

OUR MARRIAGE PRACTICE IN THE LIGHT OF THE DOCTRINE OF THE TWO  
KINGDOMS AND AN ANTI-CHRISTIAN CULTURE

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## ABSTRACT

This paper wrestles with the question, “Now that the Supreme Court has ruled that Homosexual marriage is a constitutional right, What should we do?” Marriage is an area where the work of the church and the state overlap. Currently it is the general practice of WELS pastors to fill out state marriage licenses. This paper examines where that practice is still expedient under the present circumstances. In order to come to a conclusion on this question this paper reviews the doctrine of marriage and the doctrine of the two kingdoms. It then discusses how the two kingdoms work together. It addresses the history of the Church and state relationship in America and America’s present attitude toward the Christian church. Finally, some practices are suggested for marriages in the future.

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## INTRODUCTION

In 2015, the Supreme Court made a landmark decision. The Supreme Court ruled in the Obergefell v. Hodges case that the fundamental right to marry is guaranteed to same-sex couples by the Equal Protection Clause of the Fourteenth Amendment.<sup>1</sup> Essentially, the Supreme Court ruled that it was unconstitutional to deny marriage to homosexual couples. Marriage has long been an area where both the church and the state have had an interest. For centuries couples have stood before God in a church and a pastor or a priest has performed the marriage service. It is the general practice of WELS pastors to serve as state officiants. Most pastors are registered in their state as an officiant and can fill out the paperwork that legally marries a couple in their state. I believe this could cause a problem. If pastors are state officiants they are operating on behalf of the government. The Government has now redefined what a marriage is. What if a homosexual couple asked a pastor to perform their marriage? And what if, when the pastor refuses to marry the homosexual couple, he was prosecuted for discrimination? This scenario is hypothetical, but recent events in American society point to this being a possibility. For example, County clerk Kim Davis was jailed for refusing to issue a marriage license to a homosexual couple. The WELS has recently been the recipient of legal action as well. The watchdog group the Freedom From Religion Foundation recently submitted a complaint with the department of agriculture because St. John's Lutheran School in Baraboo Wisconsin participated in a Hot Lunch program which was supported with tax dollars. The school has policies for disciplining transgender students and the Freedom From Religion foundation said that this prevented transgender students from receiving the federal funds given to St. John's for the hot lunch program.<sup>2</sup>

This leads to the question addressed in this paper: is it wise for pastors to serve as state officiants for marriages? This paper will demonstrate what the Bible says about marriage, what the Bible says about the two kingdoms, and their different roles in marriage. It will review the relationship between church and state in American history, and propose a few practices that seek to proclaim God's definition of marriage to our members and to American society.

## THE DEFINITION OF MARRIAGE AND HOW IT IS SOLEMNIZED

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<sup>1</sup> Julie Hirschfeld Davis and Nicholas Fandos *Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide*

<sup>2</sup> Joel Otto, "Living Our Dual Citizenship: Luther's Principles, Lutheran Lessons, and American Applications of the Two Kingdom's Doctrine, Part I and II," *Wisconsin Lutheran Quarterly* (Fall 2016): 37

If we are going to make a judgment on our marriage practices in the 21<sup>st</sup> century we first need to make sure we understand what the Bible says about marriage. God was the one who established marriage. He established marriage during the time of creation, sometime on the sixth day. Throughout the creation account, after God creates something he observes his creation and deems it “good.”<sup>3</sup> However, in the expanded creation account of human beings in Genesis 2, we learn that God created man first. When God observed his creation he noted that it was “not good” for man to be alone.<sup>4</sup> There was something incomplete about his creation, something missing. So God created a helper for Adam, the first woman, Eve. Eve was brought to Adam and then marriage was established. Moses says that, “for this reason a man will leave his father and mother and be united to his wife and the two will become one flesh” (Gn 2:24).

The creation account teaches us that marriage was established by God. It is not a social institution established by human beings that can be redefined by men. Although it is not a social institution established by human beings, it is a social institution. Marriage belongs to all societies of all times. The marriage of a Hindu man and woman in India is just as much a marriage as the marriage of a Christian man and woman married in a church in the United States. John Schuetze states, “God ordained marriage as a social arrangement for people in his world. He did not ordain it for only Christians in his church. It is not a sacrament. It is available for all people in his world, believer and unbeliever alike. After creating woman and bringing her to the man as his wife, God proclaimed that this arrangement would continue into the ages (Gn 2:24).”<sup>5</sup> Marriage does not exclusively belong to the church. It is a social institution for all people of all time.

The creation account also informs us about how many people make up a marriage and what genders those people are supposed to be. There is to be one man and one woman. The nouns in Genesis 2:24 are singular nouns. Jesus confirms this definition when he is tested by the Pharisees. The Pharisees came to Jesus to try and trap him with a question about divorce. Jesus quotes Genesis 2:24 of the creation account and points out that it is God who joins a man and a woman. He also points out that the two become one.<sup>6</sup> A marriage is not to consist of anything other than one man and one woman joined together by God. Jesus defines another aspect of

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<sup>3</sup> Genesis 1:4, 1:12, 1:18, etc.

<sup>4</sup> Genesis 2:18

<sup>5</sup> John Schuetze, *Doctor of Souls: the Art of Pastoral Theology* (Northwestern Publishing House), 157.

<sup>6</sup> Matthew 19:4-6

marriage in this account. He concludes his commentary on the creation account by saying, “What God has joined together, let man not separate.” It was God’s will from creation that a marriage not be dissolved. A man and a woman who have been married are supposed to stay married all their lives.

The Bible also makes it clear that while marriage is supposed to be lifelong, it is meant only for this life and is dissolved by death. Jesus states, “At the resurrection, people will neither marry nor be given in marriage; they will be like the angels in heaven” (Mt 22:30). The Apostle Paul confirms this teaching, “A woman is bound to her husband as long as he lives. But if her husband dies, she is free to marry any one she wishes, but he must belong to the Lord” (1 Co 7:39).

The Bible is clear on what a marriage is. From the above portions of Scripture, we learn that marriage was established by God as a social institution, it is to consist of one man and one woman, and it is to be a lifelong union. Anything that deviates from this definition of marriage is a sin. Marriage has been attacked by Satan, again and again, resulting in many deviations from this definition. Struggling with how we combat society’s definition of marriage is nothing new for the church. Throughout history God’s people have had to speak up against adultery, polygamy, homosexuality, and divorce. “Not only do people pursue these sinful lifestyles, but in many cases they also insist that they receive the same benefits and social status as marriage. The term ‘marriage’ is used to describe them all—same-sex *marriage*, polygamous *marriage*, and group *marriage*. The definition of marriage is changed to accommodate and include each scenario. Add to this the fact that countless couples live together as though they were married.”<sup>7</sup> The situation in which we find ourselves is not new. It is just another example of society adhering to a deviation from God’s view of marriage. As always we, as Christians, need to stand up and proclaim God’s definition in the face of a hostile society.

Although the Bible is clear about what a marriage is, it is not as clear on how a couple enters into a marriage. The Bible does not prescribe a marriage rite or ritual. It simply tells us what a marriage is. However, we can infer a few principles from the Bible about how a couple enters into a marriage.

The first principle we can infer from the Bible is that consent establishes a marriage. “While there is no specific passage of Scripture that states this explicitly, it is implicit in the

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<sup>7</sup> Schuetze, 159.

