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UNDERSTANDING THE CHURCH POSITION ON ADOPTION BY SAME-SEX COUPLES

Ana Maria Q. Faustino

The practice of adoption as a means of promoting the welfare of children arose in the middle of the 19th century as a result of complex factors, among which are religion and a change in perspective with regard to childhood.[1] Welcoming a stranger into one's family was motivated by Gospel values while nurturing children in a familial rather than institutional setting was given importance. Moreover, childcare institutions were faced with the difficult experience of a surge in the number of children needing care and the high costs of living. These conditions, plus the stigma of the institutionalization of children, led to the practices of adoption and foster care becoming preferred alternatives for promoting the welfare of children who were orphaned or abandoned. It was deemed much better for children to be provided with a permanent or temporary home with a family through adoption or foster care, respectively, than be cared for in an institution.

Facilitating adoptions became one of the important social service ministries of the Church. Starting with the creation of childcare institutions and then through child placement or adoption, along with

[1]S. Presser, "Law, Christianity, and Adoption," in T. Jackson, ed., *The Morality of Adoption: Social-Psychological, Theological, and Legal Perspectives* (Grand Rapids, MI: William B. Eerdmans Publishing, 2005), 223.

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the formation of persons willing to adopt a child, the Church has "provided children with good, safe and traditional homes with a male husband and female wife" for more than a century.[2] However, having no mechanism to secure the fact of adoption, the Church defers to what the civil law on adoption provides. The 1983 Code of Canon Law[3] prescribes that "children who have been adopted according to the norm of civil law are considered the children of the person or persons who have adopted them" (Canon 110). The intent was obviously to promote public order, but it did not foresee that civil law on adoption would one day conflict with Church teaching.

The legalization of same-sex marriages in numerous countries all over the world, starting in the Netherlands in 2000 and most recently in Costa Rica in 2020,[4] is a new historical development that has ruffled the peace and calm of the Church's adoption ministry. Firstly, it compels adoption agencies to treat same-sex couple applicants just like they would other married couples who wish to adopt a child. Secondly, non-discrimination laws and funding from the government in some areas place Catholic adoption agencies in a corner where the only option that will not violate Church teaching is for them to discontinue their adoption services.

For example, the Archdiocese of Boston's Catholic Charities, faced with this untenable situation, decided to cease its 103-year-old adoption service in 2006 after its request for religious exemption was refused by the state of Massachusetts. This was a terrible loss for the Church's adoption ministry since "Catholic Charities of Boston, specializing in placing 'minority and older children,' claimed to be the leader in special needs adoptions in Massachusetts, in cooperation with state and federal

[2]D. Weaver, "Adoption, Social Justice, and Catholic Tradition," *Journal of Catholic Social Thought* 13:2 (2016): 197–213; J. La Plante, "Tough Times for Catholic Adoption Agencies," *Our Sunday Visitor* (accessed March 2, 2018).

[3]*Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983). Hereafter cited in-text.

[4]D. Masci, E. Sciupac, & M. Lipka, *Same-Sex Marriage Around the World* (Pew Research Center, October 28, 2019).

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programs."[5] The same difficult decision was also made by Catholic Charities of San Francisco in 2006, Washington, D.C. in 2010, Illinois in 2011, and New York in 2018. Catholic adoption agencies all over the United States continue to encounter a similar dilemma where they are obliged by civil law not to discriminate against same-sex couples who wish to apply as adoptive parents. All this provides the backdrop for the Church to formulate its position on adoption by same-sex couples.

The Church Position on Adoption by Same-Sex Couples

The Church grounds her stance on a tradition of children being born and raised within a family that is founded on the marriage between a man and a woman. At the same time, she refers to the United Nations 1989 Convention on the Rights of the Child (CRC) which the Holy See ratified in 1990, employing both its perspective of the best interests of the child and its language of rights.

The Criterion of Best Interests of the Child

The main magisterial document in which the Church position can be read is *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons* released by the Congregation for the Doctrine of the Faith in 2003.

> As experience has shown, the absence of sexual complementarity in these unions creates obstacles in the normal development of children who would be placed in the care of such persons. They would be deprived of the experience of either fatherhood or motherhood. Allowing children to be adopted by persons living in such unions would actually mean doing violence to these children, in the sense that their condition of dependency would be used to place them in an environment that is not conducive to their full human development. This is gravely immoral and in open contradiction to the principle,

[5]L. Cahill, "Adoption: A Roman Catholic Perspective," in Jackson, ed., *The Morality of Adoption*, 155.

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> recognized also in the United Nations Convention on the Rights of the Child, that the best interests of the child, as the weaker and more vulnerable party, are to be the paramount consideration in every case.[6]

Even before this document came out, the Holy See had already expressed its plea to the U.N. during its Special Session on Children in 2002 that

> careful watch should be kept so that adoptions … when truly advisable and in respect for the principle of the "best interests of the child" … will be made by married couples who give real guarantees of stability, moral solidity, ability to accompany and exemplarity.[7]

According to the U.N. Committee on the Rights of the Child, the concept of the best interests of the child, on the whole, is aimed at ensuring not only the "full and effective enjoyment of all the rights recognized in the Convention" but also "the holistic development of the child" which includes the physical, mental, spiritual, moral, psychological, and social dimensions.[8] The Church does not have its own formulation of the concept of the "best interests of the child," and in the mere ten times (from 1998 to 2016) that it is mentioned in mostly minor Church documents, all such instances allude to the principle enshrined in the U.N. CRC that the best interests of the child are the paramount consideration in matters of adoption (Art. 21).[9]

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[6]Congregation for the Doctrine of the Faith, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons* (June 3, 2003), no. 7.

[7]A. Trujillo, Intervention at the special session of the United Nations on Children (May 9, 2002), https://bit.ly/3lRmYtZ (accessed March 2, 2018).

[8]United Nations Committee on the Rights of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration* (United Nations, 2013), 4. Here the U.N. Committee on the Rights of the Child asserts that the concept of the best interests of the child has three dimensions: a right, a principle, and a rule of procedure. From 1989 to 2013, the Committee left the interpretation of the best interests of the child entirely up to the States Parties that ratified the Convention on the Rights of the Child.

