How would you characterise your views on the Bill in general?

In support

The Bill is a good Bill. It will right an injustice in Scots law and has probably helped to goad the Imperial Government into righting an injustice in the Law of England and Wales. It does not suffer from the interference in religious group affairs (and b

How would you characterise your views on the introduction of same sex marriage, so that same sex couples can marry each other?

In support

This is for me a matter of my beliefs both in freedom and about marriage. I see the loving union of a same-sex couple as essentially the same as the loving union of an opposite-sex couple, and I want society to treat them as the same. For the law to treat them as the same is an important step towards this. I know that not all believers (which I use to mean individuals driven by any faith or non-religious belief) share my conviction. But believers regarding same-sex relations as wrong, or same-sex unions as essentially different from marriage, have always been free to govern their collective practice accordingly. For the first time this Bill will enable those believers who agree with me to do likewise.

How would you characterise your views on putting belief celebrants on the same footing as religious celebrants?

In support

Scotland is a kingdom in which the true religion of Jesus Christ is to be maintained and the Queen's subjects are to be ruled according to the will and command of God revealed in Scripture (Coronation Oath Act 1567). (Although, since there has been no recent coronation in Scotland, this oath has not been taken for some years, the Act's implications for the nation's religious character are quite clear.) But it is also one in which alternative religious and belief positions have long been tolerated without seeing any inconsistency. Equality in practical matters between loyal believers of all types accords with this tolerant tradition, and I support it.

How would you characterise your views on the arrangements for authorising celebrants to solemnise opposite sex and same sex marriage (including the opt-in procedures)?

In support

The Scots approach to this question has long been superior to the English emphasis on the marriage venue. It allows greater flexibility for individual celebrants to follow their consciences and meet a couple's needs. Care needs to be taken not to treat the views of conservative office-bearers in liberal religious groups as more worthy of the
law's protection than those of liberal office-bearers in conservative groups: in matters of internal group discipline the law should stay even-handed.

**How would you characterise your views on civil partnerships changing to marriages?**

**In support**

The law needs to accommodate two types of same-sex couple: (A) those for whom full marriage was and remains the 'gold standard', for whom civil partnership was a useful step along the way, but who did not regard it as marriage so long as the law did not call it so and religious marriage rites were not available; and (B) those who considered either their entry into a civil partnership (or possibly their personal exchange of vows) to be their marriage, and now see the 'conversion' of their civil partnership into a marriage recognised by law as merely a useful formality. The Bill accommodates (better than the English Bill) couples in group (A), by allowing them to marry like anybody else who is not married, albeit not letting the subsisting partnership stand in their way and dissolving it by operation of law at the moment when the marriage is contracted. As amended after the last consultation it also accommodates group (B). I think this is right, though in developing the provision for group (B) through Regulations nothing should be done to impair the option that the consultation Bill gave to group (A). I am still unhappy with the limitation of these procedures to couples whose civil partnership was formed in Scotland. I believe domicile in Scotland, which would be enough to enable the Scottish courts to dissolve on adequate grounds a partnership formed elsewhere, should also be enough for it to be dissolved by operation of law when the partners marry. Otherwise there will be real difficulty for a couple who move permanently from a territory where only civil partnership is available (e.g. moving from Helsinki or Londonderry to Stornoway) and wish to marry in their adopted homeland, but cannot argue that their existing relationship has 'irretrievably broken down'.

**How would you characterise your views on allowing civil marriage ceremonies to take place anywhere, other than religious premises, agreed between the couple and registrar?**

**In support**

No issue for me here.

**How would you characterise your views on allowing the religious and belief registration of civil partnerships?**

**In support**

If there were no same-sex marriage I should support this wholeheartedly, as I did the 2010 Alli amendment to the Equality Bill permitting religious hosting of CP registration in England. (I admit that there is an inconsistency between the understanding of hosting religious groups and the word 'civil'. If civil partnerships are to continue I should prefer the word 'registered' to replace it.) Now, I have some sympathy with those who see such partnerships as a temporary expedient and would ultimately like marriage to replace it for all couples. But that must be seen as
the view of somebody who would also like all religious groups to facilitate and bless same-sex marriage. Until they do so, there are some groups who will accommodate only civil partnership, and LGB believers who remain in those traditions would find a religiously-facilitated partnership formation better than nothing.

How would you characterise your views on allowing transgender persons to stay married when obtaining a full Gender Recognition Certificate, which provides legal recognition in the acquired gender?

