



# Sacred Rite or Civil Right?

Gay marriage shows why we need to separate church & state.

**Rev. Howard Moody**

If members of the church that I served for more than three decades were told I would be writing an article in defense of marriage, they wouldn't believe it. My reputation was that when people came to me for counsel about getting married, I tried to talk them out of it. More about that later.

We are now in the midst of a national debate on the nature of marriage, and it promises to be as emotional and polemical as the issues of abortion and homosexuality have been over the past century. What all these debates have in common is that they involved both the laws of the state and the theology of the church. The purpose of this writing is to suggest that the gay-marriage debate is less about the legitimacy of the loving relationship of a same-sex couple than about the relationship of church and state and how they define marriage.

In Western civilization, the faith and beliefs of Christendom played a major role in shaping the laws regarding social relations and moral behavior. Having been nurtured in the Christian faith from childhood and having served a lifetime as an ordained Baptist minister, I feel obligated first to address the religious controversy concerning the nature of marriage. If we look at the history of religious institutions regarding marriage we will find not much unanimity but amazing diversity—it is really a mixed bag. Those who base their position on “tradition” or “what the Bible says” will find anything but clarity. It depends on which “tradition” in what age reading from whose holy scriptures.

In the early tradition of the Jewish people, there were multiple wives and not all of them equal. Remember the story of Abraham's wives, Sara and Hagar. Sara couldn't get pregnant, so Hagar presented Abraham with a son. When Sara got angry with Hagar, she forced Abraham to send Hagar and her son Ishmael into the wilderness. In case Christians feel superior about their “tradition” of marriage, I would remind them that their scriptural basis is not as clear about marriage as we might hope. We have Saint Paul's conflicting and condescending words about the institution: “It's better not to marry.” Karl Barth called this passage the Magna Carta of the single person. (Maybe we should have taken Saint Paul's advice more seriously. It might have prevented an earlier generation of parents from harassing, cajoling and prodding our young until they were married.) In certain religious branches, the church doesn't recognize the licensed legality of marriage but requires that persons meet certain religious qualifications before the marriage is recognized by the church. For members of the Roman Catholic Church, a “legal divorce” and the right to remarry may not be recognized unless the first marriage has been declared null and void by a decree of the church. It is clear that

there is no single religious view of marriage and that history has witnessed some monumental changes in the way “husband and wife” are seen in the relationship of marriage.

In my faith-based understanding, if freedom of choice means anything to individuals (male or female), it means they have several options. They can be single and celibate without being thought of as strange or psychologically unbalanced. They can be single and sexually active without being labeled loose or immoral. Women can be single with child without being thought of as unfit or inadequate. If these choices had been real options, the divorce rate may never have reached nearly 50 percent.

The other, equally significant choice for people to make is that of lifetime commitment to each other and to seal that desire in the vows of a wedding ceremony. That understanding of marriage came out of my community of faith. In my years of ministry I ran a tight ship in regard to the performance of weddings. It wasn't because I didn't believe in marriage (I've been married for sixty years and have two wonderful offspring) but rather my unease about the way marriage was used to force people to marry so they wouldn't be “living in sin.”

The failure of the institution can be seen in divorce statistics. I wanted people to know how challenging the promise of those vows were and not to feel this was something they had to do. My first question in premarital counseling was, “Why do you want to get married and spoil a beautiful friendship?” That question often elicited a thoughtful and emotional answer. Though I was miserly in the number of weddings I performed, I always made exceptions when there were couples who had difficulty finding clergy who would officiate. Their difficulty was because they weren't of the same religion, or they had made marital mistakes, or what they couldn't believe. Most of them were “ecclesiastical outlaws,” barred from certain sacraments in the church of their choice.

The church I served had a number of gay and lesbian couples who had been together for many years, but none of them had asked for public weddings or blessings on their relationship. (There was one commitment ceremony for a gay couple at the end of my tenure.) It was as though they didn't need a piece of paper or a ritual to symbolize their lifelong commitment. They knew if they wanted a religious ceremony, their ministers would officiate and our religious community would joyfully witness.

It was my hope that since the institution of marriage had been used to exclude and demean members of the homosexual community, our church, which was open and affirming, would create with gays and lesbians a new kind of ceremony. It would be an occasion that symbolized, between two people of the same gender, a covenant of intimacy of two people to journey together, breaking



new ground in human relationships—an alternative to marriage as we have known it.

