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# From Words to Sacrament, from Sacrament to Flesh: The Concept of Marriage

Randy Lee

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Christ told the story of a landowner who built an elaborate vineyard, turned it over to tenants, and went on a journey.<sup>1</sup> When the time came for him to do so, the landowner sent his instructions, his word, to the tenants.<sup>2</sup> The tenants repeatedly refused to understand the landowner's words<sup>3</sup> so finally the landowner decided to send the perfect articulation of his words, an articulation so clear and accurate that the tenants would have to recognize the wisdom, authority, and love in it and be drawn to obedience.<sup>4</sup> That articulation was the landowner's only son,<sup>5</sup> his words made flesh.

This story parallels God's efforts to communicate with His people. From the beginning "the Word was with God."<sup>6</sup> Through Moses, God sent His instructions, His words, to His people,<sup>7</sup> but people struggled with understanding that word.<sup>8</sup> Finally God sought to provide one perfect, clear articulation of His word to His people, and so "the Word became flesh and dwelt among us."<sup>9</sup> No longer did people need to speculate on what the law looked like in practice. People could see the law alive;<sup>10</sup> they could see, for example, what it meant to keep the Sabbath holy and yet love one's neighbor as one's self.<sup>11</sup> They were no longer confronted with the words of God's law, but now they were confronted with those words in the richness of their glory, grace, and truth.<sup>12</sup>

It does not diminish the majesty of God's earlier statements that ultimately "He spoke the incarnation."<sup>13</sup> The prophet Nehemiah tells us that such is the power of God's earlier statement that the mere reading of the law could bring the people to tears and call them to renewal.<sup>14</sup> In fact, our Jewish brothers and sisters believe that God's giving of His word to His people is His greatest gift.<sup>15</sup> We, as Catholics, believe the same.<sup>16</sup> The only difference is that we believe God

loves us so much that He has now spoken His word so clearly, powerfully, and lovingly in the flesh that its message for us cannot be escaped.

If the history of God's people teaches us that the meaning of the word of God, articulated in words, can be misunderstood when pronounced in relative isolation, how much more confusing does it become when pronounced alongside a parallel yet distinct language. One encounters this dynamic when one seeks to hear the word of God in the midst of the pronouncements of the American legal system. Both God and American legalism speak of *justice, equality, forgiveness, and judgment*,<sup>17</sup> but these labels mean very different things from each of these speakers. Whatever justice and equality may mean in American legalism, they do not embrace the need to recognize my neighbor's pain as my own as justice and equality in the eyes of God require.<sup>18</sup> Judgment in American legalism, meanwhile, carries a power and confidence, a hunger for condemnation not found in the language of the God who has instructed us to first take the plank out of our own eye before reaching for the speck of sawdust in our brother's eye.<sup>19</sup> Forgiveness in American legalism cannot possibly begin to capture what God means by forgiveness, the utter brokenness of human spirit in the presence of Divine insight and mercy.<sup>20</sup> Furthermore, American legalism would assure us that God endowed us with inalienable rights,<sup>21</sup> but Job assures us that before God we lack even the right to be heard.<sup>22</sup> Thus, confusion between these languages seems inevitable, and no less so if one is prone to suspect that when the language of American legalism declares "In God We Trust," that may actually be translated, "If there is a God, he trusts us."<sup>23</sup>

Just as American legalism has threatened to confuse the faithful about the meaning of concepts like justice, equality, judgment, and forgiveness, it has also confused the meaning of more concrete terms like marriage. Furthermore, as God has invited us to understand His law as

flesh and not merely as words, He has called us to understand marriage not as merely words in rules but as words transformed into life.

We may begin to clarify this confusion by considering the words of the Church's law to describe marriage. Section 1 of Canon 1055 describes marriage as:

[t]he matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, [a covenant that] has been raised by Christ the Lord to the dignity of a sacrament between the baptized.<sup>24</sup>

This description identifies five characteristics that define marriage in the eyes of the Church.