Genesis 2 account. Adam and Eve consented to be husband and wife. When a man and woman leave their families to form a new family, they do so willingly. Each is consenting to the new relationship. Coercing one person to marry another is contrary to the law of love that is at the heart of the marriage relationship.<sup>8</sup> Consent establishes a marriage, and the consensual promise of one to another is the essence of marriage. However, the Bible offers a few qualifiers to this consent.

First, the consent must be public. The Bible does not make a distinction between being married in God's eyes or married in the eyes of the state. A person is either married or not and the consent must be public to establish marriage.<sup>9</sup> We can infer this principle from the accounts of Abraham and Isaac in the book of Genesis.<sup>10</sup> When a marriage is not made public, others may think one of the individuals is available for courtship and marriage.<sup>11</sup> Although I did not find any scholar to corroborate my idea, I believe the Bible very clearly indicates that the consent in marriage must be public in the book of Hebrews. The author to the Hebrews says, "Marriage should be honored by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral" (Heb 13:4-9). It is impossible for "all" to honor marriage if they do not know who is married. The consent that establishes a marriage needs to be public.

Second, the consent that establishes marriage needs to be present consent. Engagement is not the same as marriage because the promise of engagement is to offer present consent in the future. The consent that establishes a marriage needs to be present.<sup>12</sup>

The final aspect of marriage that needs to be stated is not implied but is explicitly stated in scripture; it is God who joins a marriage. Jesus spoke of the divine role in marriage when he said, "what God has joined together let man not separate" (Mt 19:6) "Man and woman play a part in the marriage process. They choose each other (dating). They agree to be married (engagement). They consent to be husband and wife (marriage). But even though man and woman play a part in the process, it is still God who joins them together as husband and wife."<sup>13</sup>

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<sup>8</sup> Schuetze, 160.

<sup>9</sup> Schuetze 161.

<sup>10</sup> Genesis 12,20,26.

<sup>11</sup> Schuetze 161.

<sup>12</sup> Schuetze, 161.

<sup>13</sup> Schuetze, 159.

We can infer from Scripture that couples are married when they have offered each other public present consent and that through this offering of consent God joins the two individuals in marriage. This leads to the question of what is classified as public present consent? God tells us what the couple needs to offer but he does not tell us how that public present consent is offered. Public present consent consists of whatever is necessary, within the society and culture in which the couple is living, to establish the fact that the couple is now husband and wife.<sup>14</sup> When the couple has fulfilled the legal and social requirements to establish a marriage, they are married. Slaves jumping over a broomstick in 18<sup>th</sup> century America joined the couple in marriage just as much as exchanging rings and signing a marriage license establishes a marriage in modern day America.

From the above we can conclude that how a marriage is solemnized is an adiaphoron. Scripture does not command a certain marriage ritual or practice nor does it forbid or invalidate certain marriage rituals or practices. The Bible simply tells us what a marriage is. We can infer that offering public present consent is the way a couple engages in a marriage. Based on the Bible's definition of marriage we must conclude that our own marriage practices are adiaphoron. It is not necessary to exchange vows in a church, it is not necessary to exchange rings, it is not necessary for the wife to take the husband's last name. None of these things are in God's definition of marriage.

Another thing that must be marked absent from God's definition of marriage is public ministers of the gospel. God's definition of marriage does not demand that Christian couples get married by a public minister of the gospel. God does not charge public ministers to perform marriages in the Bible. The Bible does not contain any examples of the Apostles performing marriages, nor does the Old Testament contain any ceremonial law prescribing a ritual necessary for starting the marriage relationship. Rituals for starting a marriage relationship are adiaphora. Therefore, it is adiaphora that pastors legally solemnize marriages in the United States. God has not commanded, nor forbidden, pastors to serve in this capacity. But as with all adiaphora this is the beginning of the conversation, not the end.

In order to answer the question, "Should pastors serve as state officiants for marriage in present day United States?" we need to observe what the role of the church is in regard to

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<sup>14</sup> Schuetze, 164.

marriage and what the role of the state is in regard to marriage. Then, we need to ask ourselves if this is an area where the two can overlap.

## THE DOCTRINE OF THE TWO KINGDOMS

The other pertinent doctrine of Scripture is the doctrine of the two kingdoms. Although we speak of two kingdoms, there really is only one kingdom. God is sovereign of all. He rules all things earthly and spiritual. Ultimately we owe all our allegiance to God. Earnest Koenker states, “One cannot, therefore, speak of an autonomy of the secular sphere, since both are bound together in the creative, preserving and saving purpose of God himself.”<sup>15</sup> The notion that we can compartmentalize our lives into spiritual and secular is false. Everything is ruled by God. Therefore, anytime we think or act we are operating in his kingdom. Keeping this fact in mind, that ultimately there is only one kingdom to which we owe allegiance, we can recognize a distinction between two kingdoms in Scripture. These two kingdoms are the Church and the state.

The doctrine of the two kingdoms is not explicitly discussed in the Bible.<sup>16</sup> Nowhere will you find the term two kingdoms in scripture. Neither will you find the term separation of church and state in Scripture. However, the two kingdoms can be seen in Scripture and are extensions of the ultimate kingdom. God is still in control of both kingdoms. The reason there are two kingdoms is because God rules both with redemptive and coercive means.<sup>17</sup> We can deduce that the Bible does teach a doctrine of two kingdoms from some of Jesus’ words and actions, from each kingdom’s establishment, from the purpose and mission God assigns to the church and the state respectively, and from the tools God gives to each kingdom.

Jesus’ words and actions seem to imply two kingdoms. When questioned about taxation by the Jewish leaders, Jesus said “give to Caesar what is Caesar’s and to God what is God’s (Mt 22:21).”<sup>18</sup> Brug says with these words Jesus states that the political realm and the spiritual realm

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<sup>15</sup> Earnest Koenker, “the Two Realms and the Separation of Church and State in American Society,” *Concordia Theological Monthly* (January 1956): 6.

<sup>16</sup> John Brug, “The Lutheran Doctrine of the Two Kingdoms: Current Problems Concerning Christian Citizenship and the Separation of Church and State,” *Wisconsin Lutheran Quarterly* (Summer 1999): 16.

<sup>17</sup> Koenker, 3.

<sup>18</sup> Mark Braun, “Two Kingdoms Under God: The Lutheran Take on Church and State,” *Wisconsin Lutheran College* (October 8) 2013: 8.

are distinct kingdoms and that we have responsibility toward both.<sup>19</sup> Jesus also refused to settle an inheritance dispute between two brothers.<sup>20</sup> Furthermore, when Jesus was asked if he was a king while standing before Pilate he declared that he was a king but that his kingdom was not of this earth (Jn 18). From Jesus' words and actions we can deduce that his purpose was not to set up a kingdom here on this earth. If that was not his purpose, and as he said his kingdom was not of this earth, we can conclude that there are two kingdoms, one of this earth and one that is not of this earth. From Jesus words in John 19, we can conclude that the church has been established by God and is ruled by Jesus.<sup>21</sup>

In addition to Jesus' words and actions that separate the two kingdoms, we can distinguish the two kingdoms in Scripture by their establishment, their purpose and their tools. The state will be addressed first. In this paper, when I use the word state I am using it to refer to government in general. The term, as used in this paper, includes any form of government, monarchy, republic, democracy etc.

