

## ALTERNATIVE CATHOLIC APPROACH TO SAME-SEX UNION LEGISLATION

*The desire not to be alone, to be loved and to love, to be united with another, physically as well as psychologically and spiritually, is a deep-seated and natural yearning.* [United States Catholic Conference, *Human Sexuality*, 1991, p.30]

The Vatican Congregation for the Doctrine of the Faith's (CDF's) 1993 letter, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*, concludes: "Legal recognition of homosexual unions or placing them on the same level as marriage would mean not only the approval of deviant behavior, with the consequences of making it a model in present-day society, but would also obscure basic values which belong to the common inheritance of humanity." This is consistent with the CDF's moral teaching on homosexuality. But is it the only approach Catholics can take with regard to same-sex union legislation? The attached document, *A Pastoral Approach Toward Catholics in Same-Sex Relationships*, and the following statements invite us to consider an alternative approach.

- 1 *The usages of society are to be the usages of freedom in their full range. These require that the freedom of the human person be respected as far as possible and curtailed only when and insofar as necessary.* [Vatican II, *Declaration on Religious Freedom*, n.7].
- 2 *[T]he morality proper to the life and action of society and the state is not univocally the morality of personal life, of even of familial life. Therefore the effort to bring the organized action of politics and the practical art of statecraft directly under the control of the Christian values that govern personal and familial life is inherently fallacious. It makes wreckage not only of public policy but also of morality itself.* [John Courtney Murray (who drafted the *Declaration on Religious Freedom*), *We Hold These Truths*, 1960, p.286]
- 3 *When should the state interfere with religious freedom or any personal freedom? When the public order calls for it. But what is the public order? According to the "Declaration on Religious Freedom," the public order involves a three-fold reality of justice, public peace, and public morality (not just private morality). Thus, for example, we in this country with our great respect for religious freedom have nonetheless restricted religious freedom by prohibiting human sacrifice in religious rituals (justice), by prohibiting churches from ringing loud bells for a long time early in the morning (public peace), and by prohibiting Mormons from practicing polygamy (public morality).* [Charles E. Curran, *A Vatican II view could allow for gay, lesbian unions*, National Catholic Reporter, September 5, 2003]
- 4 *The Vatican II approach could ... justify the legalization of gay and lesbian unions even if one accepts the official hierarchical moral teaching on homosexual relations. One begins with the freedom of homosexuals to live together. Most in our society agree that permanent gay and lesbian unions are much better for society than promiscuous relationships. The state can support such permanent unions by granting rights such as health insurance and Social Security benefits. As a matter of fact, the legalization of permanent gay unions would not necessarily go against the importance of the family as a basic unit of society nor would it necessarily harm the children who could be adopted by such unions.* [Charles E. Curran, *A Vatican II view could allow for gay, lesbian unions*, National Catholic Reporter, September 5, 2003]
- 5 *There is no scientific discourse which verifies that punishing instances of discrimination against gay people affects the well-being of heterosexual couples and (or) their children.... There are studies which have had some success in demonstrating that the decriminalization of*

homosexuality and the adoption of gay rights ordinances do not have an appreciable effect on the general population's willingness to enter marriage, to raise families, and to do both of those without interference; nor do they entail more public solicitation, an increase in sexually transmitted diseases, or other 'negative consequences so often detailed in parliamentary debates and arguments of opponents' of the gay liberation movement. In light of this research, allowing oneself to be guided by the fear that gay rights legislation will sound the death knell for marriage and family is at least as problematic as opposing the legal availability of contraceptives for the same reason. [Richard Peddicord, *Gay & Lesbian Rights*: Kansas City: Sheed & Ward, 1996, p.183]

6 The Catholic Church does not call for laws to stop the sale of artificial contraceptives or to close sperm banks. (Homogenital behavior, artificial contraception, and masturbation are all considered to be "intrinsically evil."). That's because there is no moral obligation to prohibit an act simply because it is immoral. Rather, there is a moral obligation to prohibit an act only if 1) the act poses a real and serious threat to society, 2) prohibition of the act doesn't result in greater harm to society. [Casey Lopata, extrapolating from moral theologian, Mark Tuohey, *The CDF and Homosexuals: Rewriting the Moral Tradition*, America, September 1992].

7 The social participation of gays and lesbians is not regulated by the virtue of chastity, but by the virtue of justice. [Peddicord, quoted in *Theologian: Church should support gay rights*, by Rob Cullivan, Catholic Courier, Sept. 24, 1998]

8 Support for gay and lesbian rights legislation and (or) municipal ordinances is well within the parameters of Catholic moral teaching. Indeed, the theological synthesis of St. Thomas Aquinas as interpreted by a thinker like John Courtney Murray, S.J. (and advanced through Murray's work on religious freedom), arguably demands such support. In the main, the virtue of justice, upon which civil society rests, cannot countenance treating people unfairly.... It is inconsistent for members of the American Catholic hierarchy to call for justice for gay people and then attempt to block the legislation which would serve to ensure this justice. [Peddicord, p. 185].

9 [T]he structure must not only allow the emergence of the opposition, give it the opportunity to express itself, but also must make it possible for the opposition to function for the good of the community.... [Karol Wojtyla: *An Anthology*, (now Pope John Paul II, discussing the concept of solidarity), edited by Alfred Bloch and George T. Czuczka (New York: Crossroad, 1981, p.49)]

10 In accord with the knowledge, competence and preeminence which they possess, they [the Christian faithful] have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church, and they have a right to make their opinion known to the other Christian faithful, with due regard for the integrity of faith and morals and reverence toward their pastors, and with consideration for the common good and the dignity of persons. [Canon Law 212 §3]

These and other statements suggest that, drawing upon the Catholic tradition and Vatican II theology, one can support legislation that supports civil same-sex unions, even if such unions are considered immoral and even if these unions are called "marriage." How? By discerning how such legislation would affect the public order. If one believes that the legislation is positive or neutral with regard to the public order, one can support it.