[9]United Nations General Assembly, *Convention on the Rights of the Child* (United Nations, 1989).

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In 2015, Pope Francis reiterated the position of the Church on the issue of adoption by same-sex couples by emphasizing the children's need for both a father and a mother:

> And in these old marriages, like good wine that gets better with age, one sees this daily work of the man to make his wife more a woman and the wife to make her husband more a man. They are not afraid of the differences! This challenge of carrying differences forward, this challenge enriches them, matures them, makes them great and they have eyes shining with joy, of so many years lived thus in love—what a great treasure is this diversity, a diversity that becomes complementarity and reciprocity. There is a knot there, one with the other. And this reciprocity and complementarity in difference is so important for the children. Children mature seeing father and mother like this; they mature their own identity in confronting the love that father and mother have, in being confronted with this difference.[10]

The absence of this sexual difference in a same-sex couple is the basis of the Church's judgment that adoption by same-sex couples is contrary to the best interests of the child. On an abstract level and based on a history of human experience, it can be said that the ideal environment in which children grow optimally is provided by the stable, low-conflict family founded on the marriage of biologically different parents. This is where the best interests of the child can flourish to a great degree. Children made available for adoption have lost this ideal environment for various reasons, and so approving their adoption by any parent or parents strives to compensate for their loss by providing them a home that approximates the ideal environment to an acceptable degree. "In an adoptive family, the child's right to the fundamental and irreplaceable experience of a father and a mother, as in a natural family, should be recognized."[11] The violation of this right does not serve the best interests of the child.

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[10]Francis, Address to participants in Rome's diocesan conference (June 14, 2015), https://bit.ly/33lX8rP (accessed March 2, 2018). Incidentally, this event came a day after the city of Rome staged a gay pride march.

[11]V. Rallo, Intervention at the general assembly of the International Commission of the Civil State (September 15, 2004), https://bit.ly/33aY41P (accessed June 14, 2018).

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The Language of Rights

When examining Church teaching on children's rights, one discovers that it contains very little sustained focus on the child who is usually subsumed in discussions on the family.[12] In a non-exhaustive list of rights offered by Pope John Paul II in his encyclical *Centesimus Annus*, he indicates the importance of the family for children's rights: the child has "the right to live in a united family and in a moral environment conducive to the growth of the child's personality."[13] The *Charter of the Rights of the Family* states that "the family has a right to assistance by society in the bearing and rearing of children" and that "children who are handicapped have the right to find in the home and the school an environment suitable to their human development."[14] These assertions are coherent with the Church's high valuation of marriage and family for the sake of children. As regards orphans or children who are deprived of the assistance of their parents or guardians, the Church

[12]C. Gudorf ("Rights of Children," in J. Dwyer, ed., *The New Dictionary of Catholic Social Thought* [Collegeville, MN: The Liturgical Press, 1994], 143–144) asserts that the Church lacks a developed treatment of the rights of the child and ascribes the deficiency to three reasons, namely: 1) the Church's suspicion of rights language, 2) the Church's tendency to treat children indirectly through a focus on families, and 3) the potential conflict of the assertion of children's rights with the order maintained by parental authority.

[13]John Paul II, *Centesimus Annus*, no. 47. The *Compendium of the Social Doctrine of the Church* by the Pontifical Council for Justice and Peace (Vatican City: Libreria Editrice Vaticana, 2004) states: "The first right of the child is to 'be born in a real family,' a right that has not always been respected and that today is subject to new violations because of developments in genetic technology" (no. 244). M. Roche ("Children and the Common Good," in C. Griffith, ed., *Prophetic Witness: Catholic Women's Strategies for Reform* [New York: Crossroad Publishing, 2009], 127) criticizes this claim about the right to a real family and sees it as a rhetorical trap that fails to focus on concrete well-being. She asks: "What is a real family? How do we secure such rights? Who is obligated to provide it?"

[14]The Holy See, *Charter of the Rights of the Family*, Art. 3, c and Art. 4, g.

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maintains that they must receive particular protection from society, although this is not explicitly presented as a right.[15]

The reticence of the Magisterium in using a language of rights seems to continue today. Nonetheless, the Holy See is guided by the following seven key principles

> which [promote] an authentic perspective of the rights and duties of the child according to international law: … 1) the child has inherent dignity as a human being and human person from the moment of conception until natural death; 2) the child's rights and duties must be viewed within the context of the family; 3) full respect of the child's rights and duties require[s] special protection and promotion of the family's rights and duties; 4) the child's well-being is the primary responsibility of his or her parents and family; and 5) the child has rights and duties with respect to the protection of his or her own life and parents have co-relative duties and rights to safeguard the child's life, from the moment of conception until natural death; 6) the child has a right and duty to be educated and parents have corresponding duties and rights to educate the child; and 7) the child has rights and duties concerning religious freedom taking into consideration the parents' duties and rights to educate their child according to their own moral and religious beliefs.[16]

Apart from these principles, the Holy See does not have a systematic list of the rights of the child.

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[15]Paul VI, *Gaudium et Spes*, no. 52 and *Charter of the Rights of the Family*, Art. 4, f. E. Regan ("Barely Visible: The Child in Catholic Social Teaching," *The Heythrop Journal* 55:6 [2014]: 1024) laments in particular that Pope John XXIII's *Pacem in Terris*, which "marks the first systematic treatment of human rights in official Catholic social teaching … makes no mention of the rights of the child." In her article, Regan reviewed about a dozen Church documents, including the *Compendium of the Social Doctrine of the Church*, and concluded that two weaknesses of Catholic social teaching concerning children are its failure to provide an adequate treatment of the issue of justice for children and its imbalanced consideration of unborn and born children.

[16]S. Tomasi, Presentation of the periodic reports of the Holy See to the Committee on the Convention of the Rights of the Child and the Optional Protocols (January 16, 2014), https://bit.ly/3GxbnYQ (accessed December 23, 2020).