First, the matrimonial covenant must be between a man and a woman. Second, the covenant creates a partnership. Third, this partnership is for “the whole of life”<sup>25</sup> in both a qualitative and quantitative sense. Qualitatively, the partnership is for the whole of life because the couple becomes “one body”<sup>26</sup> so completely that rather than thinking of a married couple as complimenting one another, we should think of them as completing one another.<sup>27</sup>

Quantitatively, meanwhile, the partnership is for the whole of life because it ends only with death.<sup>28</sup>

Fourth, the purposes of this partnership are for “the good of the spouses” and “the procreation and education of offspring.”<sup>29</sup> Fifth, the matrimonial covenant and the resulting partnership have “been raised by Christ the Lord to the dignity of a sacrament.”<sup>30</sup> As a sacrament, marriage “strengthens and, as it were, consecrates the spouses in a Christian marriage for the duties and dignity of their state.”<sup>31</sup>

Three additional characteristics can be gleaned from other canons. Section 2 of Canon 1057 indicates first that the matrimonial covenant must arise out of “an act of the will by which a man and a woman mutually give and accept each other,” and second that the covenant so created

is “irrevocable.”<sup>32</sup> Finally, Canon 1063 indicates that the ecclesiastical community must offer “the Christian faithful the assistance by which the matrimonial state is preserved in a Christian spirit and advances in perfection.”<sup>33</sup> This community aid must take at least four forms:

- 1) general instruction to people of all ages “in the meaning of Christian marriage and about the foundation of Christian spouses and parents”;
- 2) “personal preparation to enter marriage which disposes the spouses to the holiness and duties of their new state”;
- 3) “a fruitful liturgical celebration of marriage . . . to show that the spouses signify and share in the mystery of the unity and fruitful love between Christ and the Church”; and
- 4) “help offered to those who are married so that faithfully preserving and protecting the original covenant, they daily come to lead holier lives in their family.”<sup>34</sup>

Having seen the Church’s view of marriage as an irrevocable partnership between a man and a woman, for the whole of life and for the good of the spouses and the procreation and education of offspring, a partnership arising out of an act of the will and strengthened both by its status as a sacrament and by the community in which it takes life, we may now consider to what degree the concept of marriage as defined by American legalism resembles the concept of the Church. Perhaps the closest the United States Supreme Court has come to articulating a view comparable to that of the Church is the Court’s discussion of marriage in *Griswold v.*

*Connecticut* in 1963.<sup>35</sup> There, echoing the Church, the Court called upon words like *sacred* and *enduring* to communicate its concept of marriage:

We deal with a right of privacy older than the Bill of Rights – older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a

bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.<sup>36</sup>

Boiling down the ornamentality, however, one sees that marriage in American legalism is as hollow a substitute for the Church's concept of marriage as were the American legal system's efforts to duplicate the Church's concepts of justice, equality, forgiveness, and judgment.<sup>37</sup> Fundamentally, this is so because in the eyes of the Court the sacredness of marriage arises not from God<sup>38</sup> but from the intimacy of the marital relationship.<sup>39</sup> Having removed from marriage the strength to be derived from its sacramental status,<sup>40</sup> the Court is left to consider the concept of marriage as a partnership for "the whole of life"<sup>41</sup> as an aspiration rather than a reality. Thus, although in the Court's view, marriage may be "a coming together for better or for worse," quantitatively it is only "hopefully enduring."<sup>42</sup> Furthermore, qualitatively, although for the Court marriage may be a "bilateral loyalty,"<sup>43</sup> even that does not rise to the level of becoming "one body."<sup>44</sup>

Beyond these differences, which some may try to pass off as rhetorical, the Court in *Griswold* also diverged fundamentally from the Church's vision of the purposes of marriage. In *Griswold*, the Court held that the right to marry included a right to use contraceptives,<sup>45</sup> a holding that allowed the concept of marriage to be divorced from a purpose of procreation and education of offspring.<sup>46</sup> The Court did, however, preserve the sense that marriage is for the good of the spouses by claiming that marriage promoted a "harmony in living"<sup>47</sup> but even that had to be tempered by the Court's implicit message that children could undermine such harmony, a message that would become explicit in subsequent cases.<sup>48</sup>

The Supreme Court's decisions in the forty years since *Griswold* have only further distanced the Court's view of marriage from the Church's. In *Boddie v. Connecticut*,<sup>49</sup> the Court held that married couples enjoyed a "right to dissolve" their marriage, a decision that affirmed

that American legalism considers marriage as bounded by less than death, and, thus, quantitatively not necessarily for the whole of life.<sup>50</sup> Then, the following year, in *Eisenstadt v. Baird*,<sup>51</sup> the Court attacked its own vision of marriage in *Griswold*<sup>52</sup> and indicated that marriage was also not for the whole of life in any qualitative respect. As the Court said in emphasizing the degree to which marriage cannot interfere with personal autonomy,

the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusions into matters so fundamentally affecting a person as the decision whether to bear or beget a child.<sup>53</sup>