However, I can understand why homosexuals want “to be married” in the old-fashioned “heterosexual way.” After all, most gays and lesbians were born of married parents, raised in a family of siblings; many were nourished in churches and synagogues, taught about a living God before Whom all Her creatures were equally loved. Why wouldn’t they conceive their loving relationships in terms of marriage and family and desire that they be confirmed and understood as such? It follows that if these gays and lesbians see their relationship as faith-based, they would want a religious ceremony that seals their intentions to become lifelong partners, lovers and friends, that they would want to be “married.”

Even though most religious denominations deny this ceremony to homosexual couples, more and more clergy are, silently and publicly, officiating at religious rituals in which gays and lesbians declare their vows before God and a faith community. One Catholic priest who defied his church’s ban said: “We can bless a dog, we can bless a boat, but we can’t say a prayer over two people who love each other. You don’t have to call it marriage, you can call it a deep and abiding friendship, but you can bless it.”

We have the right to engage in “religious disobedience” to the regulations of the judicatory that granted us the privilege to officiate at wedding ceremonies, and suffer the consequences. However, when it comes to civil law, it is my contention that the church and its clergy are on much shakier ground in defying the law.

In order to fully understand the conflict that has arisen in this debate over the nature of marriage, it is important to understand the difference between the religious definition of marriage and the state’s secular and civil definition. The government’s interest is in a legal definition of marriage—a social and voluntary contract between a man and woman in order to protect money, property and children. Marriage is a civil union without benefit of clergy or religious definition. The state is not interested in why two people are “tying the knot,” whether it’s to gain money, secure a dynasty or raise children. It may be hard for those of us who have a religious or romantic view of marriage to realize that loveless marriages are not that rare. Before the Pill, pregnancy was a frequent motive for getting married. The state doesn’t care what the commitment of two people is, whether it’s for life or as long as both of you love, whether it’s sexually monogamous or an open marriage. There is nothing spiritual, mystical or romantic about the state’s license to marry—it’s a legal contract.

Thus, George W. Bush is right when he says that “marriage is a sacred institution” when speaking as a Christian, as a member of his Methodist church. But as President of the United States and leader of all Americans, believers and unbelievers, he is wrong. What will surface in this debate as litigation and court decisions

multiply is the history of the conflict between the church and the state in defining the nature of marriage. That history will become significant as we move toward a decision on who may be married.

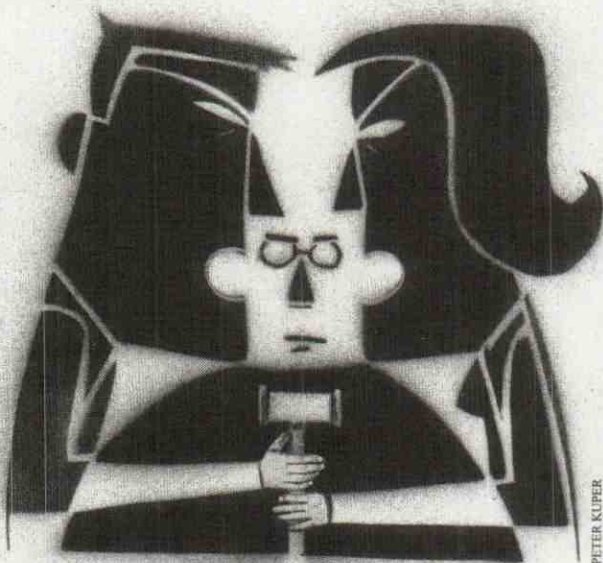
After Christianity became the state religion of the Roman Empire in AD 325, the church maintained absolute control over the regulation of marriage for some 1,000 years. Beginning in the sixteenth century, English kings (especially Henry VIII, who found the inability to get rid of a wife extremely oppressive) and other monarchs in Europe began to wrest control from the church over marital regulations. Ever since, kings, presidents and rulers of all kinds have seen how important the control of marriage is to the regulation of social order. In this nation, the government has always been in charge of marriage.

That is why it was not a San Francisco mayor licensing same-sex couples that really threatened the President’s religious understanding of marriage but rather the Supreme Judicial Court of Massachusetts, declaring marriage between same-sex couples a constitutional right, that demanded a call for constitutional amendment. I didn’t understand how important that was until I read an op-ed piece in the *Boston Globe* by Peter Gomes, professor of Christian morals and the minister of Memorial Church at Harvard University, that reminds us of a seminal piece of our history:

The Dutch made civil marriage the law of the land in 1590, and the first marriage in New England, that of Edward Winslow to the widow Susannah White, was performed on May 12, 1621, in Plymouth by Governor William Bradford, in exercise of his office as magistrate.