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Some Objections to the Church's Position

Objections to the Church's position on adoption by same-sex couples come from both secular sources and the faithful. According to same-sex couples, "lesbians and gays seek adoption for the same reasons as heterosexuals do: to fulfill a desire to be a parent; to provide a home for a child; and also, to protect a non-legally sanctioned parent-child relationship."[17] While the second and third motivations might appear in favor of the best interests of the child, the first motivation, if solely that, might pose a danger of objectifying the child (whether in the case of same-sex or heterosexual couples). Beneath the second and third objections to the Church's position are two claims.

The Claim to Rights

The rhetoric one frequently hears today in adoption debates is the claim to the right to adopt a child. However, there is no such right even for married heterosexual couples. Instead, there are eligibility and suitability requirements that need to be fulfilled by prospective adoptive parents. The eligibility criteria for who may adopt may include age, civil status, citizenship, residence, childlessness, and religious affiliation. Some laws disqualify those suffering from physical or mental difficulties.[18] Other factors that determine suitability are moral character, emotional, psychological, and financial capability and stability, reputability, and any existing relationships with the child, among others. If a couple is not able to fulfill the requirements, then they may not adopt a child. The criteria by which applicants are screened vary across the respective laws of countries, states, and territories.

What same-sex couples actually seek is the right of *access* to adoption. There are places where the following are prohibited by law from adopting a child: single persons, unmarried couples, homosexual

[17]A. Appell, "Lesbian and Gay Adoption," *Adoption Quarterly* 4:3 (2001): 75–76.

[18]"Adoption," in *Wex* (New York: Legal Information Institute, Cornell Law School, n.d.), https://www.law.cornell.edu/wex/adoption (accessed March 9, 2019).

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persons, and same-sex couples.[19] In places where "same-sex marriage" is not legally recognized, the prohibition against unmarried couples has usually been sufficient to deny same-sex couples access to adoption (although roundabout ways remain for them to gain access to adoption). However, in places that have legalized "same-sex marriage," the access of qualified same-sex couples to adopt a child is presumed. Hence, the outright rejection of a same-sex couple's application to adopt a child on the basis of sexual orientation and gender identity is considered a form of discrimination. Indeed, homosexual persons, as do all human beings, have the right to be protected from discrimination of any kind since all share the same human dignity from which human rights emanate.[20]

The Claim to "No Difference"

For many decades now, social science research has claimed that the no-difference hypothesis is true, namely, that children raised by two lesbian mothers or two gay fathers fare just as well as those raised by a mother and a father, which is the natural two-parent structure. In other words, neither the sexual orientation nor gender identity of the "parents" reportedly has a bearing on the outcomes of child-rearing as measured in various areas such as in the development of sexual identity, psychological well-being, and mental health.

Professional organizations such as the American Academy of Pediatrics (AAP) and the American Psychological Association (APA) have upheld the no-difference hypothesis in a policy statement and a review of literature, respectively.[21] On the other hand, about a

[19]A. Stanton, "Adoption Law and Controversies," in Jackson, ed., *The Morality of Adoption*, 258–259.

[20]*Catechism of the Catholic Church*, 2nd ed. (Vatican City: Libreria Editrice Vaticana, 1997), no. 2358. Hereafter cited as CCC.

[21]The Committee on Psychosocial Aspects of Child and Family Health of the American Academy of Pediatrics published "Coparent or Second-Parent Adoption by Same-Sex Parents" (*Pediatrics* 109:2 [2002]: 339–340) and then a policy statement entitled "Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian" (*Pediatrics* 131:4 [2013]: 827–830). The American

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decade after AAP issued its initial statement, the American College of Pediatricians (ACP) asserted that "children benefit from the unique parenting contributions of both men and women" and that "courts should act with extreme caution in making social and constitutional policy when relying on provisional social science data" that is "significantly limited and actually suggests differences that do not bode well for children."[22] Research that challenges the no-difference hypothesis maintains that same-sex parenting actually puts children at a higher risk for negative outcomes or, at the very least, results in different outcomes which may not necessarily be deficits. A British sociologist makes a wise reminder:

> There is a duty to examine the veracity of studies cited to back proposals that may have a dramatic impact upon children and society, rather than look away so as not to offend the sensibilities of activists.… Failure to design the study properly, failure to properly measure the relevant variables, failure to control for extraneous variables, and failure to use the proper statistical tests invalidates a study.[23]

In fact, critiques of those studies reveal that most if not all of them contain at least one fatal flaw in design or execution and that the critical limitations were not properly addressed according to accepted standards of scientific research.[24] Therefore, no empirical

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Psychological Association published *Lesbian & Gay Parenting* in 2005 (https://www.apa.org/pi/lgbt/resources/parenting-full.pdf [accessed December 8, 2018]) which had an earlier edition in 1995 entitled *Lesbian and Gay Parenting: A Resource for Psychologists*.

[22]In March of 2013, the American College of Pediatricians presented their position paper entitled *Defending Traditional Marriage for the Well-Being of the Family and the Child.*

[23]P. Morgan, *Children as Trophies? Examining the Evidence on Same-Sex Parenting* (Newcastle upon Tyne, UK: The Christian Institute, 2002), 47.

[24]Here are six critiques: 1) J. Stacey & T. Biblarz, "(How) Does the Sexual Orientation of Parents Matter?", *American Sociological Review* 66:2 (2001): 159–183; 2) S. Nock, Affidavit as Exhibit C in Court File No. 684/00 (Canada: Ontario Superior Court of Justice, 2001), https://bit.ly/3IEAI5d (accessed March 28, 2019); 3) R. Lerner & A. Nagai, *No Basis: What the Studies Don't Tell Us About*

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generalizations can be made based on any of those research studies. Newer studies that attempted to correct the fundamental data bias of previous ones by using large random samples either still fall short of commonly accepted standards or are not numerous enough. To date, the social sciences have not provided adequate scientific evidence to compare properly the outcomes of same-sex parenting with those of heterosexual parenting and to check whether differences occur and the reasons behind them.

What is the basis of the Church's position, which maintains that the lack of sexual complementarity alone in a same-sex couple is a decisive obstacle to a child's human development and therefore subverts the best interests of the child to the point that no same-sex couple can ever be judged capable of serving the child's best interests? Civil laws on adoption establish criteria regarding the eligibility and suitability of prospective adoptive parents to ensure that the best interests of the child are met.

