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Thomas J. Paprocki
Loyola University Chicago, School of Law

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Marriage, Same-Sex Relationships, and the Catholic Church

*Thomas J. Paprocki*

A recent Google search on the Internet for the name “Matthew Shepard” 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. 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 coworker, 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 into a crawl space in his apartment, which was located above a Chicago funeral home where they both worked. I know about 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 did not show up at her normal starting time. This was unusual because she was always on time. A call to the funeral home disclosed that her car was still in the parking lot, 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

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*This article is adapted from remarks presented at the Loyola University Chicago Law Journal Conference “The Constitutional and Legal Issues Presented by Same-Sex Relationships” on April 1, 2006. Thomas J. Paprocki is an Auxiliary Bishop of Chicago and an Adjunct Professor at Loyola University Chicago School of Law.*
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 has been 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 fact that we are debating and discussing the possibility of same-sex marriage reflects more on the reality that the institution of marriage is in crisis than the social phenomenon of growing support for same-sex marriage. Whether it is a Britney Spears “oops-I-made-a-mistake-it-was-just-a-joke” or just an ordinary serial monogamist, it is clear that the concept of marriage as one man and one woman, in sickness and in health, until death, is far removed from the consciences of many. Many of the arguments in favor of same-sex marriage are based on the failures of heterosexual marriage. It is undeniable that the last half-century has given us a lot of examples of bad marriages. But, if we are honest, they have also given us a lot of reasons why marriage should be unique, treasured, and protected. Look at the numbers of children who grew up with every material advantage, including an excellent education, but without a mother and father who love each other. This situation creates instability for the child and sociological data continues to reveal the effects of this.

The crisis confronting marriage, however, is no reason to manufacture or accept substitutes. The challenge, admittedly, is first to show what marriage is and why it deserves a unique status.

I have been asked to address the question of why it is appropriate or legitimate to have the law single out and enact into civil law the “Church’s understanding of marriage.” As a further point, I have been asked to respond to the claim that it is illegitimate for the Church to offer guidance to Catholic politicians regarding the morality of voting on matters related to homosexual marriage.

I presume that I am being asked to answer the claims of an argument that would go something like this: “The Catholic Church teaches that marriage is limited to the union of one man and one woman, and the Vatican has issued documents that instruct Catholic politicians to vote in conformity with those views when this limitation is challenged by homosexuals. 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 it favored status by
enacting its 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.

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:

[T]he “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.1

My response to the claim that it is illegitimate for the civil law to favor the Church’s view of marriage will address three 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; and finally, I will explain why it is legitimate for the Church to assist politicians in making morally correct decisions in regard to voting on matters related to marriage law.

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,

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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 solitary efforts—we can fulfill our inclinations toward preserving our health, satisfying our hunger, learning the truth, and seeking the beautiful. 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 toward 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. It is tragic that homosexuals are not able to fulfill these desires with those to whom they are attracted, but this is not the fault of natural marriage. It would be wrong to attempt to fundamentally redefine the very concept of marriage in a futile attempt to bring such persons to the fulfillment that is embodied in the concept of natural marriage. Such attempts will be futile because there is no way for homosexuals to reach the telos, or end, toward which sexuality is ordered.

We need to recover teleology, that is, to discover our purpose, why were we created, why we exist. One of the effects of materialism is the creation and development of the atomistic self. We are accustomed to creating and controlling our own reality, whether it is the temperature (72 degrees inside when it is 100 degrees outside), food (specialty foods regardless of season), work, relationships, et cetera. As a result, we become disconnected from what is most real. Certainly these advances and the concomitant affluence can be good things, but we have to be careful that they do not distract us from who we really are.

The human person is a combination of body and soul, so men and women are focused on something higher—more than just the advancement of the species. Marriage cannot be just about propagation of the species—it is also about the soul and bringing each partner into a
closer union with the other and closer to God.\textsuperscript{2} Each partner is good in and of themselves, not just in the "use" that they provide the other. The complementarity manifested on the biological level, i.e., reproduction, points to a complementarity of a higher level: intellectual and spiritual.

