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Religious opposition to homosexuality increasingly a question of law

by John L. Allen Jr.

All Things Catholic

A political decision in England this week marks a further step toward what can only be called the criminalization of religious opposition to homosexuality, a trend that poses deep challenges to the Catholic church -- not only in terms of legal exposure, but its capacity to articulate a positive message on sexuality and the family.

In a nutshell, Catholic adoption agencies in England have been told that they cannot bar services to gay couples. At a minimum, it means agencies that refuse to serve gays will not receive public funding. Under the English system, private agencies are reimbursed roughly £20,000 for their effort when they place a child with a couple, meaning a little over U.S. \$39,000. Catholic agencies place perhaps 230 children annually, meaning they receive as much as \$9 million from the state.

By way of background, the United Kingdom adopted an "Equality Act" in 2006 that bars discrimination against gays. Cardinal Cormac Murphy-O'Connor of Westminster, with the backing of other spiritual leaders such as the archbishop of Canterbury, requested an exemption for church-run adoption agencies on the basis of freedom of religion. Though Prime Minister Tony Blair and his Communities Secretary, a Catholic and member of Opus Dei named Ruth Kelly, were sympathetic, opposition within the Labor Party forced them to back down. In the end, Catholic agencies will not be exempt, but they have been given 20 months to make the transition.

Parliament still has to approve the regulations, and there's a court challenge to the law itself that will be

heard in March. If things stand as they are, however, it's possible that the seven adoption agencies run by the Catholic church in England may have to close.

The story illustrates a cultural "mega-trend" in the affluent North -- a collision between the irresistible force of the gay rights movement, and the immovable object of religious commitment to traditional "family values."

Increasingly, the battle is being waged not merely on the field of ideas, but in the courts.

In 2004, a Pentecostal pastor was convicted in Sweden under laws against hate speech for declaring that homosexuality is "a deep cancerous tumor on all of society." The country's Supreme Court later set aside the conviction, under provisions in the European Convention on Human Rights concerning freedom of religion.

In British Columbia in 2005, the Knights of Columbus were taken before a Human Rights Tribunal for refusing to rent a hall to a lesbian couple for a wedding reception. Their right to refuse the rental was upheld, but the Knights were ordered to pay each woman \$1,000 for offense to their "dignity, feelings and self-respect." Also in British Columbia, an Evangelical Christian teacher who wrote letters to the local newspaper opposing gay rights was suspended for three months under the local school system's policy of non-discrimination.

In France in 2004, a new law added anti-gay comments to a class of prohibited speech that already includes racist and anti-Semitic insults. Though no religious figure has yet been prosecuted, French Catholic leaders have expressed concern that the law might prevent them from opposing gay marriage.

Last March, Catholic Charities in Boston stopped providing adoption services after it failed to win an exemption from a Massachusetts anti-discrimination law that requires agencies to serve gay couples. Catholic Charities had placed 720 children in adoptive homes in the past 20 years, roughly 13 of them with same-sex couples.

Increasingly, courts may be asked to hear appeals from Christians who believe they're being discriminated against for their views on gay rights. In 2005, for example, a British bank forced an Evangelical Christian group to close its account after its leaders publicly criticized homosexuality. In the United States in 2005, an insurance agent was fired after posting critical statements about homosexuality on the Internet. In August 2006, the Minneapolis police department suspended a police psychologist because of his membership in a Christian group that promotes "traditional family values," including opposition to homosexuality.

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Exactly what all this augurs is difficult to say. It's possible, for example, there may be a silver lining for

Christians opposed to the expansion of gay rights. Historically, the church has usually been at its best when it's powerless, and the sight of Christians in the dock to defend their beliefs may inspire sympathy. On the other hand, many supporters of gay rights believe the churches eventually will be forced to adjust to new social realities, as happened with Enlightenment-era concepts of human rights such as freedom of the press and separation of church and state.

Lacking a crystal ball, how things will shake out over time is anyone's guess. In the short term, however, increasing acrimony seems a safe bet.

It's not much of a stretch, for example, to imagine pastors being fined or even imprisoned for statements opposing the rights of homosexuals to marry or adopt. (As noted above, this almost happened in Sweden). States might refuse to recognize the validity of any marriage carried out by a church that refuses to marry same-sex couples. Catholic schools could face investigations for what they teach on homosexuality. The potential for conflict is virtually unlimited, once the state decides that rejecting gay marriage and gay adoption is ipso facto a form of illegal discrimination.

Two other points are worth making.

First, if we narrow the focus to the Catholic church, what often gets lost is that Catholicism actually has, in at least some respects, a fairly "tolerant" stance on homosexuality. Under the rubric of "love the sinner, hate the sin," church officials routinely insist that homosexual persons have equal human dignity, and must not be the objects of violence or malicious speech. The Catechism of the Catholic Church says of homosexuals, "Every sign of unjust discrimination in their regard should be avoided."

Of course, the key word in that sentence is "unjust," because there are forms of differential treatment the church defends. In its July 1992 document "Some Considerations Concerning the Response to Legislative Proposals on Non-discrimination of Homosexual Persons," for example, the Congregation for the Doctrine of the Faith upheld discrimination against gays in adoption, in hiring teachers and coaches, and in military recruiting, on the grounds that society has the right not to foster behavior that evokes "moral concern," especially with regard to the formation of young people. The congregation asserted, "There is no right to homosexuality," and hence the prerogatives of homosexuals in certain areas may be curtailed for the common good.

Obviously one can debate that proposition, but it's more nuanced than some other religious bodies, and clearly distinct from crude homophobia. The binary logic of ideological debate, however, tends to blot out such shades of gray.

Second, critics both inside and outside the Catholic church have long objected that its approach to human sexuality is excessively negative, that the church is too focused on what it's against. Pope Benedict XVI has actually been trying to strike a more affirmative tone. In his first encyclical, *Deus Caritas Est*, Benedict wrote approvingly of human erotic love, and steered clear of offering an index of forbidden acts.

When Benedict traveled to Spain last May, many expected a dramatic showdown with the Socialist

government, which has legalized gay marriage, speedier divorce, and stem cell research. Instead, the pope was relentlessly non-confrontational. He was later asked about that choice on German television, and said: "Christianity, Catholicism, isn't a collection of prohibitions. It's a positive option. It's very important that we look at it again, because this idea has almost completely disappeared today. We've heard so much about what is not allowed that now it's time to say, 'We have a positive idea to offer.'"

In some ways, that style marks a "sea change," with apologies for the pun, in statements from the Holy See on issues of sexual morality.

In the court of public opinion, however, it may be difficult to project a "positive idea" when the growing threat of legal sanctions forces the church to fight defensive battles. Under these circumstances, the church spends more time defending its "no" than explaining its "yes."

Can the train-wreck of a church/state crisis be avoided? Benedict XVI is, among other things, a musician, and he has tried to strike the right tone; the question is whether he or anyone else can complete the score, while also managing to stay out of jail.

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