Exploring the Precautionary Principle

That the Church opposes same-sex adoption despite lacking robust scientific evidence for debunking the no-difference hypothesis seems to indicate that the Church is applying the precautionary principle here. The precautionary principle was originally formulated in consideration of environmental concerns.

> *The authorities called to make decisions concerning health and environmental risks sometimes find themselves facing a situation in which available scientific data are contradictory or quantitatively scarce. It may then be appropriate to base evaluations*

Same-Sex Parenting (Washington, DC: Ethics and Public Policy Center, 2001); 4) D. Allen, "More Heat Than Light: A Critical Assessment of the Same-Sex Parenting Literature, 1995–2013," *Marriage & Family Review* 51:2 (2015): 158; 5) W. Schumm, "A Review and Critique of Research on Same-Sex Parenting and Adoption," *Psychological Reports* 119:3 (2016): 641–760; and 6) F. Perales, L. Reeves, S. Plage, & J. Baxter, "The Family Lives of Australian Lesbian, Gay and Bisexual People: A Review of the Literature and a Research Agenda," *Sexuality Research and Social Policy* 17 (2020): 43–60.

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> *on the "precautionary principle", which does not mean applying rules but certain guidelines aimed at managing the situation of uncertainty.* This shows the need for making temporary decisions that may be modified on the basis of new facts that eventually become known.… This precautionary approach is connected with the need to encourage every effort for acquiring more thorough knowledge, in the full awareness that science is not able to come to quick conclusions about the absence of risk.[25]

Using the precautionary principle, the Church takes a tentative stand after weighing benefits against risks, including the fact that there is a lack of conclusive scientific data that supports her stand. Applied to child adoption, one might suggest that the Church prohibits adoption by same-sex couples as an exercise of prudence that protects the best interests of the child so long as thorough knowledge of the outcomes of same-sex parenting is not yet available. At this point, studies of the social sciences that compare the outcomes of children raised by same-sex couples versus heterosexual couples have not fulfilled scientific research standards. Thus, their conclusions, whether asserting no difference or a significant difference in outcomes, are not yet valid.

By articulating the precautionary principle in addressing environmental concerns, the Church acknowledges the possibility of revising its position on the matter if more conclusive evidence can be found to warrant such. However, there seems to be no indication that the Church is open to revision in the matter of prohibiting same-sex adoption even if scientific evidence can be found that affirms no significant difference in parenting outcomes between same-sex and heterosexual couples. Thus, the precautionary principle does not quite fit the issue at hand. Similarly, arguing the position of the Church from the best interests of the child seems to be problematic. This author tests this further using casuistry in the case of embryo adoption.

The best interests of a child, or of a vulnerable human being, are at stake in another category of adoption, namely, embryo adoption. Here, however, the Church takes a position that does not prioritize or pursue these interests. Embryo adoption in itself is the subject of

[25] *Compendium of the Social Doctrine of the Church*, no. 469 (italics in the original).

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an ongoing debate among theologians.[26] The Congregation for the Doctrine of the Faith (CDF) has expressed serious moral reservations about it, but without explicitly condemning it as immoral.

> With regard to the large number of *frozen embryos already in existence* the question becomes: what to do with them?…
>
> Proposals to *use these embryos for research* or *for the treatment of disease* are obviously unacceptable because they treat the embryos as mere "biological material" and result in their destruction. The proposal to thaw such embryos without reactivating them and use them for research, as if they were normal cadavers, is also unacceptable.
>
> The proposal that these embryos could be put at the disposal of infertile couples as a *treatment for infertility* is not ethically acceptable for the same reasons which make artificial heterologous procreation illicit as well as any form of surrogate motherhood; this practice would also lead to other problems of a medical, psychological and legal nature.
>
> It has also been proposed, solely in order to allow human beings to be born who are otherwise condemned to destruction, that there could be a form of "*prenatal adoption*." This proposal, praiseworthy with regard to the intention of respecting and defending human life, presents however various problems not dissimilar to those mentioned above.
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> All things considered, it needs to be recognized that the thousands of abandoned embryos represent a *situation of injustice which in fact cannot be resolved*.[27]

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[26]It should be noted that even the use of the term "embryo adoption" is under contention as theologians differ on what the object of the act is. G. Surtees says that the object is to "adopt the child prenatally, giving it a home first in the womb of the wife and then in the home provided by her and her husband." On the other hand, W. May and G. Grisez say that the object is to "transfer the frozen embryo, a child orphaned before its birth, to the woman's womb in order to protect its life … [and that] a single woman could [rightly] choose to do this and, after the child's delivery, offer it for adoption to a married couple." See G. Mackinnon, *Can Frozen Embryos Be Saved?*, Catholic Answers (January 1, 2002), https://www.catholic.com/magazine/print-edition/can-frozen-embryos-be-saved (accessed September 9, 2019).

[27]Congregation for the Doctrine of the Faith, *Dignitas Personae*, no. 19 (italics in the original).

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It is consistent with an earlier instruction which holds that these embryos are "exposed to an absurd fate, with no possibility of their being offered safe means of survival which can be licitly pursued."[28] The Church cannot allow embryo adoption because it would mean formal cooperation with embryo transfer, surrogacy, and *in vitro fertilization*—all of which the Church judges as immoral. "The risk of scandal is also ever present, and an endorsement of embryo adoption might not only be seen as an endorsement of IVF and surrogacy, but could actually lead to an *increase* in the practice of both, especially among Catholics."[29] Hence, the moral option, for the time being, is to continue to store the embryos in their frozen state. Similarly, the Church cannot allow adoption by same-sex couples because it would mean formal cooperation with "same-sex marriage" and the denial of human sexuality as male and female. An endorsement of adoption by same-sex couples might be seen as an endorsement of "same-sex marriage." In short, the Church ultimately grounds her opposition to same-sex adoption not in the argument of the "best interests of the child" but rather in the wider context of her interrelated teachings which she will not change. This author thus proposes another approach to the debate.