The fact that there are two kingdoms is a result of sin. Had sin not entered the world, God would not have had to rule his kingdom with coercive means.<sup>22</sup> However, sin did enter the world so God established the state to ensure that human beings could live relatively peaceful lives in the sin-infested world. This is the purpose of the state.<sup>23</sup> The Biblical basis for this view of the state is Romans 13: 1-7, where Paul states,

Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also because of conscience.

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<sup>19</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms", 16.

<sup>20</sup> Braun, 8.

<sup>21</sup> Otto, 7.

<sup>22</sup> Koneker, 3.

<sup>23</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 2.

This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing. Give everyone what you owe him: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor.

This passage first and foremost teaches that God establishes the state. All the various forms of government are included in verse seven. Paul says "all authority" has been established by God. The Bible offers no political theory or philosophy.<sup>24</sup> The Bible therefore neither condemns nor promotes a certain form of government. We can acknowledge that God established both a theocracy and a monarchy in the history of his Old Testament people. But now that the nation of Israel has served its purpose of being the chosen people from whom the savior would come, we are simply told by God that he has established all authority. Paul draws a natural conclusion from the fact that the state has been established by God. He says if you rebel against the authorities, essentially you are rebelling against God.

Therefore a Christian's first responsibility toward the government is to obey.<sup>25</sup> Christians are called to obey the governing authorities even if there is an evil person controlling the state. "Any of the Common forms of government would be good if they were controlled by good people but since bad people make bad rulers every form of government devised by men fails to achieve its aims fully because of the sinful selfishness of the people involved in it."<sup>26</sup>

In order to ensure that humans live relatively safe and peaceful lives here on this earth, God has given the government the sword and the right to punish those who are disobedient; this includes the right to execute criminals. The government curbs outward sinful actions through the threat of punishment and it encourages outwardly good behavior by rewarding it.<sup>27</sup>

The government also has the right, according to Scripture, to collect taxes from its citizens. The authorities are a blessing from God who provide services that protect and aid us. It is therefore natural that they would collect the money necessary to provide those services to their citizens.

Finally, this passage shows that we are to respect the governing authorities. The 8<sup>th</sup> commandment applies to our talk about those who occupy government positions as well. In

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<sup>24</sup> Braun, 3.

<sup>25</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 3.

<sup>26</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 2.

<sup>27</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 2.

America, we enjoy the freedom to express our opinion. As Christians, we will seek to express those opinions in the kindest possible way.

The other portion of Scripture that speaks specifically about the state is 1 Peter 2:13-14. Peter writes, “Submit yourselves for the Lord’s sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right.” This passage reiterates concisely some of the principles Paul listed in Romans 13. We are to submit to all the different types of authority. Peter makes that point very clear by listing two different examples that his audience would have been familiar with. Peter also concurs with Paul in that the state has been established by God. Peter says they “are sent by him.” The antecedent for “him” is “Lord.” Therefore it is clear Peter views the state in its various forms as being established by God. Peter also agrees with Paul in the method and purpose of the government. The government is to provide its citizens with a relatively peaceful and safe life by punishing those who do wrong and rewarding those who do good.

God has also established his church. The Apology defines the church thusly:

The church is not only an association of external ties and rites like other civic organizations, but it is principally an association of faith and the Holy Spirit in the hearts of persons. It nevertheless has its external marks so that it can be recognized, namely, the pure teaching of the gospel and the administration of the sacraments in harmony with the gospel of Christ. Moreover, this church alone is called the body of Christ, which Christ renews, sanctifies, and governs by his Spirit as Paul testifies in Ephesians 1[:22–23], when he says, “And [God] has made him the head over all things for the church, which is his body, the fullness of him who fills all in all.”<sup>28</sup>

Jesus himself was the one who instituted the New Testament Church. After Peter correctly confessed who Jesus was, Jesus says, “I tell you that you are Peter and on this rock I will build my church” (Jn 16:18). So like the state, the church was established by God. The difference between the two becomes clear when we examine the purpose and tools each kingdom has been given.

As was stated above, the purpose of the government is to provide its citizens with at least some level of peace and safety in this sin-infested world. The purpose of the church on the other

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<sup>28</sup> Apology VII/VIII:5 taken from Joel Otto.

hand is to proclaim the word for the conversion and comfort of souls.<sup>29</sup> Jesus himself gave the church this mission before he ascended into heaven. The church was commissioned by Jesus to go and make disciples of all nations teaching them to obey everything that he had commanded (Mt 28:19). Professor Joel Otto summarizes the mission of the church this way:

“On more than one occasion, Jesus gave his church its mission. Make disciples by baptizing and teaching. Preach the good news. Proclaim repentance and forgiveness. Forgive and don’t forgive sins. For what purpose? To bring people into his kingdom; to create faith in Christ in the hearts of unbelievers; to comfort the hurting and guilty.<sup>30</sup>

The tools that the church has been given to accomplish its mission are the word and sacraments. The gospel is unique to the church. Only the gospel can convert and comfort sinners. Sinners cannot be converted with the iron sword that the government has been given. The other tool that the church has been given are the keys, namely the authority to forgive and withhold forgiveness of sins. Jesus gave this authority to the church. When he said to his disciples, “I will give you the keys of the kingdom of heaven whatever you bind on earth will be bound in heaven and whatever you loose on earth will be loosed in heaven” (Mt 16:19).

We can conclude from the above that the Bible does teach the doctrine of the two kingdoms. The purpose of each kingdom and the tools used to accomplish that purpose are unique and distinct to each kingdom.

## THE RELATIONSHIP BETWEEN THE TWO KINGDOMS

The Bible distinguishes two kingdoms. Although the Bible distinguishes two kingdoms we cannot speak of an absolute separation of the two. Because Christians exist in this world, and therefore because the church exists in this world, the church and state will inevitably have to interact with each other and their interests may overlap. Therefore we must answer the questions: how do the church and state properly interact with each other, and how does a Christian operate as a citizen of both kingdoms?

A Christian’s primary allegiance is to the church. “Our first priority in life is to serve our king through faithful worship, stewardship, and evangelism.”<sup>31</sup> Therefore, I will address the

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<sup>29</sup> Otto, 8

<sup>30</sup> Otto, 8.

<sup>31</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 1.

above questions from the perspective of how the church is to interact with the government and how a Christian fulfills his responsibility to the government.

As was stated above, the mission of the church is to reach out to the lost and to comfort sinners. The Church does this by proclaiming God's word and administering the sacraments. The purpose and mission of the church therefore excludes the church from operating in many affairs of the state. The Augsburg confession states this very strongly,

Therefore the power of the Church and the civil power must not be confounded, the power of the Church has its own commission to teach the gospel and to administers the Sacraments. Let it not break into the office of another; let it not transfer the kingdoms of this world, let it not abrogate the laws of civil rulers; let it not abolish lawful obedience ; let it not interfere with judgments concerning civil ordinances or contracts let it not prescribe laws to civil rulers concerning the form of the commonwealth.<sup>32</sup>

As the Augsburg Confession states, it is not the role of the church to promote one form of government over another. It states this because the New Testament offers no political theory or philosophy to be followed.<sup>33</sup> The governments here on this earth are established by God and should be obeyed whatever their form is. Scripture does not prescribe a particular form of government. Therefore the church cannot promote a particular form of government in its preaching of God's word.<sup>34</sup> "Be aware of the temptation of suggesting that the Bible underwrites a political point of view, it doesn't. It doesn't underwrite any political point of view. It isn't interested in politics. It is interested in mens' souls and their destiny."<sup>35</sup>

If the church does not have scriptural backing to promote one type of government over another it certainly does not have backing to attempt to overthrow the government. "Jesus did not advocate for an overthrow of the existing social order or the autocratic government of his day. Paul and John do not protest against the pagan dictatorship of their day."<sup>36</sup> We in America favor our democratic republic. "In Democracy the selfishness of one sinner keeps in check the selfishness of another sinner."<sup>37</sup> Christians in America seem to latch on to democracy as the proper form of government because of this phenomenon, that one person's selfishness keeps

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<sup>32</sup> AC XXVIII 12,13 quoted in Koenker, 6.

