

MARRIAGE, SAME-SEX RELATIONSHIPS AND THE CATHOLIC CHURCH

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A Google™ search on the Internet for the name “Matthew Shepard” at one time produced 11,900,000 results. Matthew Shepard was a 21-year-old college student who was savagely beaten to death in 1998 in Wyoming. His murder has been called a hate crime because Shepard was gay.

A similar search on the Internet for the name “Mary Stachowicz” yielded 26,800 results.¹ In 2002, Mary Stachowicz was also brutally murdered, but the circumstances were quite different. Mary, the gentle, devout 51-year-old Catholic mother of four urged her co-worker, Nicholas Gutierrez, 19, to change his gay lifestyle. Infuriated by this, as he later told police, he allegedly beat, stabbed and strangled her to death and then stuffed her mangled body in a crawl space in his apartment, located above a Chicago funeral home, where they both worked. I know about

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¹ Thomas J. Paprocki, “Marriage, Same-Sex Relationships and the Catholic Church,” *Loyola University Chicago Law Journal*, Vol. 38, No. 2, Winter 2007, p. 247.

Mary Stachowicz, not from the Internet, but personally, because Mary was my secretary at the parish where I was pastor before I was named a Bishop. She worked part time at the funeral home and part time at the parish. One afternoon, she didn't show up at her usual starting time. This was unusual because she was always on time. A call to the funeral home disclosed that her car was still in their parking lot and her purse with her car keys was still at her desk, but there was no sign of Mary. As Mary's family and friends prayed and worried about her disappearance, Gutierrez prayed with them. Three days later, her mutilated body was discovered in a crawl space in his apartment.

Both murders were senseless and brutal, and I condemn them both unequivocally. However, the fact that there are over eleven and a half million more Internet stories about Matthew Shepard than Mary Stachowicz indicates where popular sentiment lies today on the question of same-sex relationships. Shepard's story has received such widespread attention because his homosexuality was the chief motive for his murder. Mary's murder was widely ignored by the media, despite the fact that she died as a martyr for her faith.

My point is that, in the light of popular opinion today, I recognize that I have an uphill struggle to persuade people of the reasons why same-sex relationships should not be legally recognized as marriages.

Yet, the ethical or moral analysis of an issue is not properly based on polls or surveys of public opinion, but on values, virtues and principles. The challenge is first to show what marriage is and why it deserves a unique status.

Before I get into the substance of this topic, I wish to note that the original announcement for this program billed the presentation as “Two Catholic Views on Gay Marriage.” I corrected that, since there is only one authentic Catholic view. There are two views being presented here tonight by two people who are baptized Catholics, but only one of those views, the one I will present, is consistent with Catholic teaching, while the other view clearly dissents from Catholic teaching. The dissenting nature of the other speaker’s views were clearly identified as such by the Vatican’s Congregation for the Doctrine of the Faith fourteen years ago today, on May 31, 1999, saying these views were “clearly incompatible with the

teaching of the Church.”² The President of the United States Conference of Catholic Bishops on February 10, 2010, issued a news release stating, “No one should be misled by the claim that New Ways Ministry provides an authentic interpretation of Catholic teaching and an authentic Catholic pastoral practice. Their claim to be Catholic only confuses the faithful regarding the authentic teaching and ministry of the Church with respect to persons with a homosexual inclination.”³

I say that the view I am presenting is “consistent with Catholic teaching” because it is not exclusively the teaching of the Catholic Church. The traditional understanding of marriage as between one man and one woman is not the invention of the Catholic Church and in fact precedes Christianity. It is not based on religion, but on natural law.

In my remarks tonight I will address the claims of an argument against my views that would go something like this:

² *Notification regarding Sister Jennine Gramick, SSND, and Father Robert Nugent, SDS, Congregation for the Doctrine of the Faith*, May 31, 1999, accessed at: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19990531_gramick-nugent-notification_en.html.

³ “USCCB President Clarifies Status of New Ways Ministry,” February 10, 2010, accessed at: <http://old.usccb.org/comm/archives/2010/10-028.shtml>.

The Catholic Church teaches that marriage is limited to the union of one man and one woman, and that the civil law should reflect this definition. Some non-Catholic religions, and some people with no religious affiliation, are supportive of homosexual marriage. The civil law governs a diverse and pluralistic society, and it is not legitimate to single out one religious group's views and grant them favored status by enacting their religious views into law. Therefore, it is not legitimate for civil society to limit marriage to heterosexual couples.