Doctrinal Integrity

As a preliminary note, this author wishes to cite J. Keenan's belief that Church teaching is "more interested in consistency and universality than in the contextual questions, more willing to suppress moral beliefs, differences, and exceptions for the sake of identity."[30] This author agrees that consistency for its own sake may be a superficial aim and may even be an erroneous goal at times when it means

[28]Congregation for the Doctrine of the Faith, *Donum Vitae*, no. I. 5.

[29]R. Mayer, "Is Embryo Adoption a Form of Surrogacy?", *The National Catholic Bioethics Quarterly* 11:2 (2011): 256 (italics in the original).

[30]J. Keenan, *A History of Catholic Moral Theology in the Twentieth Century: From Confessing Sins to Liberating Consciences* (New York: Continuum, 2010), 119.

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ignoring contexts. However, consistency remains significant, especially as it is an element of integrity or ordered wholeness which ought to characterize Church teaching. Related to this is an argument for identity which is a value to be cherished in this postmodern time of pluralism and relativism. However, this author does not agree with suppressing differences and exceptions which is what happens when there is a narrow understanding of Catholic identity as merely about taking a "Catholic stand" against moral issues like abortion, contraception, HIV prevention, same-sex unions, etc. Catholic identity is about sharing a Catholic Christian vision, values, and the apostolic mission from Christ himself, and living these out in one's daily life.

In one edition of the Catholic magazine *America* back in the 1960s, one can read a viewpoint that was as relevant then as it is today:

> The traditional Christian morality governing marriage and sexual relations was and is an ordered whole, a coherent structure whose parts all hang together. We cannot change any fundamental part of the code without affecting them all. To be specific, we cannot have stable monogamous marriage as our civilization has understood it for millennia if we accept contraception, premarital sexual intercourse and easy divorce as morally approved practices.
>
> These practices are incompatible with the inner principles of marriage as understood in the Christian tradition; and that some people do not see this is quite irrelevant if the fact is so. Any structure of human relationships has its own objective laws which must be generally observed, or the structure decays and falls apart.[31]

The writer was making his commentary on the so-called sexual revolution in Britain, the essence of which—the denial of procreation as the natural purpose of sex—"pulled out the key pin that holds our sexual moral code together."[32]

Adoption by same-sex couples may not deny procreation as the natural purpose of sex since there is already a child, but it rejects the idea that parenting, the natural corollary of procreation, is sex-

[31]T. Davis, "Sexual Revolution," *America* 108:16 (April 20, 1963): 526.

[32]Davis, "Sexual Revolution," 526.

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differenced and complementary.[33] Indirectly, it also rejects marriage as it is understood in Church tradition. Similarly, therefore, this author would like to add to the statement above—we cannot have stable monogamous marriage as our civilization has understood it for millennia if we accept adoption by same-sex couples and, implicitly, "same-sex marriage" as morally approved practices. The Church will not change her position on adoption by same-sex couples because she cannot undermine the doctrinal integrity of her teachings on human sexuality and marriage that are based on a physicalist interpretation of natural law. The possibility of change in Church position can come only on the basis of a better understanding of human realities but without changing the underlying values. The Catholic Charities of Boston and of San Francisco may have allowed the adoption of children by same-sex couples based on the best interests of the child, but what prevailed afterward was doctrinal integrity as they decided to discontinue their adoption services in their respective dioceses when exemption from civil law that allows adoption by same-sex couples was not granted to them.[34]

To better appreciate doctrinal consistency, integrity, and identity, one needs to take on a perspective of Church teaching as a system of values, principles, and norms of behavior. Simply saying, for example, that "the Church does not allow adoption by same-sex couples" as if it is merely an authoritarian pronouncement that demands assent may shroud the underlying values that the Church upholds and protects. For example, if marriage practices are perceived merely as religious customs without a rational conviction of the values that comprise the Catholic faith, then traditional practices can be easily discarded for the sake of modern social conditions. More fundamental than norms is the integrated system of values that is held in common by the Catholic

[33]In single parenting, there is room for a different-sexed parent figure to compensate for the lack of sex-differenced and complementary parenting in the single parent situation.

[34]C. Rutledge, "Caught in the Crossfire: How Catholic Charities of Boston was Victim to the Clash Between Gay Rights and Religious Freedom," *Duke Journal of Gender Law & Policy* 15 (2008): 299–300.

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faithful. However, it cannot be safely assumed that the values upheld by the Church's principles and norms and the interplay between them are clear to the laity or maybe even to some clergy. These need to be explained and modeled clearly to be imbibed. Only then can the principles and norms of behavior be understood and appreciated as moral expressions of faith, and only then can new practices be interpreted in terms of old principles and values. Francis explains that the "pastoral care for families … consists not merely in presenting a set of rules, but in proposing values that are clearly needed today.…"[35]

Values Upheld

The Church tradition that affirms the existence of an objective morality based on the paradigm of natural law uses today the language of "values" which can be understood as "realities or aspects of reality that are important in themselves, that command our respect and observance, and that call for a response in our everyday behavior."[36] Some examples of new articulations of values within the last century are the sanctity of life, consistent life ethics, the preferential option for the poor, and solidarity.[37]

In her negative evaluation of adoption by same-sex couples, the Church upholds the following objective values: the dignity of the child, marriage, human sexuality, the family, and the common good. Their interrelatedness demonstrates that the Church position on adoption by same-sex couples cannot be separated from her negative evaluation of "same-sex marriage" and homosexual activity, her defense of the complementarity of man and woman in marriage, the purposes of marriage and the family, and its relation to the common good.

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[35]Francis, *Amoris Laetitia*, no. 201.

[36]T. O'Connell, *Making Disciples: A Handbook of Christian Moral Formation* (New York: Crossroad Publishing, 1998), 21, 57.

[37]Keenan, *A History of Catholic Moral Theology*, 84.

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The Dignity of the Child

The Church teaches that every child is endowed with the dignity of a human person created in the image and likeness of God and ought to be treated as a person with rights from the moment of their conception.[38] Its helplessness demands the care and protection of the parents who by their marital act brought the child into this world. It is the parents' original and primary responsibility to provide for the child's needs and educate the child. When this is not possible, adoptive parents commit to the responsibility of raising the child.