<sup>33</sup> Braun 3.

<sup>34</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 2.

<sup>35</sup> Joel Gerlach quoted in Braun, 31.

<sup>36</sup> Braun 8-9

<sup>37</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 2.

another's selfishness in check, and because of Democracy's innate appeal to humans' sense of fairness. However, the Bible does not single out democracy as the proper form of government. There is no form of government that checks all human sins in an effective way.

It is not the church's prerogative to promote a certain form of government so it follows, and is supported by scripture, that it is not the church's prerogative to establish a Christian state here on this earth. Establishing a true Christian state is an impossibility. It is impossible because the state and the church have been given different tools and only the tools given to the church can create Christians. The state has been given the sword, which can only be used to curb outward behavior. The iron sword of the state cannot create faith; therefore the government cannot create Christians. "Faith coerced is no faith at all."<sup>38</sup> The distinction between church and state is a distinction between law and gospel. The state is an extension of God's law. It is used to curb sinful behavior and provide peace and order. The Church has the full use of God's law (to show sinners their sin and need for a savior, to guide Christians in right living, and to curb sinful behavior) but it also has the gospel. Luther insisted that the gospel has no place in the work of the government. "The government only has the law and its sole use is to curb wrongful behavior and encourage good outward behavior."<sup>39</sup> The Church wastes its energy if it tries to establish a Christian state because faith cannot be coerced.<sup>40</sup>

The mission and purpose of the church also excludes it, as an organization, from reforming State laws. Our duty as a church is to preach God's law not reform Caesar's law.<sup>41</sup> The Old Testament civil laws have been fulfilled in Christ and are not to be forced upon modern day government (Col 2:16,17). Nor is it the church's mission to force God's moral law on the state. Our duty toward the government is simply to obey. "The gospel does not bring new laws concerning the civil state, instead it commands that we obey present laws, whether they have been framed by heathen or by others, and that in this obedience we should exercise love."<sup>42</sup>

The mission and tools of the church also exclude it from promoting a particular candidate. There may very well be candidates whose values parallel that of the church. But it is

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<sup>38</sup> Jon Meacham, "The Religious Case for Church- State Separation." *Newsweek* (April 23, 2010): 2.

<sup>39</sup> Otto, 23.

<sup>40</sup> Otto, 23.

<sup>41</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 19.

<sup>42</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 4-5.

not in the scope of the church's mission to educate its members on political candidates. Otto states, "The church cannot advocate for a particular political party candidate, or policy that is not clearly defined in Scripture."<sup>43</sup>

As we can see above, the church's mission and tools severely limit its activity in the state. However, the mission and tools of the church do bestow a responsibility toward the state on the church. The church's responsibility toward the state is to speak out and inform. Although it is not within the church's scope to actively engage in the political process and change the state, the church is called by God to be salt and light (Mt. 5:13-16). We are called to inform the world about God's will in regard to issues that the Bible clearly speaks to. "The church betrays an essential part of its mission if it does not continually, by exhortation and warning, remind those in earthly authority of the Law of God which they are subject to."<sup>44</sup> When there is a policy that goes against the Christian belief the church may speak out.<sup>45</sup> The church must be cautious. Although we must speak out and testify to the truth, we must be careful about promoting a change to the law that is the one and only quintessential Christian solution. "Even when we are agreed on identifying the evils, we must be careful in prescribing a specific solution as *the* Christian solution because the problem may be very complicated in its nature and in its response to specific remedies."<sup>46</sup> However, public statements and actions toward the government are proper. It is also proper to educate members about what God's word says about certain issues.<sup>47</sup>

Although the church is to remain cautious in regard to reforming politics, the church may use legal means to seek justice for wrongs. Jesus testified against the man who struck him and Paul used his rights as a Roman citizen (Jn 18:23 and Ac 16:37-39).<sup>48</sup> The church does not seek to overturn the government but rather the particular law or act of government that requires a Christian to act in a way that violates their Christian based beliefs.<sup>49</sup> The Scriptures are clear that the church is to obey the government. However, the church may disobey the government if it commands something sinful or if it forbids the church to do something God has commanded the

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<sup>43</sup> Otto, 33.

<sup>44</sup> Nygren, "Luther's Doctrine of the Two Kingdoms" 306-308, found in Braun 15-16.

<sup>45</sup> Gifford Grobien, Two Kinds of Authority." *Lutheran Witness* (April, 2012):10.

<sup>46</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 21.

<sup>47</sup> Grobien, 10.

<sup>48</sup> Braun, 12.

<sup>49</sup> Grobien, 10.

church to do.<sup>50</sup> The scriptural basis for disobedience is Acts 5:18,19. Paul and John were being persecuted for preaching the gospel. The Sanhedrin forbid them from preaching the gospel and then released them. But Peter and John went right back to preaching about Jesus. When they were brought before the Sanhedrin again Peter and John told the Sanhedrin that they must obey God rather than men. It is clear from Scripture that we are to obey the government, but the church's primary allegiance is to God. So in cases where the government demands something sinful or forbids something scriptural, the church may disobey. This disobedience will involve passive resistance rather than rebellion.<sup>51</sup>

The church and the government have been given different tools to do their various work. And although the church is to remain distinct from the state and focus on its proper work of preaching the gospel, the church may work together with the government in areas of mutual interest. Even the leaders of the post-exilic Jewish state were willing to accept financial aid from the Persian government for the construction of the temple and for sponsorship of religious events.<sup>52</sup> This working together will be discussed in more detail later in the paper.

Many of the principles of the church's relationship to the state are derived from how a Christian is supposed to engage the state. However, there are some differences between the church's relationship to the state and an individual Christian's relationship to the state. While the church as an organization is to remain rather aloof in regards to the state, an individual Christian has more freedom in its relationship to the state.

As was stated above, an individual Christian's primary duty in regard to the state is to obey.<sup>53</sup> A Christian is to obey even if an evil person is occupying a position of authority.<sup>54</sup> Christians are to pay their taxes, obey the laws of the state, and offer the governing official the respect they deserve as servants of God (Ro 13:1-7). As was stated for the church in general, a Christian citizen may disobey the government if he or she is commanded to do something the Bible declares to be sinful, or if the government forbids something that the Bible commands.

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<sup>50</sup> Grobein, 9-10.

<sup>51</sup> Braun, 11.

<sup>52</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 16.

<sup>53</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 3.

<sup>54</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 3.

The most profound difference between the relationship the church has with the state and the relationship the individual Christian has with the state is that an individual Christian may serve in the government. While the Church's mission and tools restrict its activity in government, the individual Christian may work more extensively within the kingdom of the sword.