Gone from *Eisenstadt* was the Court's view that marriage was "a coming together...to the degree of being sacred," and "an association that promotes a way of life" and "a harmony of living."<sup>54</sup> Instead, marriage in *Eisenstadt* had become "an association of two individuals each with a separate intellectual and emotional makeup."<sup>55</sup> In *Eisenstadt* the Court also explicitly embraced the implicit message of *Griswold* that marriage need not be for the purpose of procreation when it described "pregnancy and the birth of an unwanted child" as an unreasonable "punishment for fornication, which is a misdemeanor."<sup>56</sup> Furthermore, in *Eisenstadt* the Court made clear that the community's role in a marriage is not, as canon law maintains, to support and assist the marriage<sup>57</sup> but to avoid intrusions into it.<sup>58</sup>

Through *Eisenstadt* then, the Court had established that in American legalism, marriage is not an irrevocable partnership, is not for the whole of life, is not for the purpose of procreation, and is not to be strengthened either by sacramental status or by community involvement. What remained then from the Church's vision was that marriage is a partnership of some form between a man and a woman for the good of the spouses.

The series of abortion cases<sup>59</sup> that followed *Eisenstadt* eroded even the little common ground that American legal marriage and canon law marriage had shared after *Eisenstadt*. Obviously, the abortion cases reinforced the position of American legalism that procreation was not a goal of marriage.<sup>60</sup> In fact, picking up on its child as punishment theme from *Eisenstadt*, the Court in *Roe v. Wade* focused exclusively on the hardships of motherhood:

Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child. And there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. [The] additional difficulties and continuing stigma of unwed motherhood may be involved.<sup>61</sup>

Furthermore, the Court also reinforced its position that the marriage partnership is not qualitatively for the whole of life by holding in this line of cases that a woman may decide autonomously to abort without even notifying her husband of the pregnancy or her intent to abort.<sup>62</sup> Yet, the Court broke its new ground in this line of cases when it embraced a view of marriage that undermined the position that marital partnership is for the good of the spouses.

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>63</sup> the Court justified its decision to exclude husbands from even having a right to know of a marital pregnancy by noting that “there are millions of women in this country who are the victims of regular physical and psychological abuse at the hands of their husbands.”<sup>64</sup> In that context, the Court maintained that a woman could reasonably believe that if she told her husband of her intent to abort, he would

“(a) publicize her intent to have an abortion to family, friends or acquaintances; (b) retaliate against her in future child custody or divorce proceedings; (c) inflict psychological intimidation or emotional harm upon her, her children or other persons; (d) inflict bodily harm on other persons such as children, family members or other loved ones; or (e) use his control over finances to deprive [her] of necessary monies for herself or her children.”<sup>65</sup>



Given such a negative sense of the marital relationship, one can hardly maintain that American legalism would claim the good of the spouses as a purpose of marriage. Thus, the only thing left of the canon law notion of marriage to which the American legal system has adhered is that marriage is a partnership between a man and a woman.<sup>66</sup>

Although one could argue that in *Bowers v. Hardwick*<sup>67</sup> and *Romer v. Evans*<sup>68</sup> the Supreme Court set the foundation to remove from the American legal system's view of marriage the requirement that the partnership be between a man and a woman<sup>69</sup> and although state supreme courts have been willing to take steps in that direction,<sup>70</sup> that discussion hardly seems necessary.<sup>71</sup> Having compared the concept of canon law marriage to that of marriage as defined by the American legal system, one must reach the conclusion that for heterosexual couples, the two concepts of marriage share no attributes. Confronted with that reality, one is hard pressed to argue that the American legal system's notion of marriage will be suddenly undermined if it deviates from canon law on the issue of same-gender partnerships. Initially, one might note that such an argument suggests a certain level of hypocrisy because from it one might infer that heterosexuals were seeking to impose on gay and lesbian couples the norms of canon law when heterosexuals, themselves, were not willing to abide by those norms of canon law most relevant to them.<sup>72</sup> More importantly, however, such an argument seems flawed because it ignores the reality that it appears rather late to be concerned with closing the barn door; all the animals have indeed already left the barn.