Marriage, Together with Human Sexuality and the Family

The second value that the Church upholds in her negative evaluation of adoption by same-sex couples is marriage. Marriage for Catholics is a "covenant by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children" (Canon 1055 §1). Here the Church makes a profound link between human sexuality, marriage, procreation, child-rearing, and family. However, it is a link "which the modern culture of sexuality threatens to divide."[39]

Allowing same-sex couples to adopt a child contradicts the Church's belief in the institution of marriage as an exclusive union of a man and a woman oriented to the bearing and raising of children. The Church holds that marriage is a God-given design that assures a child of both a father and a mother in a permanent relationship that gives rise to a stable family.

[38]CCC 2378; CDF, *Donum Vitae* I, 1 and III, 8.

[39]G. Campanini, "Change in the Family and the Challenges of Contemporary Culture," in L. Cahill & D. Mieth, eds., *The Family*, Concilium 1995/4 (London: SCM Press, 1995), 38.

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However, two caveats are in order. The first is that this belief in the institution of marriage does not imply that a family based on marriage between a man and a woman guarantees the security of child rights. The second is that it does not imply that a child cannot enjoy some of those rights in an environment other than a family based on marriage nor that a single, remarried, or even same-sex parent cannot secure some of those rights. While exceptions are a possibility, the Church teaching on same-sex adoption excludes exceptions for same-sex parents even as canon law, in deference to civil law, allows exceptions for single and remarried parents. It must be recognized that there is tension between what the Church teaches and possible exceptions for same-sex couples.

In today's open societies, there is an upsurge in the variety of forms of families. Aside from single-parent families, divorced families, and reconstructed or blended families, there are also multi-parent families and same-sex-parent families. Amidst all this, the Church asserts that the "normal reference point by which the different forms of family relationship are to be evaluated" is the natural institution of "a man and a woman united in marriage, together with their children" (CCC 2202).[40]

It must be clarified that by this insistence on a family structure based on the marriage of a man and a woman, the Church does not intend to reject those who are in situations that do not meet the ideals of family and marriage. After all, the Church recognizes that not all instances that fall short of the ideal are severely and destructively impaired. Francis warns the Church against an "excessive idealization" in proposing a "far too abstract and almost artificial theological ideal of marriage, far removed from the concrete situations and practical possibilities of real families."[41] There are single parents and their children, divorced families, abandoned children taken in by their grandparents or relatives, families blended from two separated spouses who live together with

[40]The *Compendium of the Social Doctrine of the Church* asserts that states need to recognize "indissoluble monogamous marriage as the only authentic form of the family" (no. 229).

[41]Francis, *Amoris Laetitia*, no. 36.

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their children from previous marriages, *de facto* unions, family members separated by poverty, and many others. In the words of L. Cahill:

> Our own sins and our need for forgiveness should make all Christian families slow to judge others and quick to offer support, even while we persistently and courageously speak up for the family relationships and social conditions that we believe will enhance family life for all. The Christian family is not the perfect family but one in which fidelity, compassion, forgiveness, and concern for others, even strangers, are known. In striving to embody these virtues, however imperfect its success, a family lives in the presence of God and begins to transform its surroundings. A Christian family is such a family.[42]

Family life with all its challenges, joys and sorrows, daily routines, and successes and failures provides members of the family bound by love with a strategic setting for learning values. The family is the "domestic church"[43] and a "school of deeper humanity" where "various generations come together and help one another grow wiser and harmonize personal rights with the other requirements of social life,"[44] thus preparing children for life and service in the bigger community of society.

Social Order and the Common Good

The Church's negative evaluation of adoption by same-sex couples can be understood not only on behalf of the best interests of the child but also against the backdrop of the Church's understanding of marriage and the common good. After all, "a Christian ethic of children … asserts that one's own good is inextricably linked to the common good, the good of others, [and] the good of the whole."[45]

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[42]L. Cahill, *Family: A Christian Social Perspective* (Minneapolis, MN: Fortress Press, 2000), 137.

[43]Paul VI, *Lumen Gentium*, no. 11.

[44]Paul VI, *Gaudium et Spes*, no. 52.

[45]B. Miller-McLemore, *Let the Children Come: Reimagining Childhood from a Christian Perspective* (San Francisco, CA: Jossey-Bass, 2003), 169.

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Same-sex couples claim a right to adoption that is consequential to a "right" to marriage (or what they call "marriage equality"). The Church rejects such rights claims to safeguard the institution of marriage and, with it, the common good. For the sake of social order and the common good, marriage itself warrants protection while it "protects the identity, security, and flourishing of children"[46] by providing a means of regulating sexual behavior for the purposes of reproduction and a stable environment for the development and education of children.

"The current definition of marriage has a place in the law … for providing a paradigm [that sets] a comparative standard for the complexity of relationships in which children might otherwise find themselves."[47] Already there are new practices like homoparenting, transparenting, shared parenting, group parenting, and fragmented parenting (biological, gestational, legal, and social) that replace natural parenthood and raise questions about what entails maternity and paternity. The ambiguity and confusion arising from these new trends will necessitate judicial/legal intervention that can adversely affect children while the "real" parent responsible for the child's upbringing is being determined. Given the institutional importance of the family for society and the common good, the Church insists that public authorities and societies have the obligation to assist the family by providing resources and support and to protect the family from whatever may threaten its foundations, like these practices which are opposed to natural law.[48]

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[46]D. Cooper-Clarke, A. Cameron, D. Palmer, C. Meney, R. Benson, J. McClean, J. Wallace, & N. Tonti-Filippini, *Revising Marriage? Why Marriage is the Union of a Man and a Woman* (Sydney: Catholic Women's League Australia, 2011), 5.

[47]Cooper-Clarke et al., *Revising Marriage?*, 9.

[48]*Compendium of the Social Doctrine of the Church*, no. 229; Paul VI, *Humanae Vitae*, no. 23; John Paul II, *Centesimus Annus*, no. 49; Paul VI, *Gaudium et Spes*, no. 45.

