

Marriage, Mail Ballot and the Magisterium

Should the High Court reject the challenge to the government's proposed postal survey concerning legislating for same-sex marriage, Australians will soon be voting "Yes" or "No" to a change.

Campaigns are beginning to emerge. Former Prime Minister, Tony Abbott, among the first to weigh in: vote "No" to protect free speech, religious freedom and "stop political correctness in its tracks". In the last week or so, three of the nation's Archbishops have contributed to the Church's position.

Archbishop Tim Costelloe SDB from Perth was the first in a [pastoral letter](#) to his flock. His intention was "to clarify as best I can the reasons for the Church's teaching" and asked the people "to reflect deeply on the issue". He said he was not forcing the letter on communities and would allow local parish priests to determine how best to treat the matter. He makes the point twice that he wishes to *propose* the Catholic position, rather than *impose* it.

In the course of his letter, Archbishop Costelloe grounds the Catholic position in belief in a personal God "whose creative design is written into the nature of creation itself". Although he does not develop the argument, he is speaking here of Natural Law theory. This source of our knowledge of right and wrong choices is shared by more than Catholics alone. Natural Law theory holds that everyone can know what is right and wrong – even independently of formal religions – because this knowledge is imbedded in us and accessible to humankind. It holds, for example, that the human person 'instinctively' knows it is wrong to steal, or to murder.

But within the Catholic tradition there are, in fact, two schools of Natural Law. One is the school of nature and the other, the school of reason. The former, using the Archbishop's terminology, sees God's intention "written in nature". This is a physicalist approach. So, it is argued, sexual norms are clearly dictated by the design of reproductive systems. To act differently to this design is to act against nature and, therefore wrong. When the Church teaches that (even for married heterosexual couples) *each and every* sexual activity must climax in unitive and (potentially) procreative intercourse or else it is sinful, it is offering an 'order of nature' argument and expectation. To do otherwise would be to thwart God's design. But if a couple, in good conscience, saw things differently, they would most likely be arguing from the 'order of reason' school of Natural Law. That is, reason reflecting on human experience revealing to us a deeper understanding of what it is to be human. What it is to express love, how to nourish a faithful, committed relationship. This school of reason approach is used extensively in the Church's social justice moral theory. Were it not for the school of reason approach, we would still hold that slavery could be justified, or believe that wives were subject to their husbands, contra to what St Paul clearly dictated in the scriptures. Presumably, same sex-couples, who make such a commitment to each other in good conscience, do so by reflecting on experience and on what it is to be human, using their God-given reason.

Overall, though, the Archbishop's letter is very respectfully written. And it is to be expected that he would present the Church's traditional teaching as "the ideal of marriage" as a loving relationship within which children are created. He also underscores the Church's teaching that there should be no unjust discrimination against same-sex couples.

Our own Archbishop Anthony Fisher OP was quoted in the media expressing his concerns about the possible consequences of a redefinition of marriage. He warned against a failure to protect religious freedoms. Whilst there are protections proposed to be offered to ministers of religion and civil celebrants, the Archbishop is also concerned with protections for the larger number of staff who work in church-run

institutions such as schools, hospitals and universities. Schools are already granted certain exemptions from the anti-discrimination act, but vigilance would certainly be needed, should the definition of marriage change, to ensure that religious freedoms are not curtailed. Australia has no bill of rights to protect such religious freedom. At the moment, freedom of religion is treated as exemptions to sex discrimination laws, not as a right in itself. There is next to no Constitutional protection of religious belief in Australia. Article 18 of the United Nations' *International Covenant on Civil and Political Rights*, which is about protection of religious freedom, has not been incorporated into domestic law in Australia, whereas Article 26 which deals with discrimination has. Clearly, some protections are warranted if the changing definition ensues. Fr Frank Brennan SJ, CEO of Catholic Social Services, has [written](#) further on this.

More recently, the Archbishop of Melbourne, Denis Hart, was reported as warning the Australian Catholic Church's 180,000 employees they risk being fired if they marry a same-sex partner. This opens up the whole question of the 'Catholic criteria' for enrolment or employment in a Catholic school. In the enrolment contract for our own staff, it expects that employees will abide by the Catholic educational philosophy of the College and not do anything *publicly* that runs counter to the Catholic values and Ignatian ethos of the College. Essentially this means that an employee's private life is respected. This week Archbishop Hart has proposed one 'litmus test for Catholic orthodoxy'. But where does one then stop? Are staff in Catholic works who cohabit unmarried, or who live in "irregular relationships" (to use the Church's language), or who use contraceptives – all technically living in "objective sin" according to the strictest Church teaching – also to be at risk of dismissal? Surely not. One's private life is one's private life and a matter of personal conscience. Pope Francis is to be echoed here: "Who am I to judge?" when people are striving to live sincere lives before God in integrity and good conscience.

For a number of years now in Australia, same-sex partnerships or civil unions have been accorded the same rights as heterosexual *de facto* couples in federal law and most states and territories (eg, in taxation, superannuation, health insurance, social security, aged care, child support, and veterans' affairs). They can also adopt children everywhere in Australia except the Northern Territory. Now, many wish to marry – and for the same reasons as their opposite-sex counterparts.

The postal ballot is a time, as Archbishop Costelloe asked of us, "to reflect deeply on the issue". It is a matter of conscience for the nation, as well as for its Catholics in particular. For the latter, may God's Spirit guide us in freedom and in truth.