This principle, that individual Christians can serve in government, can be inferred more from an absence of prohibition in the scriptures than from direct statements permitting Christians to serve in governments. John the Baptist legitimized military service for the individual Christian. Some soldiers who were listening to John's exhortation to repent and produce fruits of repentance asked John what they should do. John instructed them to be satisfied with their pay and not to extort money (Lk 3:8-14). John would have told them to find a different vocation if serving as a soldier, a government position, had been sinful. In the same account tax collectors asked John what they should do and he told them not to collect any more than what was required. Serving in the government position of tax collector was not sinful. Otherwise, John would have told them to leave their line of work. It follows that if those seeking to repent were not told to abandon their jobs as government officials, then serving in a governmental position is not sinful. Likewise, Jesus ate with tax collectors and we do not hear him condemn them for their job. When Jesus was staying at Zaachaeus' house he did not encourage Zaachaeus to leave his job as a tax collector. Christians are free to serve as government officials.

All the scholars I read agree that a Christian may serve in government.<sup>55</sup> Luther went so far as to encourage Christians to engage in civil service if they were qualified.<sup>56</sup> Serving in civil service is one way Christians can carry out their vocation to love their neighbor. Participating in government is one way we can love our neighbor by helping and being a friend to him in every bodily need and by helping him improve and protect his property and business.<sup>57</sup>

In addition to serving in government, a Christian citizen can also participate in the political process by any means granted by the government. In present day America, Christians may vote. An individual Christian may also use the legal means at his disposal to seek justice for wrongs. However, a Christian will temper this with mercy and a willingness to suffer wrongs.

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<sup>55</sup> Otto, 34. Braun, 12. Brug, 4.

<sup>56</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 14.

<sup>57</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 4.

"If we can best display our faith by enduring the unjust loss of our property or by suffering unjust punishment and thus show that we are not attached to the things of this world but to Christ, let us be willing to do that. If we can serve God best by forcing the ungodly to stop interfering with our time and possessions so that we can use them in the work which the Lord has given us to do. That is the course of action which we should take."<sup>58</sup>

A Christian will also, in general, have a helpful and respectful attitude toward the government. Luther advised his readers, "You are under obligation to serve and assist the sword by whatever means you can, with body, goods, honor, and soul. For it is something which you do not need but which is very beneficial and essential for the whole world and for your neighbor."<sup>59</sup>

However, a Christian must keep in mind that serving in government presents challenges. "The Christian in his calling as a government official, may be called upon to enforce laws which are contrary to God's word. For example, the judge may have to grant an unscriptural divorce because that is what the government permits." Every individual Christian who desires to serve in government will have to be honest about conflicts and challenges that may arise if they obtain a government position. Furthermore, although Christian citizens should seek to promote good laws to whatever extent they can, a Christian citizen needs to realize that civil laws will never conform to the standards which God's Moral Law demands.<sup>60</sup>

A Christian also should bear in mind that, while living as a citizen of the state, they may suffer persecution. A Christian may suffer persecution because, in their endeavor to be salt and light, they will present to the world a view of morality that is contrary to the sinful nature. "Since those who silently ignore evil are guilty of indirectly aiding it, as Christian citizens we should use any peaceful and lawful means of declaring our political or legal opposition to laws or acts which we believe are unjust."<sup>61</sup> When Brug sums up the attitude a Christian should foster as they participate in the government, "the key to a Christian view of citizenship is moderation and balance between the extreme of placing too much trust and energy into human efforts to improve the world and the opposite error of sitting back and doing nothing because we feel that the situation is hopeless."<sup>62</sup>

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<sup>58</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 13.

<sup>59</sup> James Wind, "Two Kingdoms – in America?" *Second opinion* (1987): 169-170.

<sup>60</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 21.

<sup>61</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 12.

<sup>62</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 5.

## THE DOCTRINE OF CHURCH AND STATE APPLIED TO MARRIAGE

Now that we have reviewed the doctrine of the two kingdoms and how the two kingdoms interact with each other we will apply these doctrines to marriage and our marriage practices.

The roles that the church and the state play in marriage can be inferred from their tools and their purpose. The government's purpose is to provide its citizens with some measure of peace and order through the use of the sword. The government is free to make laws regulating marriage and, as long as they do not go against Scripture, Christians are obligated to obey. The government's role in marriage can be inferred from Deuteronomy 24:1-4. The hardness of heart necessitated the law of a certificate of divorce. Jesus talks about this passage in Matthew 19:7-8.<sup>63</sup> In order to keep law and order in society, the government is free to establish laws that regulate marriage.

The government is also free to punish those who break those laws. The government requiring couples to obtain a marriage certificate is not unscriptural. The government keeps track of who is married and who is not primarily for financial reasons. Married couples receive tax benefits by being married. The government also regulates marriage because of children. The government protects the children of the state by keeping track of who the parents of children are. The government is then able to punish those who neglect or abuse their children. None of the requirements the government has implemented for getting married are unscriptural. Therefore, Christians are obligated to obey.

In American culture, it is also the government's role to recognize and regulate a marriage. As was stated above in the section covering the doctrine of marriage, a couple starts their marriage relationship by offering each other present public consent. Public present consent consists of whatever is necessary, within the society and culture in which the couple is living, to establish the fact that the couple is now husband and wife. In America this consists of obtaining a marriage license from the state. John Brug in an article addressing whether it is possible to be "married in the eyes of the God" without being "married in the eyes of the state" comes to this conclusion: "The dictionary defines marriage as a 'social institution under which a man and woman establish their decision to live as husband and wife by legal commitments and/or religious ceremonies.' Where there is no legal commitment, there is no marriage."<sup>64</sup> Brug

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<sup>63</sup> Braun, 7.

<sup>64</sup> John Brug, "Married in God's Eyes," *Northwestern Lutheran* (June 1995): 32.

emphasizes the legal and social aspect of marriage by saying, “Although it [marriage] was established by God, marriage is not a commitment a man and woman establish with God by faith, nor can it be established by a secret commitment.”<sup>65</sup> Schuetze agrees with these conclusions: “Nowhere does Scripture make a ‘married in the eyes of God’ versus ‘married in the eyes of society’ distinction. The simple truth is that a couple is either married or they are not. When a couple is married, they need to present this consistently in all areas of their lives. They cannot claim to be married with family and friends but then file as singles on their income tax.”<sup>66</sup> We can conclude from these scriptural principles that if a Christian couple has a genuine unconditional lifelong commitment to each other, then they do not have a valid reason at this point in time for refusing to obtain a marriage license. Luther also affirmed that it is the state’s role to regulate and solemnize a marriage.

“The Kingdom of Christ and the Kingdom of Caesar must be kept apart thus: The Kingdom of Caesar is a worldly kingdom. He judges and decides earthly matters, administers justice, wages war, and uses the sword. Christ has nothing to do with such worldly affairs. His kingdom and office is to deliver soul from sin and death and so to give the help the world cannot give.’ How to live in this life ‘is left up to Caesar. He is to maintain worldly peace and orderly government, judge and punish evil doers, *make marriage laws*, train children, build, plant, and divide goods”” (emphasis mine).<sup>67</sup>

In conclusion, we can see that marriage is properly a matter of the state. The state’s tools regulate it and the state’s laws establish a way for couple to offer present, public consent. As was stated above, under the doctrine of marriage section, God gave marriage to society in general, not specifically to the church. The state is what governs society. Therefore, it is proper that the state is the one who solemnizes and regulates a marriage.