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The Pontifical Council for the Family sheds light on the interrelatedness of human sexuality, marriage, family, and the common good:

> The truth about conjugal love also makes it possible to understand the serious social consequences of the institutionalization of homosexual relations: "We can also see how incongruous is the demand to grant 'marital' status to unions between persons of the same sex. It is opposed, first of all, by the objective impossibility of making the partnership fruitful through the transmission of life according to the plan inscribed by God in the very structure of the human being. Another obstacle is the absence of the conditions for that interpersonal complementarity between male and female willed by the Creator at both the physical-biological and the eminently psychological levels." Marriage cannot be reduced to a condition similar to that of a homosexual relationship: this is contrary to common sense. In the case of homosexual relations, which demand to be considered de facto unions, the moral and juridical consequences take on special relevance. "Lastly, 'de facto unions' between homosexuals are a deplorable distortion of what should be a communion of love and life between a man and a woman in a reciprocal gift open to life." However, the presumption to make these unions equivalent to "legal marriage", as some recent initiatives attempt to do, is even more serious. Furthermore, the attempts to legalize the adoption of children by homosexual couples adds an element of great danger to all the previous ones. "The bond between two men or two women cannot constitute a real family and much less can the right be attributed to that union to adopt children without a family." To recall the social transcendence of the truth about conjugal love and consequently the grave error of recognizing or even making homosexual relations equivalent to marriage does not presume to discriminate against these persons in any way. It is the common good of society which requires the laws to recognize, favor and protect the marital union as the basis of the family which would be damaged in this way.
>
> Marriage and the family are a social good of the first order: "The family always expresses a new dimension of good for [humankind], and it thus creates a new responsibility. We are speaking of the responsibility for that particular common good which includes the good of the person, of every member of the family community."[49]

[49]Pontifical Council for the Family, *Family, Marriage and "De Facto" Unions*, nos. 23 and 24.

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The Church's system of values is not closed in on itself and interacts bilaterally with the socio-political realm. The legalization of adoption by same-sex couples in some places is a new socio-political context that needs to be considered as we turn to a related prescription in canon law that seeks to preserve social order with respect to adopted children.

The Problematic of CIC 110

As already mentioned, the 1983 Code of Canon Law prescribes that "children who have been adopted according to the norm of civil law are considered the children of the person or persons who have adopted them" (Canon 110). The term "person" may have originally referred to a stepparent who is adopting the child borne by his or her spouse from a previous marriage. However, it has also been interpreted to mean a single/unmarried person. "By mentioning 'person or persons,' canon 110 allows for single-parent adoptions."[50] This raises the question about the propriety of adoption by a single/unmarried person whose parenting fails to approximate what the child has lost. Clarification is definitely in order as the Church herself is now caught between her own moral teaching and the law. How can the Church be historically rooted and engage the present concerns of adoption while preserving her doctrinal integrity?

Handling Differences and Exceptions

While maintaining doctrinal integrity at the theoretical level is possible, addressing the moral complexity present in diverse situations is a challenge. Fulfilling Church precepts derived primarily from the need to maintain doctrinal integrity can be daunting under certain circumstances where the objective concrete norm fails to capture the whole of moral truth.

[50]J. Beal, J. Coriden, & T. Green, eds., *New Commentary on the Code of Canon Law* (New York: Paulist Press, 2000), 150.

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Since adoption by same-sex couples is a relatively new issue, this author turns to the issue of contraception to discover what examples we have in Church history of how the magisterium handled differences and exceptions in the application of its teaching and protection of doctrinal integrity.

The call to change Church teaching that prohibits contraceptive use in marriage is several decades old. In the 1968 encyclical *Humanae Vitae*, Pope Paul VI did not heed the recommendation for a change in Church teaching on contraception in the majority report of the Pontifical Commission on Birth Control (which included scientists, theologians, married couples, physicians, bishops, and cardinals). Instead, he pronounced that each and every marital act must be open to procreation because of the inseparable connection between its unitive and procreative ends:

> The Church, nevertheless, in urging [men and women] to the observance of the precepts of the natural law, which it interprets by its constant doctrine, teaches that each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life.
>
> This particular doctrine, often expounded by the magisterium of the Church, is based on the inseparable connection, established by God, which [human persons] on [their] own initiative may not break, between the unitive significance and the procreative significance which are both inherent to the marriage act.[51]

According to this teaching, the morally acceptable way for husband and wife to postpone or avoid pregnancy for a good reason is periodic continence. Even as periodic continence has been embraced by many married couples as their response to the call to responsible parenthood and with a view of marriage as a "path to holiness,"[52] some find it irrational, excessive, impractical if not too difficult, and a serious

[51]Paul VI, *Humanae Vitae*, nos. 11–12.

[52]Cf. Paul VI, *Lumen Gentium*, no. 41 and Paul VI, *Gaudium et Spes*, no. 48.

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impasse in fundamental theological ethics on the theoretical level.[53] A similar impasse is looming in the case of adoption by same-sex couples.

How has the Church been addressing the impasse as regards contraception? Behind this doctrinal status are pastoral adaptations and approaches offered to married couples to resolve the gap between the norms set by the Church and their human experience of married life. These allow the Church to remain firm in its position on contraception based on the inseparability principle. Keenan identifies three pastoral adaptations from the late 1960s: compromise ("which did not sit well with Catholics"), the law of gradualness, and the distinction between objectively grave matter and subjective non-culpability—all of which attend to the couple's particular circumstances.[54]

As a moral category (which is different from the moral principle of compromise), compromise is used here in the ordinary sense of the word and thus classifies some moral actions as being between right and wrong, with the justification that such a best possible solution (compromise) can be tolerated in view of a situation that manifests the sinfulness of the world.[55]

As regards the law of gradualness, the faithful who accept Church teaching but struggle in living it out are encouraged to continue striving to realize such teaching gradually in their marriage with the aid of the sacraments of reconciliation and the Holy Eucharist. The

[53]M. Barberi & J. Selling, "The Origin of *Humanae Vitae* and the Impasse in Fundamental Theological Ethics," *Louvain Studies* 37:4 (2013): 382.