Within authentic marriage (especially one that does not allow for no-fault divorce),

\textit{[t]he body of another can never be an “object” of pleasure, and the pleasure-seeker who changes partners in order to renew the effect of sensual pleasure is condemning himself never to know true joy. Sensual pleasure should be accepted joyfully, but also with the gravity incumbent upon the procreative act. The bond of the flesh is the sign of a spiritual bond that only the fidelity of the spouses can make living and strong.}\textsuperscript{3}

This takes time, hence the need for absolute commitment unlike what we see in most marriages today, which are more or less conditional.

Pope John Paul II developed a large body of teaching about human sexuality which has been pulled together under the title of \textit{Theology of the Body}.\textsuperscript{4} I want to turn to a few of his insights to develop this idea of natural marriage.

Karol Wojtyla explained in \textit{Love and Responsibility} that marriage is a separate institution with a distinctive interpersonal nature.\textsuperscript{5} This institution justifies the sexual relationship between the man and woman before the whole complex of society.\textsuperscript{6} Wojtyla noted that this is important for the consequences of the relationship, e.g., children, and for the sake of the partners themselves.\textsuperscript{7} The institution of marriage is a moral evalua-
tion of their love—it gives a context to their love and relationship because they are 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.”

This love demands social recognition as a union of persons. Compare the terms “mistress,” “concubine,” “wife,” and “fiancée”; 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 a woman, to testify that [theirs] is a love on which a lasting union and community can be based”—physically, materially, morally, spiritually, et cetera. 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 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 does not 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 nonsexual—is the potential to bring forth new human life or lives. This makes the relationship uniquely vulnerable for everyone involved. In fact, one of Aquinas’s principal arguments against adultery is that the child that

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8. Id. at 219.
9. Id.
10. Id. at 219–20.
11. Id. at 219–20.
12. Id.
13. Id. at 220.
14. Id.
could be conceived from the adulterous union would not have the
stability required for its proper education.\textsuperscript{15} That stability is essential
for the good of the child, the good of society, and, frankly, the good of
the parents.

Now, some might say, if that’s his only objection, an adulterous
couple could use contraception. But one of the main arguments that
abortion advocates use is that contraception does not always work. This
argument itself acknowledges the uniqueness of the sexual relationship
between a man and woman.

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:

\begin{quote}
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. . .
\end{quote}

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.\textsuperscript{16}

This unique aspect of being able to bring human life into the world is
necessary for the advancement of society. No society can go forward
without new human lives. In fact, every society is built on the family
because the family is the first context for these new lives.

The structure of the family has changed over time, especially from a
polygamous union to a monogamous union. This has taken place
largely because of vulnerability issues. On a practical level, it is much
easier to provide completely for one wife and children with her than for
several wives and their children. Societies everywhere, recognizing this
vulnerability, have given special protection to these sexual unions. It is
only recently with the advent of the sexual revolution and widespread
contraception that sexual unions between men and women have become
casually regarded because the element of children is so easily and
readily separated from a union which \textit{naturally} includes them.

\begin{footnotes}
\item[15] \textit{Aquinas}, \textit{supra} note 2, at ST II-II, Q. 154, a. 2 (arguing that because fornication is
incompatible with matrimony, “it is opposed to the good of the child’s upbringing”).
\end{footnotes}
Ultimately, this is a sign of our self-dependency and our detachment from what is real. We have been able to reconfigure reality to our immediate desires and pleasures. But the reconfiguration is only temporary.

It is true that some children are raised without a mother and/or a father and these children deserve protection and an environment in which to thrive. We have legal provisions that facilitate a family-like structure for a child without contravening the meaning of marriage, e.g., foster families. But the natural and far more common locus for the child is within the natural family.

Other unions do not have the same vulnerability and need for additional support as natural marriage. Marriage requires an institution because the parties need private protections, public involvement, and approval. The public has the role and responsibility of being a witness to this unique union that directly involves the further advancement of society.

Other relationships and unions, while undoubtedly intimate and expressive of love, do not in and of themselves have this same vulnerability and special ability that the sexual union of a man and woman has. To extend the same institution and protections suggests that these unions are something that they are not.

