

Two Catholic Supreme Court justices, two views on moral issues

Pat Perriello | Dec. 11, 2012 NCR Today

David Savage, writing [in the *Pittsburgh Post-Gazette*](#) [1], contrasts Supreme Court justices Antonin Scalia and Anthony Kennedy as they gear up for [next year's decisions](#) [2] on the issue of gay rights.

He sees both justices as devout Catholics, but with very different judicial philosophies. He also sees Scalia having safe conservative votes and Kennedy having safe liberal votes on the two gay rights issues to be decided. Kennedy, therefore, seems very likely to be the decisive vote in potential 5-4 decisions in these cases.

Scalia believes it is within the court's power and responsibility to legislate morality. In his eyes, the court can and should enforce moral codes against conduct seen as immoral and destructive. Kennedy is more of a libertarian who believes people should be free to make their own choices. He has stated that the court's obligation is to "define the liberty of all, not to mandate our own moral code."

How can two Catholics have such totally divergent viewpoints on major moral issues? Because the differences they have are not about religion or even about morals. They disagree in the area of judicial philosophy, not church doctrine. They are both in basic agreement that abortion is wrong, homosexual acts are immoral and marriage is between a man and a woman.

Where they differ is to what extent a court or a government can impose the beliefs of one sector of the electorate on all the citizens of a free country. Although some church leaders appear to advocate that Catholic doctrine be translated into law, they are either just plain wrong, or at best they simply have an opinion that need not be shared by all Catholics. Church leaders have no power, nor should they, to insist that all Catholics follow a particular judicial philosophy. Consider how adamant Americans are that Islamic or Shariah law not be imposed in our country, or even in democratic Islamic countries. In the same way, Catholic teaching should not be imposed on an entire nation. That was tried in the Middle Ages.

Many in the church will tell you they are not pushing Catholic doctrine, but rather, the natural law, which applies to all people. The trouble with that argument is that the church's understanding of natural law is just that. It represents what the church understands to be the natural law. While everyone may agree murder is wrong, there is no consensus on what natural law means on many other issues. For example, the fact that some Catholic ethicists have decided artificial contraception is against the natural law represents their interpretation or understanding of nature in this circumstance. It cannot, however, be understood to be binding on all those who have not arrived at the same conclusion as these particular ethicists. If the church went on to define its understanding of natural law as binding on all people, it would thereby demonstrate that what it calls natural law is in actuality, Catholic teaching.

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