The first thing to note in response to this argument is that it relies on several false premises. The Catholic Church did not invent marriage as an institution limited to heterosexual couples. Neither did the state. Marriage is a pre-political and natural phenomenon that arises out of the nature of human beings. The Catholic Church, along with virtually every religion and culture in the world recognizes and supports this natural institution because without it, no society will exist or flourish. I will discuss this phenomenon shortly.

Secondly, it is a given of First Amendment jurisprudence that the mere fact that a civil law harmonizes or agrees with religious beliefs is not grounds for finding an Establishment Clause violation. Certainly, if the civil law granted recognition *only* to sacramental marriages as defined in the *Code of Canon Law* of the Catholic Church, this would violate the Establishment Clause. But no law purports to do so.

The Supreme Court has held that:

The Establishment Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions. In many instances, the Congress or state legislatures conclude that the general welfare of society, wholly apart from any religious considerations, demands such regulation. Thus, for temporal purposes, murder is illegal. And the fact that this agrees with the dictates of the Judaeo-Christian religions while it may disagree with others does not invalidate the regulation. So too with the questions of adultery and polygamy. The same could be said of theft, fraud, etc. because those offenses were also proscribed in the Decalogue. *McGowan v. Maryland*, 366 U.S. 420, 442 (1961).

My response to the claim that it is illegitimate for the civil law to favor the Church's view on marriage will address two points: first, I will discuss the nature of marriage as a natural institution; second, I will argue that civil law and a limited government act beyond their competence and

authority when they attempt to redefine the fundamental attributes of marriage.

I. THE NATURE OF MARRIAGE

First, neither the state nor the Church “created” marriage. Marriage is a natural outgrowth of human nature, capacities and needs in a similar way that language is a natural outgrowth of human nature, capacities and needs. No one at the dawn of time sat down with a committee of linguists to develop languages, nor did a blue-ribbon committee of sociologists and politicians create marriage.

Marriage grows out of a natural affinity and complementarity of male and female – in other words, the ways in which one gender completes the other emotionally, spiritually and physically. Most of our natural inclinations can be developed and accomplished through our own efforts – we can fulfill our inclinations towards preserving our health, satisfying our hunger, learning the truth, seeking the beautiful, through our own solitary efforts. Even if others assist us in reaching these goals, it is our own efforts that ultimately are determinative of our fulfillment. But the inclination, natural desire and capacity towards procreation and creation of a family

can only be fulfilled through the union of a man and woman. Even though new biotech interventions in reproduction have advanced seemingly solitary avenues to this fulfillment, say through artificial reproduction, they all must find ways to mimic the union of a man and woman in order to be successful.

The inclination towards these goods is obviously keenly felt by all human beings, including those with same-sex attractions. But couples of the same sex lack the capacity to realize the goods of natural marriage for the simple reason that they lack the complementarity of male and female.

Pope John Paul II developed a large body of teaching about human sexuality which has been pulled together under the title of the "Theology of the Body." I want to turn to a few of his insights to develop this idea of natural marriage.

Karol Wojtyla wrote in *LOVE AND RESPONSIBILITY*, "Marriage is a separate institution with a distinctive interpersonal nature....This institution provides a justification for the sexual relationship between a particular relationship within the whole complex of society."⁴

⁴ Karol Wojtyla, *LOVE AND RESPONSIBILITY* (New York: Farrar Straus Giroux, 1995).

Wojtyla also noted that this is important for the consequences of the relationship, e.g., children, and for the sake of the partners themselves. The institution of marriage is a moral evaluation of their love – it gives a context to their love and relationship because they’re given a place both in the social milieu and society at large. They may not think they need this acceptance at first, but as time goes by, they are bound to realize that without this acceptance their love lacks something very important.

There is a need for social recognition of this love as a union of persons. Love demands this recognition. Compare the terms “mistress,” “concubine,” “wife,” and “fiancé.” Wojtyla notes that these are words referring to women, but they also say something about a man. The first two words are used for women who are objects; the second two suggest the co-subject of a love having full personal and hence full social value.

Thus, Wojtyla continues, the institution of marriage is necessary to signify the maturity of the union between a man and woman, to testify that theirs is a love on which a lasting union and community can be based – physically, materially, morally, spiritually, etc. This institution serves first the interests of the persons in the marriage and secondarily the interests of others who participate in it (e.g., children) and society at large.

The fact that the institution in fact does all this is revealed in the movement for same-sex marriage. Unions which are essentially different from marriage (one man and one woman permanently committed to each other) will not become marriage simply by taking on the institutional guise. Those involved in same-sex relationships are looking for social validity and legal approval. All of this is understandable, but that doesn't make it possible.