While there is certainly room to consider how best for the community to relate to the relatively small number of same gender couples in the community,<sup>73</sup> the more urgent question is how to reinvigorate a dialogue of truth to the vast number of heterosexual couples who have

come to believe that the flimsy imitation of the sacrament of marriage offered up by American legalism is indistinguishable from the real thing.<sup>74</sup>

As noted earlier,<sup>75</sup> when God has found spoken words incapable of carrying His message to a confused, deaf, or even hardened world, He has spoken in flesh. Thus, if the concept of marriage in America is to be recaptured by the Church, Catholics must be willing to allow God to articulate the sacrament of marriage with their lives. For this reason, Pope John Paul II sought out Luigi Quattrocchi, a lawyer, and his wife, Maria Beltrane Quattrocchi, a homemaker, to make them the first married couple to be jointly beatified.<sup>76</sup> In beatifying the couple, the Pope held up the couple as “a living demonstration of what the Second Vatican Council said about all the faithful being called to holiness” and as a “great witness of faithfulness in love.”<sup>77</sup>

While Luigi and Maria Quattrocchi may be the first married couple beatified together, they are hardly the Church’s only married couple who can demonstrate what it means to live in a marriage as a sacrament. In fact, we too easily forget that God first gave life to his Church in the midst of a married couple, and holiness was no easier for that couple than it is for us. That couple was confronted with a conception out of wedlock and almost separated.<sup>78</sup> During their marriage they were pursued by legal authorities and moved frequently.<sup>79</sup> Three times the husband had to give up his business and start over.<sup>80</sup> The wife had to bury her husband prematurely, and then she buried her son.<sup>81</sup> Yet, Mary and Joseph were sustained through it all because at the center of their marriage was Jesus, and, thus, in their lives we can see marriage made flesh.<sup>82</sup>

God did not have to have Jesus born to a married couple. He had made the adult Adam from a lump of clay,<sup>83</sup> and He could have made Christ the same way. Every day He converts bread into the body of Christ; on the altar of the temple in Jerusalem, before the very eyes of the

temple priests, God could have converted a cereal offering into His infant son and the child could have been raised by the holiest of Judah, who would have taught Him in the temple.<sup>84</sup> But God chose the savior of the world to come from a marriage: a marriage faced with all the timeless challenges that still present themselves to this very day, and, yet, a marriage always holy, always faithful in love, and always centered in Christ: a marriage lived as a sacrament.

God made the law for men, not men for the law.<sup>85</sup> God created men to know, love, and serve Him<sup>86</sup> and the law to help them do that.<sup>87</sup> He gave us the law so that we could live more fully as His sons and daughters<sup>88</sup> and so that even in those moments when we know not what we shall be, we can still strive to be Christ-like.<sup>89</sup>

The law, then, was never intended to be just words. It was created to join with us to become truth made flesh. We are called to transform God's words into life,<sup>90</sup> and that includes the word *marriage*.

We should not be surprised that we have so many annulments in the Church; we should be thanking God that, by His graces, our own confusion has not left us with more. There are seventeen million divorced Catholics in the United States.<sup>91</sup> "[T]he Church is obliged to provide justice for anyone whose marriage has failed when it can be shown with moral certainty that the marriage lacked from its onset some essential element for a true sacramental bond."<sup>92</sup> In a land where the concept of marriage has been so hugely distorted, should we not expect that many Catholic marriages do indeed end because they lack some element of this sacrament or, more precisely, because their partnership has not sacramental strength to sustain it through the challenges of life.

The point here has not been to criticize law but to understand it for what it is. There is a hint of eternal truth in law that exists outside the light of God much as G.K. Chesterton observed

there was a hint of truth in myth that existed outside of the light of God.<sup>93</sup> But that hint of truth is only enough to make such law a shadow of eternal truth. And the law of God is indeed a description, a map, even a picture of a life lived in eternal truth, but even that is not the same as a life lived in eternal truth.<sup>94</sup> It is only because “the Word became flesh and dwelt among us,” that we truly “have seen His glory,”<sup>95</sup> and our brothers and sisters throughout America will continue to struggle to see the glory of marriage until they are shown it in the flesh. As Catholic couples enflame their marital vocations with the power of the Holy Spirit and live them as a sacrament, these couples become a light to the world, and in that light divorce and annulment must give way to the joy found in serving God.<sup>96</sup>

In that light also, the world can see that love, the leaven of marriage, is a way of life rather than merely an attraction, an emotion, or a decision. Love is living as Christ lived. Thus, God seeks married couples whose lives will challenge, “Did Christ heal? Did Christ encourage? Did Christ guide? Did Christ forgive? Did Christ bless? Did Christ suffer ignomities? Did Christ suffer insults? Did Christ suffer wounds? Did Christ offer up His earthly life to get His spouse the Church to Heaven?

“Then do likewise.”

Whose marriages will speak these words for God if not the marriages of those who call themselves the brothers and sisters of Christ?

