

Vatican II and the Year of Faith:  
*What's Missing from the Supreme Court's "Gay Marriage" Decision?*

The media are abuzz with the recent Supreme Court decisions relating to "Gay Marriage." Of the two decisions the most far reaching relates to "The Defense of Marriage Act" (DOMA). In 1996, Congress passed a law that defined marriage in Federal law exclusively as the union of a man and a woman. Last week the Supreme Court struck down a portion of that law which forbid the Federal government from recognizing the claims of homosexual couples to be married.

The majority opinion in the case (authored by J. Kennedy) is long and convoluted, but at its heart it argues that the United States government has a moral interest in supporting "Gay Marriage." It approves the marriage law of New York State which, the court opines, offers "a far-reaching legal acknowledgment of the intimate relationship between two people, a relationship deemed by the State worthy of dignity in the community equal with all other marriages." There you have it. In the opinion of the Court, the conjugal union of a man and a woman has no greater dignity than that of homosexual sodomy. It is this moral judgment that underlies the court's decision.

There were two dissenting opinions in the case. Each argued that DOMA was constitutional and should be upheld. Neither of the dissenting opinions offered any reflection on the relative dignity of traditional marriage or homosexuality. In fact, Justice Alito specifically denied that the court had any business considering such questions. Instead, the dissenting opinions treated the issue entirely in terms of constitutional law, balance of powers, the right of the people to self-government, etc. In their minds, the majority opinion simply engaged in a massive overreach of judicial power.

In reading all of this, I was struck by a considerable irony. It was the supporters of "Gay Marriage" who offered an explicitly moral justification for their decision. The supporters of DOMA, by contrast, deliberately prescinded from such reasoning. This flies in the face of a common charge against defenders of marriage. We frequently here that traditionalist want to "impose their moral views." In this case, it was precisely the supporters of "Gay marriage" who "imposed their moral views" against the representative will of the American people. In effect, supporters of "Gay Marriage" demanded that the Federal government (and, thus, all tax-payers) subsidize and legitimize homosexual relationships by granting them a special tax status (among other benefits).

All of this means, furthermore, that there was something very important left out of the Supreme Court's decision: the moral argument for traditional marriage. The one question *all* the justices refused to address was this: "*Does society have a vested interest in favoring the committed, exclusive, procreative, union of man and woman over other types of sexual intimacy?*"

The philosophical answer to this question (not just the Catholic position) is that marriage is a *natural* institution - one arising spontaneously from the nature of the human person. *Every* culture (whether or not it has been exposed to Christianity) has some form of marriage for the blindingly obvious reason that children come from the sexual union of a man and a woman. Even cultures that traditionally tolerated some forms of homosexuality (ancient Greece, for example)

understood that childbirth made fertile sex fundamentally different from every other form of love, attraction, or eroticism. This is true whether or not you think homosexuality is immoral.

The reason that we favor married couples in our legal system is not because we are homophobic, or "heterosexist" or what-have-you. Nor is it simply a matter of Christian tradition. Again, this is not even a uniquely Christian issue. Where is the pagan culture that traditionally acknowledges homosexual "marriage?" We favor married couples for the (again blindingly obvious) reason that married couples make babies, and we want to give parents a leg up in the care and nurture of their children.

Homosexual couples do not make babies. (I can hardly believe we need to point this out.) Therefore, there is absolutely no reason to provide any special legal status to their unions. This is not to stigmatize homosexuals, or to demean them in any way - any more than it demeans football fans to lack their own special legal status. You don't even have to believe that homosexuality is immoral in order to see this. The state does not need to make any moral judgment about sexual behavior in order rationally to restrict the legal advantages of marriage to "baby makers."

But why not extend "marriage rights" to homosexuals? What harm can it possibly do? It is harmful because the logic of this choice fundamentally obscures the rationale for favoring marriage. It means the state is now in the business of promoting sexuality-for-its-own sake, and identity politics, instead of families. The real rationale for "Gay Marriage" is not the good of families, but to change societal attitudes about gay sex. The court admitted this in a roundabout way when they alleged that DOMA served only to impose "a stigma upon all who enter into same-sex marriages."

In the court's logic, "family" is not the natural result of the male-female procreative union. Rather, it is a sort of badge of cultural legitimacy that society grants to approve or disapprove of a lifestyle. Children, therefore, become something awarded by the state as marker of that legitimacy. They are objectified by this decision.

The Catholic Church has always taught that rights do not come not from the state. Rights flow from our nature as rational beings. The state needs to recognize these rights; it does not create them. The family, in this scheme, is something that exists prior to the state as a matter of natural necessity. It arises neither from legal decision nor simply from religious dogma. To deny this is not to grant "equal rights" to gay people. It is to denude the concept of rights of any objective value.

At the time of the Second Vatican Council, the question of homosexual marriage was not at issue and the council Fathers had no occasion to entertain it. However, they did consider the great importance of marriage to the civil order, especially in the document *Gaudium et Spes*. They noted that the root of the marriage bond is more than "erotic inclination," but has "the begetting and education of children" as its essential nature. The fathers write:

All of these [elements] have a very decisive bearing on the continuation of the human race, on the personal development and eternal destiny of the individual members of a family, and

on the dignity, stability, peace and prosperity of the family itself and of human society as a whole. (*Gaudium et Spes*)

The Supreme Court's decision was against justice. Its logic implies that rights are merely conventions awarded by the state. Its underlying motive was simply to further social approval of homosexuality. It can also only lead to diminished respect for the rights of parents, and the dignity of children and family.