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.

First, I need to make a short digression to discuss a 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 Mill, 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.\textsuperscript{17}

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 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 sadomasochism be allowed if the intensity of pleasure experienced by 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 postmodern rejection of all universal moral truth claims. Since no ethical system could be justified to this level of precision, many postmodern 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 there are supposedly 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

\textsuperscript{17} See generally John Stuart Mill, \textit{Utilitarianism, in ESSENTIAL WORKS OF JOHN STUART MILL} 183, 183 (Max Lerner ed., 1965).
moral questions end up being only political questions decided by the majority, with the result that the weakest suffer the most.

The justices of the Supreme Judicial Court of Massachusetts reflected these attitudes in their rejection of their state’s explanations for why it limited marriage to heterosexual couples. In Goodridge v. Department of Public Health, the court declared that homosexual marriage is required because of equality principles and that there is “no rational basis” for the state to limit marriage to members of the opposite sex.\textsuperscript{18} The court considered three possible justifications put forth by the state, only two of which are relevant to our discussion.\textsuperscript{19} First, it rejected the state’s interest in the procreative nature of marriage, because not all marriages are procreative, nor are all children born into marriages.\textsuperscript{20} Nor could the state justify the restriction of marriage to heterosexuals because this is the best setting for raising children.\textsuperscript{21} Not all children necessarily do best when raised by a father and mother, nor are all children damaged who are not raised in a marriage. Therefore, the state is acting irrationally when it denies important marital benefits to homosexual couples, especially those with children in their household, who wish to marry.\textsuperscript{22}

By inference, the court appears to be saying that, in order for the state to rationally marry only heterosexual couples, it would have to prove scientifically that its postulates about procreation and child rearing are always and everywhere true. Only if the state had come forward with irrefutable scientific data that demonstrably proved, on the one hand, that all heterosexual couples who marry have children and raise all of these children to be happy and successful, and, on the other hand, that no one who is not in a married heterosexual relationship ever procreates, and that any children raised outside of marriage are all demonstrably damaged by the lack of their birth mother and father, could the state rationally limit marriage to a man and a woman. This is obviously an impossible standard to meet. The court stated in its opinion:

The “marriage is procreation” argument singles out the one unbridgeable difference between same-sex and opposite-sex couples, and transforms that difference into the essence of legal marriage. [T]he marriage restriction impermissibly “identifies persons by a single trait and then denies them protection across the board.” Romer

\textsuperscript{19} Id. at 964 (the third rationale concerned the conservation of scarce state resources).
\textsuperscript{20} Id. at 961–62.
\textsuperscript{21} Id. at 962–64.
\textsuperscript{22} Id. at 964.
v. Evans, 517 U.S. 620, 633, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996). In so doing, the State’s action confers an official stamp of approval on the destructive stereotype that same-sex relationships are inherently unstable and inferior to opposite-sex relationships and are not worthy of respect.

... The department has offered no evidence that forbidding marriage to people of the same sex will increase the number of couples choosing to enter into opposite-sex marriages in order to have and raise children. There is thus no rational relationship between the marriage statute and the Commonwealth’s proffered goal of protecting the “optimal” child rearing unit.23

Since the state could not meet this arbitrarily imposed level of proof, the court reached the conclusion that the state acts irrationally, hurtfully, and in denial of the dignity of homosexual couples by refusing to marry them, all for no purpose whatsoever. Even the scientifically verifiable biological facts about procreation are seen as mere irrational props to a policy based on hatred and fear.

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 postmodern 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

23. Id. at 962–63.
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, and similarly necessary and beneficial to the common good, is necessarily upon 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 redefinition 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).

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 twentieth 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 it 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 coordinate its activity with the activities of the rest of society, always with a view to the common good.

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 Supreme Judicial Court of Massachusetts in the case holding that the state must “marry” homosexual couples, declared that


"[i]n a real sense, there are three partners to every civil marriage: two willing spouses and an approving State."  

Because marriage is important to the state, and because the state confers many benefits and duties on the basis of marriage, the court concluded that it is within the authority of the state to define marriage.  