The wisdom of American law and even the wisdom of canon law can be contained in books, and in those books, one may find shadows, descriptions, or even pictures of truth. But we are not called to be shadows or descriptions or pictures of truth.<sup>97</sup> As Saint Teresa of Avila said, we are called to be the feet of Christ, and not just His feet, but also the eyes through which He

looks upon His children with compassion and the Hands with which He blesses a world that hungers for Him.<sup>98</sup>

Mother Teresa of Calcutta was once invited to a talk on hunger, but she got lost and arrived late. When she did arrive, she found a man lying in front of the hotel hosting the talk. The man was starving to death. Mother Teresa picked him up and took him home. He died in her arms, of hunger.<sup>99</sup> In contrast to the world around her, Mother Teresa sought not to be a book nor a talk but to be the eyes and hands and feet of Christ.<sup>100</sup> Her life still calls to her brothers and sisters in Christ, “Be more than a book, Beloved. Be feet.”

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<sup>1</sup> *Matthew* 21:33; *Mark* 12:1.

<sup>2</sup> *Matthew* 21:34; *Mark* 12:2.

<sup>3</sup> *Matthew* 21:35-36; *Mark* 12:3-5.

<sup>4</sup> *Mark* 12:6; *See also Matthew* 21:37.

<sup>5</sup> *Matthew* 21:37; *Mark* 12:6.

<sup>6</sup> *John* 1:1.

<sup>7</sup> *Exodus* 19-31.

<sup>8</sup> *See, e.g., Isaiah* 1:3 (“Israel does not know, my people has not understood.”).

<sup>9</sup> *John* 1:14.

<sup>10</sup> CATECHISM OF THE CATHOLIC CHURCH ¶ 65 (1994) [hereinafter CATECHISM].

<sup>11</sup> *See, e.g., Luke* 6:6-11, 14:1-6; *John*: 5-30 (healing on the Sabbath).

<sup>12</sup> *John* 1:14.

<sup>13</sup> Michael Card, *The Final Word, on JOY IN THE JOURNEY: TEN YEARS OF GREATEST HITS* (Sparrow Records 1994) (“He spoke the Incarnation, and so was born a son. His final word was Jesus. He needed no other one.”).

<sup>14</sup> *Nehemiah* 8:1-12 (Ezra reads the law to the Jewish people upon their return to Jerusalem from exile in Babylon.).

<sup>15</sup> Rabbi Lawrence A. Hoffman, *Responses to Joseph Allegritti: The Relevance of Religion to a Lawyer’s Work*, 66 *FORDHAM L. REV.* 1157, 1162 n.6 (1998).

<sup>16</sup> CATECHISM, *supra* note 10, at ¶ 50.

<sup>17</sup> Randy Lee, *Reflections on a Rose in Its Sixth Season: A Review of H. Jefferson Powell’s The Moral Tradition of American Constitutionalism*, 32 *CREIGHTON L. REV.* 1205, 1246-55 (1999).

<sup>18</sup> 1 *Corinthians* 12:26 (“When one suffers, all suffer together.”). *Compare* DOROTHY DAY, *THE LONG LONELINESS* 151 (1997) (describing government aid as a dynamic which is “centralizing and departmentalizing, involving themselves with bureaus, buildings, red tape, legislation, at the expense of human values”) *with* Lee, *supra* note 16, at 1241 n. 220 (quoting Robert E. Rodes, Jr.):

“This, to my mind, is more than a will to do him justice, more than a will to meet his necessities as best we can. It is a will to enter into his sufferings and make them our own. It is a will to appropriate the passion of our neighbor as a Christian is called to appropriate the Passion of Christ.”

<sup>19</sup> *Matthew* 7:3.

<sup>20</sup> *Psalms* 51:18-19. *See also* Lee, *supra* note 17, at 1248-49.

<sup>21</sup> THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

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<sup>22</sup> *Job* 38-41; *See, e.g., id.* at 40:2 (“Will we have arguing with the Almighty by the critic? Let him who would correct God give answer!”).

<sup>23</sup> Lee, *supra* note 17, at 1227-28.

<sup>24</sup> CODE OF CANON LAW, Canon 1055 §1 (1989).

<sup>25</sup> *Id.*

<sup>26</sup> *Genesis* 2:24 (“That is why a man leaves his father and mother and clings to his wife, and the two of them become one body.”).