It can be said that marriage, as an institution, exists at least in part to protect the vulnerability that arises, especially for women, when a man and a woman have an intimate relationship that of its nature has the potential for children. What sets the sexual union between a man and a woman apart from any other union – sexual or non-sexual – is the potential to bring forth new human life or lives. This makes the relationship uniquely vulnerable for everyone involved.

Legal parlance has also recognized this unique aspect and vulnerability by referring to the child as the “issue” of marriage. In fact, as University of Notre Dame Law Professor Gerald Bradley has pointed out, “Consummation has traditionally (though, perhaps, not universally) been recognized by civil as well as religious authorities as an essential element

of marriage. Pre-existing, incurable physical defects and incapacities which render a party unable to consummate the marriage, are, under most statutes, grounds for annulment. . . . The law, in its rules regarding consummation, embodies an important insight into the nature of marriage as a bodily – no less than spiritual and emotional – union that is actualized in reproductive-type acts.”⁵

The Catholic Church has considerable jurisprudence on the concept of the consummation of marriage. This jurisprudence on marriage developed over the course of centuries, starting with the early Christians who simply entered into and lived out their marriages according to the traditional practices of the culture in which they lived, first the Jewish culture and later the Greco-Roman culture.⁶ Despite the widespread practice and acceptance of homosexual relations in the Greek and Roman cultures, neither Greek law nor Roman law ever sought to grant legal status to same-sex relationships or to define them as “marriage.” However, from the start Christians distinguished themselves from the Greeks and Romans in rejecting their promiscuous understanding of sexuality and

⁵ Gerard V. Bradley, “Same-Sex Marriage: Our Final Answer?” in *SAME-SEX ATTRACTION: A PARENTS’ GUIDE*, John F. Harvey, OSFS, and Gerard V. Bradley, eds. (South Bend, Indiana: St. Augustine’s Press, 2003), 139.

⁶ *New Commentary on the Code of Canon Law*, Commissioned by the Canon Law Society of America (New York, N.Y.: Paulist Press, 2000), p. 1234.

embracing instead the virtue of chastity both within marriage and outside of marriage.

With regard to the consummation of marriage, then, Canon 1061 of the *Code of Canon Law* states that a valid marriage is “called ratified and consummated if the parties have performed between themselves in a human manner the conjugal act which is per se suitable for the generation of children, to which marriage is ordered by its very nature and by which the spouses become one flesh.” Thus, oral sex, anal sex, and mutual masturbation do not constitute consummation of marriage.⁷ I have yet to see any analysis, jurisprudence, legislation, argumentation, or explanation of how a so-called same-sex “marriage” is consummated.

II. LAW AND TRUTH IN RELATION TO THE STATE

Next, I would like to turn to a consideration of the proper relationship between law and truth, or, more specifically, between law and the truth about marriage as held on the basis of natural law reasoning.

⁷ See *New Commentary on the Code of Canon Law*, Commissioned by the Canon Law Society of America (New York, N.Y.: Paulist Press, 2000), pp. 1257-1259.

First, I need to make a short digression to discuss an historical progression about the necessary grounds or justifications for enacting civil laws.

The philosophical project of the Enlightenment sought to sweep away old-fashioned traditions that rested on no more than superstition and historical anachronisms, and establish in their place a legal system resting on a standard that all ethical norms and laws should be justified by empirically valid evidence. By employing this scientific standard in pursuit of a just and reasonable society, reformers hoped to imitate the advances made possible by the use of the scientific method in expanding human control over nature. Similarly, it was thought that such standards could be used to decide disputed moral questions and would one day establish rational and just rules for the social organization of human beings. Social taboos and superstitions were to be swept away by scientifically verifiable approaches to social organization, and only those practices that could be justified by this new standard would be legitimate. Hence we have the development of utilitarianism by Jeremy Bentham and John Stuart Mills, a theory that claims to be able to rationally settle all

ethical questions in terms of measuring how much they maximize pleasure and minimize pain.

The obvious difficulty with this attempt to graft scientific and mathematical standards of proof-requirements into the ethical and social organization of human beings is that there is no means of measuring, manipulating, and verifying the truth claims of various ethical and philosophical positions. Even utilitarianism cannot identify or measure the “greatest happiness” that is the guiding light of its method. For instance, should sado-masochism be allowed if the intensity of pleasure of the torturer outweighs the pain inflicted on the victim? Who can scientifically verify whether the pleasure is more intense than the pain? Consequentialists, who believe that the ethically correct position is the one that most advances the overall good of society, face a similar problem, as it is impossible to accurately measure all of the good and bad consequences that flow from any particular choice.