Since the court concluded that limiting marriage to one man and one woman amounted to a denial of the equal dignity of those who are attracted to members of the same sex, the court held that the state must marry same-sex couples who wish to be married.

But surely this is backwards reasoning—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. 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 preexisting 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 preexisting 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. By turning the relationship of the family and state upside down, the court advances a view of the family that is subordinate to and dependent upon the state for its existence. In order to realize a particular vision of equality before the law, the Massachusetts justices took it upon themselves to instrumentalize and then redefine the very meaning of marriage. In fact, the relationship is the reverse. 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 toward 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 is currently being pressed most

27. Id. at 954–58.
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, Catholic Charities was recently forced to withdraw from offering adoption services in Massachusetts because the state refused to accommodate the Church’s teachings against placing children with same-sex couples.

Recently, the San Francisco Board of Supervisors came out with a direct attack on the Catholic Church, using highly insulting language to denounce Catholic teaching on homosexuality as hateful, callous, and ignorant, and urging the Catholic Archbishop to resist Catholic teaching from the Vatican.\textsuperscript{28}

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

\textsuperscript{28} CITY & COUNTY OF SAN FRANCISCO, BOARD OF SUPERVISORS, RES. 168-06 (March 21, 2006), available at http://www.sfgov.org/site/uploadedfiles/bdsupvrs/resolutions06/r0168-06.pdf. Text of Resolution:

WHEREAS, It is an insult to all San Franciscans when a foreign country, like the Vatican, meddles with and attempts to negatively influence this great City’s existing and established customs and traditions such as the right of same-sex couples to adopt and care for children in need; and

WHEREAS, The statements of Cardinal Levada and the Vatican that “Catholic agencies should not place children for adoption in homosexual households,” and “Allowing children to be adopted by persons living in such unions would actually mean doing violence to these children” are absolutely unacceptable to the citizenry of San Francisco; and,

WHEREAS, Such hateful and discriminatory rhetoric is both insulting and callous, and shows a level of insensitivity and ignorance which has seldom been encountered by this Board of Supervisors; and

WHEREAS, Same-sex couples are just as qualified to be parents as are heterosexual couples; and

WHEREAS, Cardinal Levada is a decidedly unqualified representative of his former home city, and of the people of San Francisco and the values they hold dear; and

WHEREAS, The Board of Supervisors urges Archbishop Niederauer and the Catholic Charities of the Archdiocese of San Francisco to defy all discriminatory directives of Cardinal Levada; now, therefore, be it

RESOLVED, That the Board of Supervisors urges Cardinal William Levada, in his capacity as head of the Congregation for the Doctrine of the Faith at the Vatican (formerly known as Holy Office of the Inquisition), to withdraw his discriminatory and defamatory directive that Catholic Charities of the Archdiocese of San Francisco stop placing children in need of adoption with homosexual households.
the things of earth.” 29 In other words, the conclusion that same-sex relationships should not be afforded legal status 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 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 has 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.” 30

If you acknowledge that truth exists, then we can discuss and even argue about whether or not the Catholic Church or I correctly understand 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 (now Pope Benedict XVI) in a speech he gave in Rome in 1999. 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 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 . . . 31

III. THE CHURCH AND CATHOLIC POLITICIANS

This leads me to my third and final point—the controversy over recent documents that offer guidance to Catholic politicians about their moral duty to defend traditional marriage.

The Church has always believed that it has a duty to assist Catholics in living a moral life. Scripture says that every person will have to give

31. Id. at 176.
account for the actions he performed in life, and that we are judged on the basis of our own actions in life. That judgment will take place regardless of the kinds of work we perform in life—it is equally true for an auto mechanic, a chef, a doctor, and a politician. It is the duty of the Church to assist her members in living a morally upright life, both for the sake of advancing the common good and defending human dignity, and in order to assure the salvation of souls. Part of that duty includes assistance in thinking through difficult moral dilemmas that come up in many different areas of life.