There would be no clergyman in Plymouth until the arrival of the Rev. Ralph Smith in 1629, but even then marriage would continue to be a civil affair, as these first Puritans opposed the English custom of clerical marriage as unscriptural. Not until 1692, when Plymouth Colony was merged into that of Massachusetts Bay, were the clergy authorized by the new province to solemnize marriages. To this day in the Commonwealth the clergy, including those of the archdiocese, solemnize marriage legally as agents of the Commonwealth and by its civil authority. Chapter 207 of the General Laws of Massachusetts tells us who may perform such ceremonies.

Now even though it is the civil authority of the state that defines the rights and responsibilities of marriage and therefore *who* can be married, the state is no more infallible than the church in its judgments. It wasn’t until the mid-twentieth century that the Supreme Court declared antimiscegenation laws unconstitutional. Even after that decision, many mainline churches, where I started my ministry, unofficially discouraged interracial marriages, and many of my colleagues were forbidden to perform such weddings.



PETER KUPER



# It's happening at HOME

**EQUALITY IS CLOSER THAN YOU THINK. IN CITY HALLS AND STATEHOUSES ACROSS AMERICA, THE FIGHT FOR EQUAL RIGHTS IS TAKING PLACE RIGHT WHERE YOU LIVE.**

Most major victories for gay rights happen at the state and local level. Whether it's meaningful hate crimes legislation, equal marriage rights for lesbian and gay couples, employment non-discrimination, parental rights or any of the other issues facing lesbian, gay, bisexual and transgender people in America, member organizations of the Federation of Statewide LGBT Advocacy Organizations are working — grassroots, on the ground, nationwide.

**[www.federationlgbt.org](http://www.federationlgbt.org)**

The civil law view of marriage has as much historical diversity as the church's own experience because, in part, the church continued to influence the civil law. Although it was the Bible that made "the husband the head of his wife," it was common law that "turned the married pair legally into one person—the husband," as Nancy Cott documents in her book *Public Vows: A History of Marriage and the Nation* (an indispensable resource for anyone seeking to understand the changing nature of marriage in the nation's history). She suggests that "the legal doctrine of marital unity was called *coverture*... [which] meant that the wife could not use legal avenues such as suits or contracts, own assets, or execute legal documents without her husband's collaboration." This view of the wife would not hold water in any court in the land today.

As a matter of fact, even in the religious understanding of President Bush and his followers, allowing same-sex couples the right to marry seems a logical conclusion. If marriage is "the most fundamental institution of civilization" and a major contributor to the social order in our society, why would anyone want to shut out homosexuals from the "glorious attributes" of this "sacred institution"? Obviously, the only reason one can discern is that the opponents believe that gay and lesbian people are not worthy of the benefits and spiritual blessings of "marriage."

**A**t the heart of the controversy raging over same-sex marriage is the religious and constitutional principle of the separation of church and state. All of us can probably agree that there was never a solid wall of separation, riddled as it is with breaches. The evidence of that is seen in the ambiguity of tax-free religious institutions, "in God we trust" printed on our money and "under God" in the Pledge of Allegiance to our country. All of us clergy, who are granted permission by the state to officiate at legal marriage ceremonies, have already compromised the "solid wall" by signing the license issued by the state. I would like to believe that my authority to perform religious ceremonies does not come from the state but derives from the vows of ordination and my commitment to God. I refuse to repeat the words, "by the authority invested in me by the State of New York, I pronounce you husband and wife," but by signing the license, I've become the state's "handmaiden."

It seems fitting therefore that we religious folk should now seek to sharpen the difference between ecclesiastical law and civil law as we beseech the state to clarify who can be married by civil law. Further evidence that the issue of church and state is part of the gay-marriage controversy is that two Unitarian ministers have been arrested for solemnizing unions between same-sex couples when no state licenses were involved. Ecclesiastical law may punish those clergy who disobey marital regulations, but the state has no right to invade church practices and criminalize clergy under civil law. There should have been a noisy outcry from all churches, synagogues and mosques at the government's outrageous contravention of the sacred principle of the "free exercise of religion."

I come from a long line of Protestants who believe in a "free church in a free state." In the issue before this nation, the civil law is the determinant of the regulation of marriage, regardless of our religious views, and the Supreme Court will finally decide what the principle of equality means in our Constitution in the third century of our life together as a people. It is likely that the Commonwealth of Massachusetts will probably lead the na-



tion on this matter, as the State of New York led to the Supreme Court decision to allow women reproductive freedom.