In support

I have no problem with this. But I refer back to the question about 'conversion'. Given the effort to which draftsmen have gone to accommodate a married couple (H and W) when H is recognised as female but wishes to remain in a same-sex marriage to W rather than convert to a civil partnership as the law presently requires, I think the Parliament should recognise that there are likely to be more people in the situation of Australian civil partners M1 and M2, migrating to Scotland and wishing to be married. Neither couple sees civil partnership as adequate when other same-sex couples are married, though both might have seen it as acceptable if marriage were not an option.

Would you like to comment on the wider issue of protections for those in society who may have concerns about same sex marriage?

1. EQUALITY LAW, IF IT EXISTS, SHOULD BE EQUAL    People can disagree with the whole premise of equality law as it affects individuals and private organisations (including churches and commercial undertakings). In seeking to achieve supposed societal goals, it intervenes in the freedom of these private actors to decide whom they will teach, employ or accept as customers or tenants. For some, the benefits of such freedom outweigh the social detriment of discriminatory decisions. I can at least understand this argument. Once it is accepted, though, that equality law affecting private decisions is here to stay, I think equality must also underlie any exemptions. One 'strand' of discrimination is not more acceptable than another because the victim class is smaller; nor are some sincere convictions a more respectable basis for discrimination than others because they are rooted in religion. Nor should the law distinguish between religious views by the number of their adherents. Hence, to my mind, a religious conviction (e.g. that women cannot represent Christ) should not justifiably exclude them from positions in religious organisations if a sincere non-religious conviction (e.g. that a woman's place is in the home) does not justify excluding them from positions in secular ones. Likewise, the fact that the believers who would argue today (with the Dutch Reformed and Mormon traditions of earlier times) for the inherent inferiority of the black man are less numerous than those who would still argue (with current Roman Catholicism) for the inherent wrongness of a same-sex orientation should not make one view less - or more - worthy of free manifestation than the other. So long as the law silences (or protects) one conviction, I have no greater problem with it silencing (or protecting) the other.  

2. WIDER SOCIETY IS NO LESS ENTITLED THAN RELIGIOUS GROUPS TO FORM A COLLECTIVE VIEW    'Public morals' is one of the grounds on which ECHR Article 9.2 recognises that proportionate limits may be set to the manifestation of religion and belief. The principal supranational human rights instrument affecting the laws of Scotland and England thus acknowledges scope for a public morality. It rejects the
idea that the only morals worthy of respect are religious ones. When Scottish courts impose the concept of 'natural justice' on religious discipline, or regulations balance public concern for animal welfare against traditions of ritual slaughter, these are not instances of illicit repression but of the rule of law. Fair and equal treatment is also now a settled part of Scottish and English societal values. And, if the Bill becomes law, this will be expressed in the fact that all marriages and the resultant family units are equal. Society is entitled to make this known, and to govern its terminology accordingly. I hope both schoolchildren and the media will eventually come to use the words 'married', 'husband' and 'wife' instinctively, regardless of the genders involved in any particular marriage; for me this is not just about the feelings of the couples concerned but also about the normalisation of same-sex relations in daily life, leading to homophobia's increasing social unacceptability. Hence my attitude to teachers whose religious views lead them to deny the status of marriage to the marriage of a same-sex couple. I am happy for them to tell the truth - that a particular faith group would not consider these to be marriages, and (if this be the case) that they personally share that group's stance. But to deny that such marriages are a normal part of Scottish or English life, or that the parties to them believe themselves truly married and that the law (and much of society) concurs, would fly in the face of reality; and, given the school's role of preparing pupils for the wider world, attempting to conceal such reality from them by censoring or excluding otherwise valuable classroom literature would also be an indirect lie. I do not believe that - even in faith-based schools - religious freedom should go that far. It does not worry me that children born into faith traditions, given the full facts about marriage, may grow up with the same convictions as the wider society and rejecting a particular part of their parents' religious belief. I admit my profound disagreement with the views represented (for example) by the 'Christian Institute', the Roman Catholic hierarchy and the Orthodox Chief Rabbi. I hope those views will become less widely held as time passes, even within the Scottish and English communities which carry such religious labels. I note the opinion poll evidence that already the Roman hierarchy does not speak on this point for the majority of Scotland's Catholics.

Would you like to comment on the wider issue of freedom of speech?

I have covered this in my answer to question 12.

Would you like to comment on any other wider issues in relation to the Bill that are not mentioned above?

No.

Are you responding as...

an academic

Dr Augur Pearce
9 July 2013