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Same Sex Marriage Heads to the Court: Part I

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Distinctly Catholic

All people are created in the image and likeness of God and thus possess an innate human dignity that must be acknowledged and respected. In keeping with this conviction, the Church teaches that persons with a homosexual inclination must be accepted with respect, compassion, and sensitivity? (Catechism of the Catholic Church, no. 2358). We recognize that these persons have been, and often continue to be, objects of scorn, hatred and even violence in some sectors of our society. Sometimes this hatred is manifested clearly; other times, it is masked and gives rise to more disguised forms of hatred. ?It is deplorable that homosexual persons have been and are the object of violent malice in speech or in action. Such treatment deserves condemnation from the Church?s pastors wherever it occurs? (Congregation for the Doctrine of the Faith, On the Pastoral Care of Homosexual Persons, Oct. 1, 1986, no. 10).

These words are taken from the United States Conference of Catholic Bishops? 2006 statement ?Ministry to Persons with a Homosexual Inclination.? They are good words for us all to remember as the U.S. Supreme Court hears oral arguments tomorrow in two cases involving same sex marriage. Inside the high court, we can expect the kind of reasoned debate the venue demands. Unfortunately, too much of the debate outside the court continues to be marked by bigotry on both sides.

Both sides? Yes. Too often, opponents of gay marriage put forward false and mean-spirited arguments, suggesting that gay men and women are morally unfit, or somehow perverted, when it has become obvious to all but the most hateful in recent years that being gay is not a perversion. A gay person is not a straight person making an aberrant choice. There are countless testimonies that evidence the fact that gayness is experienced as a given, not a choice.

This is why I believe that our Church?s theology regarding homosexuality is inadequate. It has been

drawn from centuries of lucid and progressive reflection on marriage, a reflection that led the Church to increasingly recognize the dignity of both parties to marriage, casting suspicion on arranged marriages or views of marriage that reduced the woman to an object of the man's choice. And, while many would fail to see this as progressive, I think the Church's on-going commitment to the belief that marriage is forever is a necessary bulwark against a more contractual idea of marriage, the kind of thing one can get out of if it doesn't work out, a hedging of bets at the beginning that rightly invalidates the idea of self-surrender without which no marriage can properly be considered a sacrament. I do believe that our pastoral practice towards divorced and remarried persons requires some adjustment too, perhaps following the practices of the Eastern Orthodox churches, but thank God the Church has held on to the belief that marriage is a total commitment of self, not a mere contract to be discarded when deemed appropriate.

The Church's teaching on homosexuality seems to be entirely derivative of this teaching on marriage, and just so, it has not yet wrestled with the fact that being gay is a given, not an unnatural choice, but a natural phenomenon. I suspect that if the Church engages the issue of homosexuality as it is experienced, we will find the theological resources to avoid the kind of hurtful language the Church condemns but also sometimes indulges, such as labeling homosexuality "intrinsically disordered." In terms of the current debate, it would be helpful if the Church's pastors acknowledged that gay people, in their pursuit of the right to marry are not intending to overturn traditional marriage, they are trying to claim it for themselves. Their intentions are hardly subversive.

But, the bigotry runs both ways. Those who defend traditional marriage can often make arguments that are coarse and hoary. Still, the intention to preserve marriage does not require one to be a bigot and those who oppose same sex marriage should not be dismissed as mere bigots. I have argued in these pages that the Church lost the fight for traditional marriage when it acquiesced in the laws granting no-fault divorce fifty years ago. In our culture today, prescinding entirely from the debate about same sex couples, U.S. society does not mean by marriage what the Church means by marriage. This fact should invite those who oppose same sex marriage, especially our bishops, from the kind of histrionic language that sees the push for same sex marriage as a civilizational threat. On the other hand, if we think we should learn from our mistakes, I think it is fine for someone to hold the position that we should have been more vigilant fifty years ago when no-fault divorce laws came on the books and we will not similarly remain asleep this time. This, of course, requires the person holding the position to make the full case, against divorce and same sex marriage, not the half case against only the latter. I suspect that the opponents of same sex marriage, having consulted the polling data, are reluctant to make this intellectually honest case because they know it will force people to see the issue in ways that will not help them at the ballot box. Nonetheless, as a society, we should all be concerned about the instability of an institution that is so foundational to the life of our culture as marriage. To dismiss the concerns of those who worry about redefining marriage as mere bigots is itself a form of bigotry. After all, many of us who are concerned about traditional marriage root our concern in the idea that marriage as the Church understands it is also "a given."

I confess to be torn myself on this issue. The position I have long held, in support of civil unions but not same sex marriage, is no longer politically viable. That is clear. I cannot deny that we must find a way to deliver the security a couple, any couple, gay or straight, should receive in their long-term commitments, just as I cannot deny that I have no problem with privileging those heterosexual friendships that we have called marriages for centuries. I am increasingly risk-averse when it comes to foundational institutions: Remember that we were told no-fault divorce laws would "liberate" women but, in fact, the new legal regime has been a disaster for many women, especially poor women. And, I have a native suspicion of government interference in such deep strata of our culture, a suspicion born from Orwell's observations about the danger of empowering a government to be able to change the meaning of words. There are things in a culture that precede politics and politics should be leery of messing around with those things.

In this case, both the equal dignity of all people and a traditional definition of marriage strike me existing in that pre-governmental, cultural strata, and those impulses are in conflict. I only hope the conflict will be worked through, as the bishops suggested, without unnecessary ugliness on either side.

Tomorrow: Same sex marriage and the law.

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