When it became clear that this Enlightenment project aiming at universally justifiable ethical positions was not attainable, and that it was impossible to justify ethical positions with the same precision as was present in science, philosophical trends shifted to the post-modern rejection

of all universal moral truth claims. Since no ethical system could be justified to this level of precision, many post-modern philosophers and social critics adopted varying modes of cultural and moral relativism. Here no absolute or universal truths are possible, and ethical reflection becomes a political endeavor of compromise and mutual respect. Equality is one of the very few unquestioned values that is enshrined in this philosophy, although it leaves unanswered the question of why equality should be favored over inequality if all positions are morally equivalent. Since supposedly there are no moral truths but only preferences held by individuals, all alternatives should be given equal respect and dignity. To hold to moral absolutes, in this view, is to limit human potential and deny equal dignity to those who do not accept or live by such precepts. But it is logically impossible to equally credit all moral positions in the law, as even those attempts to adopt morally neutral positions are themselves moral choices that deny recognition and equality to those who disagree. The end result is that moral questions end up being only political questions decided by the majority, with the result that the weakest suffer the most.

Since limiting public policy to positions based on either empiricism or moral relativism is too problematic, we should consider a third basis of justifiable laws -- those that are warranted. While it may be that ethical truths do not lend themselves to being "justified" under scientific standards of proof, moral positions can and should be evaluated in terms of whether or not they are "warranted" because they are reasonable. We can come to a conclusion that a claim is warranted in a number of ways -- based on trustworthy authorities (a basis that is explicitly rejected by both enlightenment and post-modern philosophy), through natural law reasoning, reflection on human nature, including our embodied biological nature, human experience, as well as the lessons that come from various cultures, religions, traditions, history, and the social sciences. Together, this common human heritage represents a received treasure that each generation has the duty to hand on to the next.

Civil societies and the state are acting properly, in accordance with reason, when they base their legal systems on "warranted claims" that are attested to by this kind of evidence. Under this system, one is certainly *warranted* in believing that society has an important and vital interest in preserving, promoting and defending marriage and families as composed

exclusively by heterosexuals. At the same time, given the fact that the state itself would be endangered if families based on heterosexual relations were threatened, the state is warranted in refusing to grant legal recognition to same-sex marriage.

The burden of establishing that homosexual unions are similarly vulnerable and in need of recognition, as well as being necessary and beneficial to the common good, as heterosexual marriage, is necessarily on those who wish to overturn these warranted claims. I do not believe it will be possible to establish, based on the evidence detailed above, that such claims are in fact warranted. If the state, nonetheless, adopts such proposals in order to further the political or social agendas of those who cannot establish such warrant, the state would be acting illegitimately, and in opposition to reason.

A re-definition of marriage to include same-sex marriage is beyond the competence of the state, because marriage both precedes the state and is a necessary condition for the continuation of the state (because future generations arise from and are formed in marriage). When a state enacts a law saying that a same-sex relationship can constitute a marriage, it has the power to enforce that in a society's external practices, but it is devoid of

any intrinsic moral legitimacy and is a contrary to any natural reality. If the government says that an apple is now the same as an orange, and the law requires everyone to call apples “oranges,” the state would have the power to punish anyone who calls an apple an “apple” instead of an “orange,” but it would be a totalitarian abuse of raw power and would not change the biological reality of the nature of the fruit in question. So too with the definition of marriage.

Benito Mussolini defined totalitarianism in this way: “Everything within the state, nothing against the state, nothing outside the state.” The great totalitarian movements of the 20th Century sought to fundamentally subordinate families to the goals of the state, whether in pursuit of a national identity rooted in racial purity or in furtherance of a Marxist utopia. In response, the Church further refined its teaching on the ethical principle of subsidiarity, which holds that is not legitimate for the state to interfere with the fundamental nature of the family. In this view it is never legitimate for the state to decide that it will use marriage and the family as mere instrumentalities to be manipulated to achieve the state’s own goals of cultural transformation. Rather, the principle of subsidiarity holds that “a community of a higher order should not interfere in the internal life of a

community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good." (*Catechism of the Catholic Church* #1883)

Shades of this impulse toward consolidation of every sphere of life into the direct control of the state, and a rejection of the concept of limited government appears to underlie the rejection of the concept of "natural marriage" and the movement for legal recognition of same-sex marriage.

The State has a duty to preserve and promote marriage as an institution that precedes the State, but the State does not have the authority to fundamentally redefine the nature of that institution. Similarly, the State has the authority to enact the "rules of the road" to protect vehicle drivers. But it has no authority or power to change the laws of physics so that car crashes will be less destructive. Rather the State assesses the pre-existing factors that influence safe driving – the age when most persons can handle the responsibility of driving, the effect of alcohol on drivers, the best way to construct roadways, maximum safe speeds – in order to create rules that best accord with these pre-existing realities. The same should be true of marriage.

