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MSW Responds to Ed Peters

Michael Sean Winters | Apr. 15, 2013 Distinctly Catholic

?The first thing we do?.? Dick, the butcher, a forgettable role in a largely forgettable play by Shakespeare, gave voice to a sentiment that many people share, even if his remedy was excessive. There is something about the legal profession that makes it especially ripe for satire and worse.

That something is the ability to miss the forest for the trees. Lawyers are not unique in this regard. I work part-time at a university and have seen how the increasing balkanization of knowledge leads many people to grasp the intricacies of their chosen field, but completely unable to place the significance of their research in a broader context, extending beyond the categories and prejudices of sociology, or psychiatry or whatever their field is. My chosen city of residence is often accused of being sick with the dreaded disease ?Inside the Beltway syndrome? and as often as not the charge is fitting.

If I were asked to find an example of legal reasoning that is accurate in the particulars but completely devoid of what we could call breadth of vision, I would now submit a post by Edward Peters [1], canon law professor at Sacred Heart seminary in Detroit, in response to a post I wrote last week [2], regarding the issue of same-sex marriage.

Mr. Peters asserts that I was wrong to say divorce is the greater threat to the Church?s understanding of traditional marriage than same-sex marriage is. He seems especially upset that I pointed out how many marriages, of Catholics and otherwise, end in divorce and compare that number to the few instances of gay marriage. He contends that ?the differences between ?same-sex marriage? and ?divorce? are *categorical* in nature not pragmatic and they turn on matters of *principle* not prudence.? He spends the rest of his post explaining how the code of canon law permits some instances of divorce, so the whole genre is not suspect, but that gay marriage is always suspect because there is no instance of the Church ever endorsing gay marriage.

So far as the canon law of the Church goes, Peters is undoubtedly correct. There are instances in which the Church permits divorce and no such instances of it permitting gay marriage. But, that was not the point I was making and I think it requires a peculiar lens, and an ideological blinder, to think otherwise. The point I was making was, I had thought, obvious. There was a time in the not too distant past in which divorce for most Catholics was largely unthinkable. Indeed, in the ambient culture of the U.S. divorce was mostly something a Hollywood star did but not something a neighbor did. By way of example, the U.S. did not have a divorced president until Ronald Reagan?s election in 1980. A divorce was still considered something of a scandal for a politician until that time.

Peters writes as if none of that history mattered:

So, the question for Winters is simple: can he point to a single shred of magisterial Church teaching that permits ?same-sex marriage? under any conditions whatsoever? Of course he cannot, and as he cannot, he should not be describing divorce and ?same-sex marriage? as threats to marriage whose only difference lies in the number of people involved. That is disingenuous. Would one really argue that malnutrition is a greater threat to human dignity than is murder, because many more people are malnourished than are murdered? I

think the truth is better served by recognizing the categorical differences between the two distressing situations and approaching them differently.

Obviously, in my original post, I was not making the case that because the number of one category is larger than the other, that alone suggests a comparison.

I would have thought it was obvious to all that it is not divorce per se, but the introduction of no-fault divorce that changed the culture. Of course, our civil and canon laws have long recognized situations in which a person is well advised to get divorced for cause. But, the introduction of no-fault divorce laws suggest something different. Actually two things. The first is unimpeachable: Sometimes, even though there is no incidence of abuse or no question about the legitimacy of children, a marriage simply doesn?t work out. The Eastern Orthodox churches recognize this, and while they respect the apostolic teaching that no one can receive the sacrament a second time, the Eastern churches will bless a second union and admit those who make it to Communion, evidencing a sympathy with the human condition. I like that. But, in the U.S. at least, the introduction of no-fault divorce laws led to something else, something pernicious. Because the law teaches it does not merely adjudicate, our culture has come to view marriage not as a lifelong sacramental union but as a kind of contract, the product of human will and nothing more, in which the two parties, and only the two parties, have a stake, God is not a party to the agreement, and the state?s interest in preserving long-term commitments is run through the cultural shredder. Marriage is now like being a preferred customer with an airline. You get miles that allow you some benefits, but if a better offer comes along, you take it. If Mr. Peters cannot see that it is this contractual, exclusive mundane view of marriage is the real threat to the Church?s understanding of marriage, his blindness is extreme. Whether it is willful or not I leave for him and his confessor to determine.

Peters concludes by writing: ?So I close by hoping that the above suffices at least to show the flaws in Winters? attempt to paint the serious *pastoral* problems that divorce represents in society as a greater threat to marriage than are the grave *principle* problems raised by legislating for ?same-sex marriage?. What to say. Sometimes a principle problem is more grave than a pastoral problem. Other times not. Many times a comparison is inappropriate ? I think his comparison of murder and malnutrition is more telling than he admits! My point is simply this. The core problem for the Church today in this matter is that the culture no longer understands marriage as a lifelong commitment, a sacrament in which divine grace is given to two people so that their love can mirror the love that is between Chirst and His Church, bring forth children, and deepen the love of the two spouses, that is to say, how the Church understands it. The principal culprit here is not a legal principle. It is the consumer society approach to marriage, made possible by the availability of no-fault divorce laws, that is the culprit. The fact that this problem is ?pastoral? not one of ?principle? does not diminish its significance.

Which brings me to repeat my central argument against Peters? understanding of the legal craft?s role in the Church. It is at the service of the pastors, not the other way round. He, a lawyer, undoubtedly wishes the centrality of his craft to be at center stage at all times. This leads to poor pastoral judgments, especially regarding the cause of my initial post, Peters? stated belief that the Church should refuse communion to people who vote one way or another. I recall in 2004 when then-Archbishop, now Cardinal Raymond Burke, in St. Louis adopted Peters? approach to this issue of withholding communion from politicians. Shortly after the 2004 election, Cardinal Oscar Rodriguez Maradiaga came to the U.S. and was asked about this. He stated that denying communion to people as Burke had done would be considered a scandal in his country. Cardinal Rodriguez Madariaga was right. As of Saturday, he is also the coordinator for Pope Francis? new G-8 cardinals advisory board. I will not go so far as to suggest to the new G-8 group that ?the first thing we do?.? But I will suggest that they find ways to remind those who serve the Church as canonists, that their craft is at the service of the Gospel, not the other way round.

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[1] http://canonlawblog.wordpress.com/2013/04/11/no-the-church-does-not-regard-same-sex-marriage-and-divorce-as-simply-variations-on-the-distressing-theme-of-marriage-woes/
[2] http://ncronline.org/blogs/distinctly-catholic/vigneron-same-sex-marriage-communion