<sup>27</sup> Teresa Stanton Collett, *Recognizing Same-Sex Marriage: Asking for the Impossible?* 47 CATH. U.L. REV. 1245, 1250 (1998):

Through the marital union, heterosexual partners experience a completeness previously unknown to them as individuals. This completeness arises from the complementarity of the two persons. They are distinct persons, yet made for each other, as evidenced by the creative capacity of their union on all levels. The union of their minds is evidenced by the willing exchange of their thoughts and perceptions of their experiences. The union of their souls is evidenced by their loving embrace of the mysterious other who is their spouse. The union of their bodies is evidenced by the procreative potential of marital intercourse.

<sup>28</sup> CODE OF CANON LAW, Canon 1141 (1989) (“A marriage that is *ratum et consumatum* can be dissolved by no human power and by no cause, except death.”).

<sup>29</sup> *Id.* at Canon 1055 §1. *See also id.* at Canon 1063 (acknowledging that “spouses signify and share in the mystery of the unity and fruitful love between Christ and the Church”).

<sup>30</sup> *Id.* at Canon 1055 §1.

<sup>31</sup> *Id.* at Canon 1134. Its status as a sacrament also makes marriage a sign and means “which express[es] and strengthen[s] the faith, render[s] worship to God, and effect[s] the sanctification of humanity and thus contribute[s] in the greatest way to establish, strengthen, and manifest ecclesiastical communion.” *Id.* at Canon 840.

<sup>32</sup> *Id.* at Canon 1057 §2.

<sup>33</sup> *Id.* at Canon 1063.

<sup>34</sup> *Id.*

<sup>35</sup> 381 U.S. 479 (1965).

<sup>36</sup> *Id.* at 486.

<sup>37</sup> *See supra* text accompanying notes 17-23.

<sup>38</sup> *See supra* text accompanying notes 30-31.

<sup>39</sup> *Griswold*, 381 U.S. at 486.

<sup>40</sup> *See supra* text accompanying note 31.

<sup>41</sup> *See supra* text accompanying notes 25-28.

<sup>42</sup> *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). *Compare with supra* text accompanying note 28 (indicating marriage endures to death).

<sup>43</sup> *Griswold*, 381 U.S. at 486.

<sup>44</sup> *See supra* text accompanying notes 26-27.

<sup>45</sup> *Griswold*, 381 U.S. at 485.

<sup>46</sup> *See supra* text accompanying note 29. Father Anthony Zimmerman notes that the number of divorces in the United States nearly tripled in the fifteen years after use of the pill began in this country. Fr. Anthony Zimmerman SVD, STD, *Contraception, Divorce, God’s Grace: Seminar on NFP and Holiness*, <<http://zimmerman.catholic.ac/nfp-32-contraception.htm>>.

<sup>47</sup> *Griswold v. Connecticut*, 381 U.S. 479, 486 (1963).

<sup>48</sup> *See infra* text accompanying notes 56, 61. For expressions of this view from popular culture, see Randy Lee, *A Tribute to My Friend David Orgon Coolidge*, 11 WID. J. PUB. L. (forthcoming 2003).

<sup>49</sup> 401 U.S. 321 (1971).

<sup>50</sup> *Id.* at 383.

<sup>51</sup> 405 U.S. 438 (1972) (guaranteeing single people the right to use contraceptives).

<sup>52</sup> *See supra* text accompanying note 36.

<sup>53</sup> 405 U.S. at 453.

<sup>54</sup> *See supra* text accompanying note 36.

<sup>55</sup> *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972). The shift in view from *Griswold* to *Eisenstadt* highlights a more general distinction between American constitutional law and canon law. As the Court states in *McCulluch v. Maryland*, 17 U.S. 316, 415 (1819), American constitutional law seeks to evolve over time and to adapt to a changing world. Canon law, meanwhile, seeks to communicate eternal truth to a world in need of such stability.

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John Paul II, *Sacrae Disciplinae Leges*, in CODE OF CANON LAW xxix (1989) (recognizing "the whole juridical – legislative tradition of the church" is derived from "the books of the Old and New Testament").

<sup>56</sup> Eisenstadt, 405 U.S. at 448.

<sup>57</sup> See *supra* text accompanying notes 33-34.

<sup>58</sup> Eisenstadt, 405 U.S. at 453.

<sup>59</sup> See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979); *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983); *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

<sup>60</sup> These cases also reject fundamentally the Church's view that children are "a sign of God's blessing." CATECHISM, *supra* note 10, at § 2373 (1994). In fact the Court essentially turned the Church's teaching on sexuality and procreation on its head by making sexual intimacy outside of marriage the good and any consequent child the evil rather than looking on sexual intimacy outside of marriage as the problem and children as an expression of God's love.

<sup>61</sup> 410 U.S. 113, 153 (1973).

