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## Religion and the New Politics

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### 7. New Politics, the United States Conference of Catholic Bishops, and LGBT Legislation

#### A Critical Analysis

Todd A. Salzman and Michael G. Lawler, Creighton University

#### Abstract

Our focus in this essay is on the divisions the new politics promotes surrounding sex and sexualities and how the United States Conference of Catholic Bishops (USCCB) is fostering these divisions legally, theological-anthropologically, and ethically. We begin by describing recent legal issues surrounding sex and sexualities and then present and critically analyze the USCCB's legal, anthropological, and ethical perspectives on these issues. We conclude that in its teachings on homosexuality and its advocacy opposing the Equality Act and non-discrimination legislation, the USCCB promotes unjust discrimination against members of the LGBT community, violates human dignity, and assaults the common good.

Keywords: Equality Act, LGBT, non-discrimination, same-sex parenting, theological anthropology, United States Conference of Catholic Bishops

## **Introduction**

Though the “new politics” of the Trump era are multifaceted, one aspect of them is to sow division and polarization between individuals and groups, and divisions have been sown in a wide swathe across race, religion, economics, education, sex, and sexualities. One consistent strategy to create division is the creation of fear of the other rooted in misinformation that manipulates deepest held religious, political, or cultural beliefs. In terms of sexualities, one of the most poignant examples of fear-based politics creating polarization is the so-called bathroom-war over transgender people. The strategy is to create a narrative of transgender women invading women’s public bathrooms and violating the privacy, modesty, and even chastity of women, and especially young girls. Another fear-based narrative is the narrative about homosexual orientation that causes psychological, emotional, relational, and spiritual damage to children fostered, adopted, or born into homosexual households. These are compelling narratives for people who oppose non-discrimination legislation related to gender identity and homosexual orientation.

The United States Conference of Catholic Bishops (USCCB), and Catholic sexual teaching in general, have promoted these polarizing narratives directly or indirectly. Drawing on USCCB publications, the Nebraska Catholic Conference sent out a request to parents in all Catholic schools to contact their state legislators and encourage them to oppose non-discrimination legislation based on sexual orientation and gender (LB 586) since such legislation “would prevent a Catholic school from reprimanding a transgender [woman] coach who insists on using the girls’ shower and restroom facilities” (Nebraska Catholic Conference 2015). The Congregation for the Doctrine of the Faith (CDF) asserted in 2003 (7), without any supporting evidence, that permitting legal adoption by same-sex couples is “gravely immoral” and “would actually mean doing violence to these children.” Both statements foster fear that children are endangered by transgender people and homosexual parents, motivate resistance to legislation mandating for non-discrimination, and promote the Catholic Church’s own stance of “not-unjust” discrimination under the pretense of treating people with human dignity, respect, and compassion. The irrational and immoral becomes rational and moral with well-crafted semantic manipulation, the human dignity of all people, false information, and fear generated without any scientific evidence or experiential validation.

Our focus in this essay is on the divisions surrounding sex and sexualities and how the USCCB is fostering these divisions promoted by the new politics legally, theological-anthropologically, and ethically. We begin by describing recent legal issues surrounding sex and sexualities and then present and critically analyze the USCCB’s legal, anthropological, and ethical perspectives on these issues.

## **Background to the Equality Act**

In May 2012, President Obama became the first president to publicly support same-sex marriage. On June 26, 2015, in *Obergefell v. Hodges*, the Supreme Court of the United States (SCOTUS) ruled that same-sex couples have a fundamental right to marry, and same-sex marriage was legalized throughout the nation. This ruling reversed the Defense of Marriage Act (DOMA) passed by Congress in 1996, which defined marriage as a legal union between one woman and one man. This development in the law demonstrated a rapid evolution in

social mores and cultural embrace of same-sex relationships. Given this cultural evolution, we could reasonably expect that laws prohibiting discrimination against LGBT persons in employment and housing would follow, but this has not been the case. Many who objected to the legalization of same-sex marriage for ethical and/or religious reasons have shifted cultural battle-lines from marital to non-discrimination legislation. With its politics of division the Trump administration has promoted this shift by undoing many of the executive orders issued by President Obama to protect LGBT persons and has fueled the religious right's opposition to the Equality Act, an offspring of the Employment Non-Discrimination Act (ENDA).

The ENDA, legislation to prevent employment discrimination based on sexual orientation, was first introduced in Congress in 1994, but it did not pass either the House or the Senate. In the 2006 midterm elections, the Democratic Party gained a majority in both the House and the Senate and ENDA had a good chance of being enacted. In 2007, however, a provision for the protection of gender identity and transgender inclusion was added to ENDA legislation for the first time. Several sponsors of the bill believed that this would present an obstacle for passage, even in a majority Democrat House of Representatives, and dropped the addition of gender identity from the bill. The legislation passed in the House but died in the Senate since President Bush threatened to veto it. In 2013, the Senate passed ENDA legislation on a bipartisan vote (64-32), but the Republican dominated House Rules Committee voted against it.