So what is marriage? It depends on whom you ask, in what era, in what culture. Like all words or institutions, human definitions, whether religious or secular, change with time and history. When our beloved Constitution was written, blacks, Native Americans and, to some extent, women were quasi-human beings with no rights or privileges, but today they are recognized as persons with full citizenship rights. The definition of marriage has been changing over the centuries in this nation, and it will change yet

again as homosexuals are seen as ordinary human beings.

In time, and I believe that time is now, we Americans will see that all the fears foisted on us by religious zealots were not real. Heterosexual marriage will still flourish with its statistical failures. The only difference will be that some homosexual couples will join them and probably account for about the same number of failed relationships. And we will discover that it did not matter whether the couples were joined in a religious ceremony or a secular and civil occasion for the statement of their intentions. ♦



# The Wedding March

Gay nuptials combine pomp and protest.

Alisa Solomon

**"G**et down, get down!" a voice yelled from the back of the crowd at a mid-March wedding in New York City, and a chorus of others soon took up the call. These were not the cries of partyers going wild on the dance floor, but the irritated admonitions of some fifty newspaper photographers and TV camera folk trying to get celebrants to duck under the frame of their shots. One cable guy elbowed his way forward so aggressively that he almost pushed a few wedding guests into Ruth Finkelstein and B.C. Craig's *chuppah*. Gazing intently into each other's eyes, the two brides didn't seem to notice.

That misty morning, they were one of three same-sex pairs solemnizing their commitments on the steps of City Hall to protest the state's refusal to grant them marriage licenses and express support for the mayor of New Paltz, Jason West, and two Unitarian ministers, who had been charged with misdemeanors in the Hudson Valley town for pronouncing dozens of couples wife-and-wife or husband-and-husband. Reached for comment, Mayor Michael Bloomberg told the press that the demonstrators should have taken their rites to Albany, since state laws were their target. "I think this is more theater than anything else," he said.

Effective mass protest has always employed histrionics, of course, but there are other important—and even radical—ways in which Bloomberg was essentially right. Like other public demonstrations, the astonishing nuptial insurgency that spread across the country this year offered an effective mix of sympathetic characters, engaging narrative, fabulous spectacle and sassy rebuke. No matter what you think about marriage as a political goal, there is no denying that these "wedding marches" produced a stirring display of queer desire and anti-Bush defiance. What's more, pointing at the gap between the symbolic ritual of a wedding and the legal, contractual fact of marriage, the protests exposed the tenuousness of the tie between rites and rights—and the vigorous social and cultural forces called out to defend it.

The festive two-by-two queues for licenses in San Francisco,

the busloads of betrothed in Phoenix, the exuberant exchanges of vows in Portland, all these proliferating images of the love that once dared not speak its name refusing to shut up shifted the ground of the gay-marriage debate. Favorable rulings from judges have been won by particular couples bringing lawsuits, but the crowds of wedded wannabes, from long-term lovers to the newly smitten, have taken the issue out of the courthouses and into the streets. Like the first gay pride parades, which made the personal step of coming out political by multiplying and flaunting it, the mass rush to the altar over the past six months has turned the relatively private and intimate act of matrimony into a collective action staged for a mass public. (In contrast to the parades, though, which polymorphously present myriad versions of queerness, the marriage demos constrict gay visibility, excluding those who reject nuclear couplehood.)

Meanwhile, the city officials who rebelled against laws and practices they regard as discriminatory revived a dramatic form of direct-action civil disobedience: Like racially integrated lunch-counter sit-ins, the issuing of the licenses accomplishes the very deed whose outlawing the protests seek to undo. Such stagings of possibility are always compelling. In today's parched political landscape they came like a quenching rain. Even people not particularly invested in gay marriage couldn't help getting caught up when renegade mayors and town clerks boldly asserted local authority and brazenly resisted the crushing narrowness of Right-Wing America. Hundreds of straight folks poured into San Francisco's City Hall to volunteer as witnesses or help hasten the paperwork. Others passed trays of steaming coffee along the line of couples waiting hours in the February rain. Cars driving by honked their congrats. Taxis offered "free rides for newlyweds." All were getting in on the giddy opportunity to stand outside the Republican frame. In this context, even among leftists and feminists suspicious of the marital enterprise, whether one actually wanted a queer marriage license became almost beside the point—about as relevant as whether those lunch-counter protesters really wanted to eat the food at Woolworth's.

The pageantry played in Peoria—and drew all those photogra-

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