<sup>62</sup> *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 897-98 (1992); *Planned Parenthood v. Danforth*, 428 U.S. 52, 67-70 (1976) (declaring spousal consent provision unconstitutional). In *Casey*, in addition to characterizing the notice requirement as embodying "a view of marriage consonant with the common-law status of married women, but repugnant to our present understanding of marriage and the nature of rights secured by the Constitution," the Court went so far as to say that "a husband has no enforceable right to require a wife to advise him before she exercises her personal choices." *Casey*, 505 U.S. at 898.

<sup>63</sup> 505 U.S. 833 (1992).

<sup>64</sup> *Id.* at 893.

<sup>65</sup> *Id.* at 888 (quoting the district court). Despite the Court's negative view of marriage, one study shows that of those married people who rated their marriage as "very unhappy" but stayed together, nearly eighty percent considered themselves "happily married" and "much happier" five years later." Dr. James Dobson, FAMILY NEWS FROM DR. JAMES DOBSON (Focus on the Family, Colorado Springs, Colo.), Sept. 2002, at 1. On the other hand, "only nineteen percent of those who got divorced or separated were happy five years later." Dobson, *supra*, at 1.

<sup>66</sup> The Supreme Court rejected arguments that marriage could include polygamy in *Reynolds v. United States*, 98 U.S. 145 (1878).

<sup>67</sup> 478 U.S. 186, 197, 199 (1986) (Powell, J., concurring) (Blackmun, J., dissenting) (reflecting five members of the Court indicating that imprisonment for acts of homosexual sodomy would violate the Constitution).

<sup>68</sup> 517 U.S. 600 (1996) (holding unconstitutional law that would make political advocacy by gays and lesbians more difficult).

<sup>69</sup> See, e.g. Mark S. Spindelman, *Reorienting Bowers v. Hardwick*, 79 N.C.L. REV. 359 (2001).

<sup>70</sup> See, e.g. In re Adoption of R.B.F., 803 A.2d 1195 (Pa. 2002) (recognizing statutory right of gay and lesbian couples to adopt children); *Baker v. State*, 744 A.2d 864 (Vt. 1999) (recognizing state need to recognize same-sex committed relationships under state constitution's Common Benefits Clause); *Baht v. Lewin*, 852 P.2d 44 (Haw. 1993) (recognizing potential problem with state statute's restriction of marriage to couples of one man and one woman under the state constitution's equal protection clause).

<sup>71</sup> Those who debate the relative merits of state recognition or regulation of same-sex relationships, of course, are engaged in a socially valuable discussion that clearly implicates the lives in many homes. See, e.g., Collett, *supra* note 27; David Orgon Coolidge, *Same Sex Marriage*, 38 S. TEX. L. REV. 1 (1997); *Symposium on the Legal Issues Surrounding Civil Unions*, 11 WID. J. PUB. L. (forthcoming 2003) but see John G. Culhane, *Uprooting the Arguments Against Same-Sex Marriage*, 20 CARDOZO L. REV. 1119 (1999). Furthermore, as Saint Thomas More pointed out, "[W]hat you cannot turn to good, you . . . make as little bad as you can." THOMAS MORE, UTOPIA 36 (George M. Logan & Robert M. Adams eds., 1989). Thus, the point here is not that Catholics should not engage in the debate of same-sex marriage in an effort to seek an incremental improvement in the status of this ravaged concept. Rather, the point here is more narrowly that having seen the gap widening for forty years between the canon law and American legal system notions of marriage, one should hardly now need to sound a warning that the two may be starting to separate.

<sup>72</sup> See *Matthew* 23:3-4 ("[D]o and observe all things whatsoever [the scribes and Pharisees] tell you, but do not follow their example. For they preach but they do not practice. They tie up heavy burdens and lay them on people's shoulders, but they will not lift a finger to move them."); *Luke* 11:46. See also Carlos A. Ball, *Moral Foundations for a Discourse on Same-Sex Marriage: Looking Beyond Political Liberalism*, 85 GEO. L.J. 1871, 1941 (1997)

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("While marriage is exalted as a valuable social institution in a normative sense, heterosexual intimate acts that occur outside of marriage, such as adultery and fornication, are usually tolerated by society.").

<sup>73</sup> See *supra* note 71. See also Maurizio Ragazzi, *Domestic Partners' Benefits: A Critical Reflection*, 7 CATH. SOC. SCI. REV. (forthcoming 2003); *Symposium on Homosexuality and the Catholic Church in Today's Culture*, 6 CATH. SOC. SCI. REV. 57 (2001).

