NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (http://ncronline.org)

More on the Gay Marriage Ruling

Michael Sean Winters
| Aug. 6, 2010
Distinctly Catholic

Thanks to Cathy Grossman at USAToday [1]for working her way through the court decision on gay marriage in California and pulling out the parts that are most relevant to the religious conversation.

Grossman notes that Judge Vaughn Walker?s decision at one point spells out in all CAPs what is the essential rationale for his decision. He writes, ?A PRIVATE MORAL VIEW THAT SAME-SEX COUPLES ARE INFERIOR TO OPPOSITE-SEX COUPLES IS NOT A PROPER BASIS FOR LEGISLATION.? Judge Walker is absolutely correct. No ?private? moral view should be the basis of any legislation, on same-sex couples or otherwise. But, there is nothing ?private? about Catholic moral views.

Conservatives like to blame Griswold v. Connecticut, the landmark 1964 case in which the Supreme Court overturned a law that banned the sale and distribution of birth control, for our judiciary?s fixation with privacy rights. Alas, the problem is more ancient. The coarse maxim of the early Common Law ? ?A man?s home is his castle? ? gives voice to a primitive notion of privacy. But, it was the Reformation that began the process by which Western thought came to the conclusion that morality was a matter of conscience only, not the outcome of consciences wrestling with the realities of the world outside of the conscience, all undertaken together as part of the one, universal Church. Edward Reed?s classic book ?From Soul to Mind? shows how moral theology was transformed into modern psychology beginning with Erasmus Darwin and finishing with William James. I am not blaming the Common Law, Martin Luther or William James for Judge Walker?s ruling. I am saying that American culture has become complicit with the idea that morality is a private matter for some time. In this sense, the Church lost the battle over gay marriage a long time ago. We Catholics believe that morality is something discerned, not created, and it is difficult to see how we can make that insight felt in our nation?s jurisprudence.

This focus on privacy, however, seems especially misplaced when re-writing the rules of the road for civil marriage laws. After all, marriage is all about public recognition of a relationship, yes? That relationship is rooted in the privacy of the human heart, a fact recognized by the maxim of the law, again very ancient, that forbids testimony in court by spouses against each other. But, you don?t need a marriage contract if you are only interested in a private relationship. You get married to gain public recognition, and legal sanction, of the relationship.

I understood why the majority of the Court ruled in Lawrence v. Texas that privacy concerns demanded that they overturn a sodomy law. That ruling was but a small step from a man?s home is his castle logic. But, I never understood Justice Scalia?s concern, voiced in his dissent, that the Lawrence ruling would expedite gay marriage and I still think there is a kind of cart/horse aspect to this. Yes, societal attitudes were changing, but the phenomenon under review ? sexual conduct in the privacy of one?s own home versus a government-issued, very public, marriage license ? are so different I could not imagine that Lawrence would beget yesterday?s ruling. Only a profound sense of confusion explains such a link.

That confusion is what Pope Benedict XVI calls the ?dictatorship of relativism.? My problem with the Pope?s phrase is that it implies a thought-through agenda that I do not perceive in the cacophony of modern social trends. I prefer the phrase that Cardinal O?Connor used to employ, the ?seraglio of the Enlightenment.? Judge Walker?s ruling seems to me an invitation to chaos, not to justice. Whatever your thoughts on gay marriage, this line of reasoning is disturbing, seeming to suggest no societal capacity to establish public norms for conduct. That, more than the result in this particular case, is the problem and it is a very big problem.

Source URL (retrieved on *10/22/2014 - 20:03*): http://ncronline.org/blogs/distinctly-catholic/more-gay-marriage-ruling

Links:
[1] http://content.usatoday.com/communities/Religion/post/2010/08/prop-8-proposition-8-gay-marriage-judge-walker-/1