The church’s role in marriage is derived from its tools. The tools of the church are the gospel and the keys. Although it is the role of the state to solemnize and regulate a marriage, only the church can inform couples on God’s will for marriage. Human society is corrupted by sin so society’s definition and regulation of marriage will never be fully in line with God’s will.<sup>68</sup> Therefore the church’s role is to do what the state cannot and proclaim God’s word to enlighten Christians to God’s will for marriage. The church will proclaim God’s definition of marriage

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<sup>65</sup> Brug, “Married in God’s Eyes,” 32.

<sup>66</sup> Schuetze, 161.

<sup>67</sup> St. Louis, 13b, 1442ff.; cited by Gerlach “is there a Relationship Between Confessional Lutheranism and Political Conservatism?” 1. Found in Braun, 15.

<sup>68</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 21

appealing, as Jesus did, to the creation account. Marriage is to consist of one man and one woman living as husband and wife for life.

The church will also educate Christian husbands and wives as to how they are to live in their marriage. The apostle Paul gives the church precedent for this in both 1 Corinthians 7 and Ephesians 5. Guided by these portions of Scripture, the Church will encourage Christian husbands and wives to fulfill the sexual needs of their partners (1 Co 7:3-5), and not to separate from each other (1 Co 7:10-11). The Church will exhort husbands to look to Christ as their model and to love their wives as Christ loved the church. The Church will encourage wives to submit to their husbands as the Church submits to Christ.

The role of the church in regard to marriage is also to enact church discipline when two people are not following God's definition of marriage. We have profound scriptural precedent for this discipline. The one documented case of excommunication in Scripture had to do with a marital issue. In the church in Corinth, a man had his father's wife. The text of 1 Corinthians does not give us many details but it is clear that this man and woman were not married and were engaging in an inappropriate sexual relationship. It is clear that the woman was at some point in time married to the man's father. Because they were not following God's will for marriage Paul commanded the congregation to "expel the immoral brother" (1 Co 5). We learn from the second letter to the Corinthians that the church followed through with this discipline and it had its desired effect. The man was brought to repentance and Paul encouraged the congregation to welcome him back into fellowship (2 Co 2: 5-11).

In conclusion, the church's role in marriage is to educate, inform, and disciple. This role is in line with its tools and purpose. Engaging in marital sin can endanger our salvation so the church needs to fulfill its purpose and proclaim God's law for marriage and proclaim the gospel to those who are repentant in marriage. When a Christian husband or wife is engaging in a marital sin the church may need to proclaim God's law even to the extent of using the binding key and excommunicating that individual.

## CHURCH AND STATE AREAS OF OVERLAP

Thus far we have observed what God says about marriage and the doctrine of the two kingdoms. From the scriptural presentation of these two doctrines one may come to the conclusion that it is improper for the church to solemnize marriages. Scripture does not

command public ministers of the gospel to perform marriages, we have no example recorded in scripture of Jesus or the apostles performing marriages, nor do we have any Levitical laws prescribing a marriage right for the Old Testament Church. There is no scriptural basis demanding that the church solemnize a marriage. On the other hand, we can infer from Scripture that it is the proper duty of the state to regulate marriage. Marriage was given to all of society, and government was given to regulate society. Therefore it is proper for the government to come up with an orderly system to define who is married and who is not. Luther himself thought that pastors should not be involved in marriage. Luther thought that by performing marriages clerics were “drowning themselves in worldly affairs.”<sup>69</sup> Luther believed that marriage was “a purely civil and secular thing.”<sup>70</sup> One may ask, “Have we broken into area where we should not have?”

It would be false to say that the WELS has been sinning by having their pastors serve as state officiants. This is because an absolute separation of church and state is impossible. In areas of mutual interest, the church and the state are permitted to work together.

The Bible does not speak of a separation of Church and state. The doctrine of the two kingdoms and the degree to which the two kingdoms should not overlap is largely derived from the tools and purpose of each kingdom. An absolute separation of church and state is impossible. As the church is an organization in this world and this world is governed by various states, the church and individual Christians will inevitably have to interact with the state. It is impossible to demand a total separation of all activities of church and state.<sup>71</sup> The fact that the church and state are not totally separate is easy to observe in our present day American situation. Otto observes:

In America today the church enjoys many benefits provided by our government. Churches enjoy certain tax exemptions as well as the normal protections of police, fire fighters and the military. Our schools receive government assistance with lunches, milk and bussing. And in some states the government provides financial assistance to parents with students attending private and religious schools. Students at Christian colleges and universities receive government grants and loans. This illustrates that a strict and total separation between church and state is impossible.<sup>72</sup>

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<sup>69</sup> Joel F. Harrington, “Reformation, Statebuilding and The “Secularization of Marriage: Jurisdiction in the Palatinate” *Vanderbilt University*, 53-63.

<sup>70</sup> Aurthur Piepkorn, “The Doctrine of Marriage in the Theologians of Lutheran Orthodoxy,” *Concordia theological Monthly* 7 (July 1953): 459-62.

<sup>71</sup> Braun, 30

<sup>72</sup> Otto, 31.

The Bible does not speak of or demand a total separation of church and state. Jesus' statement to give to Caesar what is Caesar's and to God's what is God's shows that the two kingdoms are distinct and that Christians have a responsibility toward both. Because God has assigned to the church and state their own distinct purposes and their own distinct tools, the work of the two kingdoms should not become mixed or confused. Neither should the church or state try to do the work of the other.<sup>73</sup> However, this does not mean that the two organizations are completely separate nor does it mean that they cannot work together. Since there are some areas in life which both the state and the church have a valid interest, such as marriage, sexual morality, education and so on, their interests and activities may sometimes overlap.<sup>74</sup> Although Brug speaks of a separation of church and state he admits that, "perhaps it might be therefore clearer if we would speak of 'avoiding a mixture or confusion of the church and state' rather than of a 'separation of church and state.'"

As long as the activity can be rightly addressed by the tools of both the church and state and as long as it is within the God-given purpose of both the church and the state, the two kingdoms may overlap and work together. The area where we regularly accept such an overlap is in the area of marriage. "In the marriage of a Christian couple the church is interested [in] helping the couple begin their marriage on the basis of God's Word and in seeking his [God's] blessing upon them in prayer. The state is interested in a witnessed written confirmation of the legal contract which has serious implications regarding property rights and inheritance."<sup>75</sup> In the case of marriage we can see that both the church and the state have an interest. The church would like to proclaim God's word to the couple and the state would like to ensure that the contract is signed and witnessed. Therefore, the pastor is allowed to serve as a representative of the state. Brug states, "We allow both of these purposes to be fulfilled on the basis of a single ceremony. The mechanics vary from state to state, but to some degree our pastors act as legal representatives of the state in establishing the legal aspect of marriage."<sup>76</sup>

We cannot say from scripture that it has been wrong for pastors to serve as state representatives in this capacity. Scripture permits some overlap between the two kingdoms.

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<sup>73</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 16.

<sup>74</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 16.

<sup>75</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 16.

<sup>76</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 16-17.

When determining whether the church and state should overlap we must keep three principles in mind. Is the overlap scriptural, is this overlap legal, and is this overlap expedient.

In areas of overlap we must first ask is this overlap scriptural. If scripture prohibits an activity for the church then we should not allow the overlap. A grossly hypothetical example of this would be aiding the state in the punishment of criminals. If the state asked the church to help it run prisons and carry out executions the church would have to politely decline. The Church's mission is not to punish criminals. The state has been given the iron sword. God has not bestowed the tool necessary to operate prisons and execute criminals upon the church.<sup>77</sup> Conversely, another area of overlap that is scriptural would be corporate acts of kindness. Christians have been called to love our neighbor and therefore we may engage in acts of kindness as a group. If the state has set up a program that would help the church to engage in these acts of kindness the church is free to make use of that program. For example, it would be an acceptable area of overlap for the church to gather a collection for the local food shelf.