<sup>74</sup> Cf. Thomas L. Shaffer, *Nuclear Weapons, Lethal Injections, and American Catholics: Faith Confronting American Civil Religion*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 7, 8 (2000) (paraphrasing Fr. James Burtchaell) ("Catholics weren't paying any attention to the Bishops, because the Bishops had been trying so long to preach to the Oval Office that they stopped preaching to Catholics.").

<sup>75</sup> See *supra* text accompanying notes 1-12.

<sup>76</sup> John Paul II, *Beatification of the Servants of God Luigi Beltrane Quattrocchi and Maria Corsini, Married Couple*, <<http://www.catholicmission.org/HOMILY%20OF%20JOHN%20PAUL%20II%20,%20WORLD%20MISSION%20SUNDAY%20.html>> ("Drawing on the word of God and the witness of the saints, the blessed couple lived an ordinary life in an extraordinary way.").

<sup>77</sup> *Id.*

<sup>78</sup> *Matthew* 1:18-19.

<sup>79</sup> *Id.* at 2:13-15, 19-23.

<sup>80</sup> *Id.* at 1-2 (moving from Nazareth to Bethlehem, from Bethlehem to Egypt, from Egypt to Nazareth).

<sup>81</sup> *John* 19:26 (Mary at the cross of Jesus).

<sup>82</sup> Pope John Paul II is keenly aware of the challenges of being married today. In fact when he beatified Luigi and Maria Quattrocchi, he said,

We know how many families in such situations are tempted by discouragement. I am thinking in particular of those who experience the drama of separation. I am thinking of those who face illness and those suffering from the early death of a spouse or child. In these situations, too, one can give great witness of faithfulness in love, which is made more important by the purification brought by the crucible of suffering.

John Paul II, *supra* note 76.

<sup>83</sup> *Genesis* 2:7.

<sup>84</sup> Compare with *Luke* 2:41-51 (the boy Jesus teaching in the temple).

<sup>85</sup> *Mark* 2:27.

<sup>86</sup> CATECHISM, *supra* note 10, at ¶¶ 356-58

<sup>87</sup> *Id.* at ¶ 1970 ("The Law of the Gospel requires us to make the decisive choice between 'the two ways' and to put into practice the words of the Lord.").

<sup>88</sup> 1 *John* 3:24 ("Those who keep his commandments remain in him, and he in them.").

<sup>89</sup> *Id.* 3:2 ("Beloved, we are God's children now; what we shall be has not yet been revealed. We do know that when it is revealed we shall be like him, for we shall see him as he is.").

<sup>90</sup> John Paul II, *supra* note 55, at xxvii, xxix.

<sup>91</sup> Tim Unsworth, *Rules against remarriage driving souls away*, (visited Oct. 16, 2002)

<[http://www.natcath.com/NCR\\_Online/archives/042001/042001k.htm](http://www.natcath.com/NCR_Online/archives/042001/042001k.htm)>.

<sup>92</sup> Rev. Jeffrey Keefe, O.F.M. Conv., *Why the Church Is Granting More Annulments*, CATHOLIC UPDATE: TODAY'S FAITH IN FOCUS, at 1 (1983).

<sup>93</sup> G.K. CHESTERTON, THE EVERLASTING MAN, in 2 COLLECTED WORKS 135, 241 (1986).

<sup>94</sup> John Paul II, *supra* note 55, at xxix.

<sup>95</sup> *John* 1:14.

<sup>96</sup> CATECHISM, *supra* note 10, at ¶¶ 899-900 (describing Christian vocation of bearing leaven for the world); REV. LAWRENCE G. LOVASIK, S.V.D., 1 THE APOSTOLATE'S FAMILY CATECHISM 367 (1994) (indicating those filled with gift of piety find it "delightful" to serve God). See also Zimmerman, *supra* note 46 ("[W]e can look forward to a new and thriving Church again when divorce is overcome by true love, when spouses abandon contraception and allow God to work with them in their marriage again.").

<sup>97</sup> CHESTERTON, *supra* note 93, at 245 ("A picture may look like a landscape; it may look in every detail like a landscape. The only detail in which it differs is that it is not a landscape.").

<sup>98</sup> JOHN MICHAEL TALBOT, *St. Theresa's Prayer, on HEART OF THE SHEPHERD* (Sparrow Records 1987).

<sup>99</sup> MOTHER TERESA, WORDS TO LOVE BY 24-25 (1983).

<sup>100</sup> *Id.* at 72 ("We are supposed to preach without preaching not by words, but by our example, by our actions.").