In recent years, the Church has sought to assist Catholics in political life to sort through competing claims and philosophies that assert that all politicians must put aside their religious views when voting on measures regarding the civil life of the community. By calling attention to these claims and refuting them, the Church seeks to assist its members in both preserving the common good of society and also in helping politicians to live a morally upright life through the actions they undertake in their professional lives.

In 2003, then-Cardinal Ratzinger issued a document called “Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons.” This document was issued in response to various arguments and campaigns aimed at establishing legal recognition of homosexual marriages, including arguments that religious opposition to homosexual marriages is illegitimate. This document was addressed to all Catholics, explaining why such proposals are immoral and harmful to the common good and why they must therefore be opposed. The most controversial aspect of this teaching is the assertion that the “homosexual inclination is . . . ‘objectively disordered’ and homosexual practices are ‘sins gravely contrary to chastity.’”

The reason for this negative reaction is the tendency of the listener to hear the word “disorder” as a psychological term and to personalize it, as when a homosexual person asserts, “The Church says I’m disordered.” However, the term “disorder” is used in this context in a philosophical sense referring to the purpose of sexual activity in the natural order, not as a psychological description of the person. As John Finnis has pointed out, “This is a moral doctrine, a teaching about what

32. See Matthew 25:31–46 (describing the way in which the “Last Judgment” will be carried out by Jesus Christ).
is right (or wrong), good (or worthless and harmful), and choiceworthy (or sinful).”  

Father John Harvey describes it this way: “But if one has a sexual-genital attraction to another person of the same sex, it can never lead to a morally good act between the two individuals, but rather it will always lead to an immoral act. That is why it is called an objective disorder.”

This document was preceded by a more general one that addressed a wider range of topics, called the “Doctrinal Note on Some Questions regarding Participation of Catholics in Political Life.” The preceding document acknowledges the valid autonomy of the temporal order from the religious order, but it argues that this rightful autonomy does not mean that the temporal order is independent of morality. In particular, the note discusses the duties of Catholic politicians to oppose civil laws that contradict fundamental moral absolutes, such as laws that permit killing of the innocent or that undermine marriage and the family.

These documents really do not present any new ideas, but rather they elaborate on the constant teaching of the Church in the light of new challenges to this traditional teaching. In large measure, they are further reflections upon the teaching of Vatican II on the role of the laity in building up a culture that reflects and advances the fullness of human dignity.

The point of controversy over these documents, as I understand it (aside from those who simply disagree with the position of the Church on the question of homosexual marriage), comes in regard to the status of Catholic politicians who reject the central point of the documents—those who claim that they are Catholics in good standing while supporting abortion or homosexual marriage.

Some Bishops have said that a politician who consistently rejects these duties and campaigns and speaks out in favor of immoral laws should be excluded from Holy Communion under Canon 915 of the Code of Canon Law, which states that “Those who obstinately persist in manifest grave sin, are not to be admitted to holy Communion.” This is because support for immoral laws is seen as formal cooperation in sin, which harms the spiritual health of the politician, and also because immoral laws harm the common good of

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society. One of the main concerns is that, because such politicians publicly identify themselves as Catholics, some people could be led to believe that the Church is not "really" opposed to such things as abortion or homosexual activity. If it were, why would such high-profile Catholics publicly support such actions without any comment from the Church? Such people could be led into sin by such confusing and contradictory witness.

There is an internal debate that is still going on in the Church about whether or not excluding such politicians from Communion is a prudential way of proceeding, and there are important considerations on both sides of the issue. But what is not controverted is the principle that Catholic Bishops have a duty to properly instruct the faithful about moral questions, and the further duty of Catholic Bishops to see to it that the sacraments are properly administered. It certainly is no concern of non-Catholics, and the suggestion that the Bishops are somehow challenging the proper separation of Church and state is nonsensical. It is obviously only state action that can offend against the Establishment Clause, and the First Amendment guarantees that Churches are free to govern themselves, free of governmental intrusion.

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 passersby. Some Epicurean and Stoic philosophers disputed with him, some of them asking, "What is this magpie trying to say to us?" 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.'" 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." In the end, I hope that at least a few of you will agree with my remarks.

39. *Acts* 17:34.