For a certain area of overlap we must also determine if it is legal. This question is easy to answer because the state won't allow the church to work with it in an area where it has said it won't work with us.

The third question we have to ask is if this area of overlap is expedient, that is, is this area of overlap advantageous to both the church and state and is the overlap proper under the circumstances. A prime example of this is the area of marriage. Up until now it has been very expedient for the church and state to overlap. Both church and state have a legitimate interest in marriage. Although the Bible does not prescribe a marriage ceremony, it does not forbid one. The Bible is fine with Christians serving in government, so this overlap is not unscriptural. The state has not made it illegal for pastors to serve as state officiants, so it is not illegal. Finally, it is expedient because both the interest of the state and the church are attended to with a single ceremony.

## HISTORY OF CHURCH STATE RELATIONS, OUR LAWS, AND PRESENT CULTURE.

It is the last qualification for an area of overlap that is especially pertinent for this paper. Is it still expedient for pastors to serve as state officiants for marriage now that the state has

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<sup>77</sup> It should be noted that the Bible does not forbid capital punishment, nor does the Bible prohibit the church from engaging in prison ministry. But it would be wrong for the church as an organization to execute criminals on behalf of the government.

redefined marriage? Brug warns, “There may be areas of church-state interaction which cannot be declared to be sin on the basis of Scripture, nor have they been declared unconstitutional in court but nevertheless would be dangerous for us to become involved in them … Certain forms of co-operation may be lawful, but not expedient.”<sup>78</sup> To answer the question, whether it is expedient or not for pastors to serve as state officiants at this point in history, we will have to observe the relationship between church and state throughout history, we will have to observe our government’s laws regarding church state relation, and our cultures general attitude toward the church.

The relationship between church and state has a long history and has manifested itself in many different ways.<sup>79</sup> During its first three centuries Christianity was forced away from the state due to persecution. It wasn’t until the 4<sup>th</sup> century that Christians were permitted to profess their faith publically. This forced the church to develop an apolitical sense of its own identity.<sup>80</sup> Constantine blurred the distinction between church and state when he became the first Christian emperor. Ambrose created more of a divide when he excommunicated Theodosius.<sup>81</sup> Catholic Europe operated with the principle that religion and state must work together to maintain each other.<sup>82</sup>

“When Luther set forth his opinions on the relationship between church and state in the 16<sup>th</sup> century he was stepping into a long argument in which there was an established tradition of drawing a line between the church as one type of institution and the state as another.”<sup>83</sup> Unfortunately, even though Luther’s views were remarkably clear and consistent, the position was never put into practice.<sup>84</sup> At Luther’s time the church and state had been so intricately entwined for so long that untangling the two was a difficult proposition.<sup>85</sup>

Although church and state became more distinct after Luther’s time, the distinction was still blurred and state churches were the norm up until American colonial times. During

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<sup>78</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 18

<sup>79</sup> Wind, 168

<sup>80</sup> Braun, 11-12

<sup>81</sup> Wind, 168.

<sup>82</sup> Braun, 3

<sup>83</sup> Wind, 168

<sup>84</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 17.

<sup>85</sup> Otto, 24-26.

American colonial times a state-established church was more the norm than the exception.<sup>86</sup> Therefore, during the 18<sup>th</sup> century the founding fathers were faced with a problem. They wanted to maintain strong local governments in the states while at the same time limiting their ability to reach beyond their rightful functions. The Founding Fathers solution was to design a series of mechanisms that would have a general tendency to strengthen government when it acted rightly but weaken it when it acted wrongly. One of these mechanisms was giving religious freedom to all. By allowing the existence of many religious groups the Founding Fathers hoped that no individual group would be able to rise up and impose its will on the rest of the groups.<sup>87</sup> The Founding Fathers proceeded to include the free exercise clause and free establishment clause in the first amendment to the constitution.

The First Amendment states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” According to Waldman, these phrases in the First Amendment are a classic example of political compromise. It was a declaration that the federal government could not regulate religion but that the states could. Edward Fredrich notes that this compromise may have appealed to many religious groups of early America. Back in 1776, voluntary support for churches by their own members was not the widespread practice that it is today. There were fears that various church groups could not stand on their own financial feet.<sup>88</sup> This compromise would have appealed to those who wanted more religious freedom while at the same time appealing to those who wanted state sponsored churches for financial reasons.

Despite its ambiguity, the First Amendment has allowed for a better distinction between the two kingdoms in America than perhaps any other nation in history.<sup>89</sup> The First Amendment prohibits the establishment of a federal religion and that principle has been subsequently applied to the states. To a great degree, it also prohibits the government from restricting the practice of one’s religion.

There are limits to these freedoms however. A very important area of litigation has been the struggle to preserve the free exercise of religion.<sup>90</sup>

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<sup>86</sup> Braun, 19

<sup>87</sup> Braun, 19

<sup>88</sup> Edward Fredrich, “Focus on the Bicentennial: The States and Religious Freedom” *The Northwestern Lutheran* (July 1976):216-217.

<sup>89</sup> Otto, 30-31.

<sup>90</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 22.

Some of the earliest cases which the court received involved the Mormon practice of polygamy. These cases helped establish the principle that religious freedom does not protect actions which are dangerous to the health safety, morals, and welfare of society. The outlawing of polygamy was upheld on these grounds (*Reynolds v. United States*, 1878). Religious snake handling, religious drug use, compliance with zoning and safety codes, mandatory immunization of school children, and medical treatment of children against the will of their parents are examples of other matters what would be covered under this principle.<sup>91</sup>

The government's actions against the Mormons shows that the US government is capable of restricting the exercise of religion. The extreme to which the Court will allow free exercise of religion is illustrated by the case upholding the right of Jehovah's Witnesses to refuse to salute the flag (West Virginia State Board of Education vs Barnette).<sup>92</sup> "The Jehovah's Witnesses and other unpopular or separatist groups such as conscientious objectors, Sabbatarians, Hare Krishna, Black Muslims, and the Amish have been the source of many of the decisive rulings which tested and expanded the limits of religious freedom and which set the precedents which offer us so much protection today."<sup>93</sup>

From the above, we can see that the church in America has enjoyed great benefit. It has been allowed to go about it business unhindered and unharmed and has even enjoyed many benefits from the state such as tax-exempt status. I agree with Earnest Koenker when he says, "We must acknowledge with gratitude the opportunities granted by the Bill of Rights for churches and the state to interact constructively with one another."<sup>94</sup> However, we also can see that the government does have the ability to limit the free exercise of religion.

Based on the Constitution and the extent to which we have enjoyed religious freedom to date one may conclude that it is still expedient for pastors to serve as state officiants for marriages. However, due to our society's attitude toward the church and same sex marriage it may no longer be expedient and it could be wise for pastors no longer to fill out state marriage licenses. Professor Otto summarizes our culture's attitude:

The rapid changes in our government's policies (and our nation's attitude) toward homosexuality and its sanctioning of gay marriage has placed Christians and our church in a precarious position. We can face public relations nightmares or threats of litigations from groups opposed to Christianity, such as the Madison-based "Freedom From

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<sup>91</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 22.

<sup>92</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 23.