The benefits and duties conferred on marriage simply respond to the reality that the state cannot exist without families who will bring into existence the next generations. Those who advance a view of the family that is subordinate to and dependent upon the state for its existence turn the relationship of the family and state upside down. The family itself is the first cell of society, from which the state receives its existence. In a very real sense, the state exists to serve the family which has its own legitimate nature and identity. It is not within the power of the state, particularly a state which claims to embrace the notion of a limited government, to redefine marriage in order to advance the state's interests in equality of treatment.

It would be naïve to assume that this impulse towards the aggrandizement of the state poses no threats to religious freedom. While the political campaign to strip Catholic institutions of their ability to witness to their religious teaching through their institutions is currently being pressed most strongly by those who seek to weaken the Church's defense of the unborn and other frail human beings, it is quite likely that this pressure will be brought to bear on the Church's opposition to same-sex marriage. For instance, in 2011 Catholic Charities throughout Illinois

were forced to withdraw from offering foster care and adoption services because the state refused to accommodate the Church's teachings and policies against placing children with same-sex couples, indeed with any unmarried cohabiting couples, whether heterosexual or homosexual.

In short, the Church's teaching on homosexuality and marriage is Catholic because it is true, not true because it is Catholic. This is expressed in the words of the bishop, St. Cyril of Jerusalem: "The Church is called Catholic or universal because . . . it teaches fully and unfailingly all the doctrines which ought to be brought to men's knowledge, whether concerned with visible or invisible things, with the realities of heaven or the things of earth."⁸ In other words, the conclusion that same-sex relationships should not be afforded legal status is because it is based on the truth, not just on Catholic teaching. Yet, saying that makes this conclusion all the more controversial. If it were based simply on Catholic teaching, opponents could say in our pluralistic context, "You Catholics are entitled to your opinion, but that is not binding on others." Instead, saying that truth is the reason that same-sex relationships should not be afforded

⁸ Quoted in *Office of Readings*, LITURGY OF THE HOURS, Wednesday of the Seventeenth Week of Ordinary Time.

legal status is offensive to those who deny the existence of truth, who prefer to live in a world dominated by what Pope Benedict XVI termed a “dictatorship of relativism.” In his homily at the Mass on the day of the opening of the conclave that elected him Pope, the Holy Father identified this “dictatorship of relativism” as “the gravest problem of our time.”⁹

If you acknowledge that truth exists, then we can discuss and even argue about whether or not I or the Catholic Church correctly understands the truth of this matter. But if you deny that there is such a thing as truth, that is, *the* truth, not just *my* truth and *your* truth, then the matter becomes merely an exercise of raw political power in terms of who has more votes to impose an agenda, and that is what makes it ultimately tyrannical. This was described by then-Cardinal Ratzinger in a speech that he gave in Rome in 1996: In a culture dominated by relativism, he said, “The majority determines what must be regarded as true and just. In other words, law is exposed to the whim of the majority, and depends on the awareness of the values of society at any given moment, which in turn is determined by a multiplicity of factors. This is manifested concretely by the progressive disappearance of the fundamentals of law inspired in the Christian

⁹ Quoted in John L. Allen, Jr., *THE RISE OF BENEDICT XVI* [New York: Doubleday, 2005], p. 174.

tradition. Matrimony and family are increasingly less the accepted form of the statutory community and are substituted by multiple, even fleeting, and problematic forms of living together.”¹⁰

IV. CONCLUSION

I conclude by recalling St. Paul’s visit to Athens. We read in the *Acts of the Apostles* that Paul engaged in daily debates in the public square with ordinary passers-by. Some Epicurian and Stoic philosophers disputed with him, some of them asking, “What is this magpie trying to say to us?” (*Acts* 17:18). Perhaps you are asking the same thing of me right now! After Paul addressed the Athenian citizens in the Areopagus, we are told that “some sneered, while others said, ‘We must hear you on this topic some other time’” (*Acts* 17:32). Again, some of you may be sneering, and I might be lucky if you said you were willing to hear me again on this topic some other time. But the passage ends by saying that a “few did join him, however, and became believers” (*Acts* 17:34). In the end, I hope that at least a few of you will agree with my remarks.

¹⁰ Quoted in John L. Allen, Jr., *THE RISE OF BENEDICT XVI* [New York: Doubleday, 2005], p. 176.

Resources:

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