[54]Keenan, *A History of Catholic Moral Theology*, 146–151. J. Bretzke (*A Morally Complex World: Engaging Contemporary Moral Theology* [Quezon City, Philippines: Jesuit Communications Foundation, Inc., 2004]) explains that the end of the moral principle of compromise is not to reduce the good but rather to seek its maximum possible realization in the concrete situation at hand (p. 204). The principle was illustrated by John Paul II (*Evangelium Vitae*, no. 73) using the case of elected government officials who are faced with pro-abortion laws which they cannot repeal but limit the harm done by such laws.

[55]Keenan, *A History of Catholic Moral Theology*, 147.

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gradualness can be thought of as an "ongoing conversion and growth in moral virtue."[56]

As regards the distinction between objectively grave matter and subjective non-culpability, confessors recognize extenuating circumstances in the lives of the faithful that can make them subjectively non-culpable of objectively grave matter, thereby maintaining Church teaching and sparing the penitent from unjust condemnation.

As regards addressing other contexts, "while the Church has always taught that marital acts of contraception are morally wrong, the use of contraceptives can sometimes be acceptable within certain other contexts outside of consensual conjugal acts."[57] Two such contexts are the following: in the case of rape that has already happened, the use of contraceptives would be an act of self-defense; in the case of therapeutic medical treatment that has a secondary contraceptive effect, it would be an act of medical therapy.

These approaches and manners of addressing other contexts demonstrate how the Church stood by its teaching on contraception despite a clamor for change and yet was able to address differences and exceptions. Nevertheless, this author does not subscribe to the moral category of compromise because of its ambiguity and finds that the law of gradualness and the distinction between objectively grave matter and subjective non-culpability are not suitable for responding to the issue of adoption by same-sex couples. The simple reason is that adoption by same-sex couples is a definitive and permanent arrangement involving a child. The two pastoral adaptations consider only the moral agency of the same-sex couple and not the best interests of the child. An alternative pastoral adaptation that is more appropriate for adoption by same-sex couples would be the principle of tolerance,

[56]J. Bretzke, *Handbook of Roman Catholic Moral Terms* (Washington, DC: Georgetown University Press, 2013), 100.

[57]T. Pacholczyk, "Catholics and Acceptable Uses of Contraceptives," *Making Sense of Bioethics* Col. 129 (March 30, 2016), https://bit.ly/3AfXKd6.

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which is also in the tradition of the Church (this would be applicable only for those same-sex couples who have already adopted children).

Handling Conflict Between Civil Law and Morality

Cognizant that civil law may not always correspond to the moral law as it is in the case of adoption by same-sex couples, the Church humbly accepts her role as a "sign of contradiction" as she journeys with and proclaims the teachings of Christ to a secularized and pluralistic world.[58] Nonetheless, this is to be done with gladness "as joyful messengers of challenging proposals, guardians of the goodness and beauty which shine forth in a life of fidelity to the Gospel."[59]

The Church officially endorses two different approaches to address conflict between civil law and morality. According to C. Curran and R. Gula, the first (older) approach sees civil law in the light of natural law as directing persons to do what nature dictates. Here Catholics should participate in law-making to make civil law reflect Catholic morality. The second (newer) approach is guided by the principle that considers the rights and freedom of conscience of the individual as enshrined in the declaration on religious freedom *Dignitatis Humanae*, and thus acknowledges that civil law is less influential in a pluralistic society. Here Catholics should influence the moral climate "through example, education, and service" so that Catholic moral values and principles are conveyed and experienced in the community.[60]

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[58]Paul VI, *Humanae Vitae*, no. 18.

[59]Francis, *Evangelii Gaudium*, no. 168.

[60]C. Curran, *Ongoing Revision: Studies in Moral Theology* (Notre Dame, IN: Fides Publishers, 1975), 110–134; R. Gula, *Reason Informed by Faith: Foundations of Catholic Morality* (New York: Paulist Press, 1989), 254–255. Gula also cites examples for each of the approaches. The first approach is employed in the *Declaration on Procured Abortion* by the Congregation for the Doctrine of the Faith (1974): "The law is not obliged to sanction everything, but it cannot act contrary to a law which is deeper and more majestic than any human law: the natural law engraved in [people's] hearts by the Creator" (p. 21). The second approach is employed in

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In the first approach, public discourse and authentic dialogue with civil authorities are of utmost importance in being able to influence public policy. It is not about Catholics imposing their views on everyone else but rather about expressing them as a right, using rational arguments in a consistent and balanced manner. Also, the bishops' conferences play a crucial role in the public domain. Any structural weaknesses or inappropriate strategies on their part could have detrimental consequences for authentic dialogue on moral issues.[61]

Meanwhile, the second approach is simply about witnessing to Gospel values which every Catholic is called to do as a way of life. The Catholic married couple's example of responsible care for the children they bring into this world and their witness of the good news that Christian marriage is are educative ways of mediating Roman Catholic moral values to the community.

> Authentic conjugal love will be more highly prized, and wholesome public opinion created about it if Christian couples give outstanding witness to faithfulness and harmony in their love, and to their concern for educating their children also, if they do their part in bringing about the needed cultural, psychological and social renewal on behalf of marriage and the family.[62]

An even more compelling witness is adoption as a family apostolate, a loving service to the adoptee, and an expression of solidarity for the common good of society. "Christian charitable activity … is not a means of changing the world ideologically, and it is not at the service of worldly stratagems, but it is a way of making present here and now the

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Donum Vitae, also by the CDF: "[The law] must sometimes tolerate, for the sake of public order, things which it cannot forbid without a greater evil resulting" (III).

[61]An assessment of how Catholics debated the Reproductive Health Bill in the Philippines and the lessons to be learned from it can be found in E. Genilo, "The Catholic Church and the Reproductive Health Bill Debate: The Philippine Experience," *The Heythrop Journal* 55:6 (November 2014): 1044–1055.

[62]Paul VI, *Gaudium et Spes*, no. 49.

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love which [the human person] always needs."[63] The Christian way of life itself reflects Christ and proposes Gospel values to the community and larger society. The integrity of moral teaching then would not just be on a doctrinal level but truly embodied by Christians striving to live out their faith in our morally complex world.

[63]Benedict XVI, *Deus Caritas Est*, no. 31.

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