<sup>93</sup> Brug, "The Lutheran Doctrine of the Two Kingdoms," 23.

<sup>94</sup> Koenker, 9.

Religion Foundation.” We might run the risk of losing tax-exempt status or government assistance for our school because homosexuals are now a protected class. It’s not even difficult to envision a time when calling homosexuality a sin is labeled as hate speech in America.<sup>95</sup>

There have already been some troubling examples of our culture turning against Christianity. “Around the country churches and religious groups often find that they are forced into conflict with civil authorities over zoning restrictions that limit their ability to meet, worship and practice their faith.”<sup>96</sup> Brug has sited some examples.

In Evansville, Indiana, Kevin Wilson has been struggling with such a problem. After purchasing some property with an existing church building in 1994, Wilson was told that he could not use his church building as a church without obtaining a special use permit from the city. When he applied for the permit he received a conditional permit limited to one year because of the concerns of neighbors over parking issues and the number of people who might be using the building (the building holds 60 and Wilson’s congregation averages 20-30 on Sundays).

In Evansville, Illinois, the Vineyard Christian Fellowship finds itself in a similar situation. It owns an office building in downtown Evansville that is zoned for commercial use only. Under the restrictions the congregation can hold classes and meetings in the building, have concerts and other special programs during the day or in the evening. The church can do almost anything with its building except hold worship services in it. The city council has refused to change the zoning restrictions to accommodate the church despite a recommendation from the city’s zoning commission in favor of the church. One member of the city council has said that the church could obtain the zoning ruling it sought if it agreed to pay the city \$35,000 each year to compensate for having tax-exempt status.<sup>97</sup>

The government does have legitimate concerns when it comes to zoning. They need to make sure that buildings are suitable for their intended use so that the occupants remain safe. One cannot assume that the primary purpose of the government in enforcing zoning laws is to curtail freedom. However, in the cases above it seems to me that the government did not have a compelling reason to refuse the permit and refuse to change the zoning restriction.

In addition to zoning problems, Brug points out an ominous change of direction based the 1990 Supreme Court ruling of Employment Division v Smith. The court upheld the right of the state of Oregon to deny unemployment benefits to counselors who were fired for using the drug

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<sup>95</sup> Otto, 37.

<sup>96</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 24.

<sup>97</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 24.

peyote during a Native American religious rite. “What alarmed guardians of religious freedom was not the ruling itself but the rationale set forth in Justice Scalia’s majority opinion, which seemed to establish a very dangerous change of direction in the Court’s basic principles.”<sup>98</sup>

Justice Scalia’s opinion modified the basic attitude of the Court toward exemptions from the law on religious grounds. In his view the government may grant religious exemptions, but has no constitutional obligation to do so. In effect, the state may restrict the free exercise of religion as long as it does so inadvertently through a generally applicable law. Scalia admitted that his ruling will force religious minorities to seek relief from oppressive laws by lobbying elected officials for relief, and that some will fail in their efforts. Scalia observed that leaving the accommodation of religious needs to the political process will place a disadvantage on those religious practices which are not widely engaged in, but this unavoidable consequence of democratic government must be preferred to a system where each conscience is a law unto itself. There is no special entitlement to religious exemptions unless they can be attached to some other constitutional right, such as freedom of speech. This line of reasoning was acceptable to conservative justices Scalia, Rehnquist, White, Kennedy, and the more liberal Stevens, who often takes a narrow view on the free exercise of religion.<sup>99</sup>

If this ruling becomes the basis of future court ruling, protection of the religious rights of unpopular minorities will no longer depend on a constitutional principle but on legislators. This new court doctrine could be used against churches that discriminate on the basis of gender or sexual preference in selecting employees.<sup>100</sup>

If our culture is shifting away from religious freedom and toward a general feeling of dislike for Christianity what should we do in regard to our marriage practices? How do we best be salt and light in our present setting? How do we best proclaim God’s definition of marriage? Is it expedient for pastors to continue to serve as a civil servants and file the marriage licenses?

## CONCLUSION

There are a number of approaches we could take. First, a pastor could conclude that it is no longer expedient to serve as a state representative. This conclusion is based on three observations. First, God did not give marriage to the church. Marriage is a social institution for all people of all time. Public ministers of the gospel are not commanded to perform marriages nor do we have an example in scripture of a minister of the gospel performing a marriage.

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<sup>98</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 28.

<sup>99</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 28.

<sup>100</sup> Brug, “The Lutheran Doctrine of the Two Kingdoms,” 29.

Second, although the two kingdoms can overlap in areas of mutual interest, marriage more properly belongs to the state. The church could accomplish its goal of educating and disciplining without our pastors filling out the state paperwork. Third, it is no longer expedient for our pastors to serve the state this way due to our culture's shift against Christian morality. If pastors adopted this conclusion, marriage services would cease to exist in the church. This approach would prevent future lawsuits filed against the church based on discrimination, because pastors would no longer be offering government service to a select group of people.

I do not favor the above practice. Although we cannot say the above practice would be wrong it is more of a retreat from our culture than a proclamation of the truth. A second option would be to double down on our marriage practices. Francis Rossow notes, "The wedding service is a splendid mission opportunity. Normally some unchurched people attend a wedding. People who would otherwise feel uncomfortable in a church now feel that they have a legitimate reason to be present."<sup>101</sup> As God's messengers here on earth, it is our duty to proclaim the truth about marriage in a culture that has distorted it. The wedding service provides an opportunity to preach this truth. If we take this approach we would need to carefully craft our marriage practice. Paul Grime encourages pastors to exclude "wedding silliness." He states, "We believe the time has come when that truth (God's truth about marriage) needs to be seen and experienced more intentionally in our practice."<sup>102</sup> In an era where the devil prowls around insisting that the church should not have the right to refuse to marry homosexual couples, triteness and empty sentimentality needs to come to an end.<sup>103</sup> If this approach were taken, pastors would need to be firm on what is allowable in the marriage service and what is not. Do the signs and symbols in the service proclaim that this is a special day for the couple? Or do the signs and symbols proclaim the truth about Christ? Do people walk out of the service thinking, "Well, that was nice." Or do they walk out of the service thinking, "That was a lot about Jesus and forgiveness, and the model of Christ and the church." In this practice the pastor would still serve as the state officiant but take extra care to craft a wedding service and sermon that proclaim God's truth about marriage. If this approach were taken we would simply have to be aware of a possible lawsuit. This should not surprise or scare us. The Church has been persecuted by governments

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<sup>101</sup> Francis C. Rossow, "Toward Wedding Sermons with substance," *Concordia Journal* (January 1981): 8-12.

<sup>102</sup> Paul J. Grime, "Is it Time for wedding Silliness to End?" *Concordia Theological Quarterly* 80 (2016): 138.

<sup>103</sup> Grime, 138.

and societies thought history. The potential for persecution should not force us into silence.

A third option would be a combination of the two. The pastor could discontinue filling out state marriage license but still encourage wedding services. The couple would get their marriage license at the government office and then have a wedding service in the church. As in the above practice great care must be taken to make the service and sermon Christ centered. If the church were sued for discrimination in the future this is the practice I would suggest adopting.

Whatever practice is taken, as time progresses the church will need to constantly be asking and answering the question, "How do we best proclaim God's definition of marriage in our present culture?" In order to develop a good practice we will always need to go back to scripture and reaffirm what God says about marriage, the two kingdoms, and the mission of the church. Then we will be able to develop a sound practice that reflects sound doctrine.

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