthly laws and customs, even though human laws and customs sometimes undermine or even abrogate God's good purposes for marriage.

God, in His mercy, has given marriage as the foundational institution for all of society. The church's witness to this divine gift is, therefore, of incalculable importance. This witness comes not only in the verbal testimony to the world as it tells of God's design for marriage, but also as the actual marriages of believers demonstrate the way marriage is meant to work in human life.

Therefore, while marriage is not, strictly speaking, an ecclesial (churchly) institution, the church cannot abdicate its responsibility to teach what God intends marriage to be. Our Creator gives marriage, together with all His creation, for our good. Psalm 148 testifies to the Creator's intention for good in all His works. It speaks of all creation praising God in a chorus extending from heaven's angels, to the air, the sea and dry land, to all creatures, and to all humanity. Along the way, it speaks of "young men and maidens together" (v. 12) praising the Lord. Our hope is that men and women young and old will see what marriage is, gladly receive it as God's gift, and "praise the Lord" as they enjoy marriage's blessings.