In 2019, the House passed the Equality Act, expanding the protections of ENDA to include housing, credit, education, public spaces and services, and the jury system. This act amends the 1964 Civil Rights Act and extends the prohibition against sex discrimination to include "sexual orientation, gender identity, or pregnancy, childbirth, or a related medical condition of an individual, as well as because of sex-based stereotypes" (116th Congress 2019–2020). In May 2019, the Senate received the bill for consideration but has not acted on it. Twenty-one states and Washington, D.C., currently have laws that prohibit discrimination in the public and private sectors on the basis of sexual orientation and gender identity.

Sociological surveys indicate that only one-third of respondents know that legal protections do not exist on the basis of transgender identity and only one-quarter know that they do not exist on the basis of lesbian, gay, and bisexual identity (Ipsos 2019). A 2018 survey reports that 69% of respondents support laws that protect LGBT people from discrimination, 23% oppose such laws and 8% have no opinion (PRRI 2018). In April 2019, Quinnipiac University conducted a poll that found 92% of American voters surveyed believe that employers should not be able to fire a person based on that person's sexual orientation or sexual identity (Quinnipiac 2019). Although these statistical studies show a majority national support for nondiscrimination legislation, there has also been a decline in support among Republicans since 2015. For young Republicans (ages 18–29), support declined from 74% to 63%; and among more progressive Republicans, from 68% to 59% (Igoe 2019). This decline correlates with the period of the Trump administration's legislative actions against the LGBT community, which could certainly account for the decline but the data do not show a causal relationship between the two.

Although there is overwhelming national public support for laws that protect LGBT people from discrimination, Congress has been unable to pass such legislation. The House

voted on and approved the Equality Act on May 17, 2019, by a vote of 236-173 with bipartisan support. Up until now, the senate has blocked a vote on the Equality Act and the Trump administration issued the following statement in August 2019: “The Trump Administration absolutely opposes discrimination of any kind and supports the equal treatment of all; however, the House-passed bill in its current form is filled with poison pills that threaten to undermine parental and conscience rights” (Henderson 2019). Although the legislation is stalled for the moment, SCOTUS heard, deliberated and ruled on three cases involving sexual orientation and gender discrimination in June 2020. The three cases concern people who were fired from their place of employment because of sexual orientation (*Bostock v. Clayton County, Georgia*, and *Altitude Express v. Zarda*) or gender identity (*R.G. & G.R. Harris Funeral Homes v. Equal Opportunity Employment Commission*) (Howe 2019). Gerald Bostock worked as a coordinator of child welfare services in Clayton County, Georgia. He claims that after the county discovered he was gay, it falsely accused him of mismanagement of public funds in order to fire him. Altitude Express is a skydiving company in New York, which petitioned the court to review Donald Zarda’s lawsuit against the company. Zarda claimed that he was fired from the company for being gay, a violation of Title VII’s prohibition of discrimination on the basis of sex. The trial court dismissed Zarda’s suit. He appealed the decision to the 2nd U.S. Circuit Court of Appeals which ruled in his favor, ruling that discrimination based on sexual orientation “is a subset of sex discrimination” (Catholic News Service 2019). The third case involves gender identity and a transgender employee. The Equal Employment Opportunity Commission filed a lawsuit against Thomas Rost, owner of a funeral home in Michigan, after he fired Aimee Stephens who was hired in 2007 and, based on employment records, identified as a man. Six years later, Stephens identified as a woman and wanted to wear women’s clothes at the funeral home. Stephens comments that Rost considers himself a devout Christian and fired Stephens for violating the dress code and that Rost would be “violating God’s commands” if he allowed Stephens to dress in women’s clothing (Howe 2019). The 6th U.S. Circuit Court of Appeals ruled in favor of the EEOC and Stephens, and Rost petitioned SCOTUS to review the decision. SCOTUS heard these three cases on October 8, 2019 and ruled on them in June 2020. It voted 6-3 that the 1964 Civil Rights Act’s prohibition of discrimination on the basis of sex protects homosexual and transgender employees from being fired. SCOTUS’s ruling on these cases and the 2020 election results have the potential to move non-discrimination legislation forward nationally or to continue to leave it up to individual states to decide the issue.

### **The USCCB on Nondiscrimination Legislation**

Many states have already passed nondiscrimination laws based on sexual orientation and gender identity. In addition, public, including Catholic, support for such laws is high — 69% of religiously unaffiliated Americans and 68% of Catholics support transgender rights (Greenberg et al. 2019b); and 69% of all Americans, 72% of Hispanic Catholics, 71% of white Catholics, and 68% of other non-white Catholics all support laws that protect LGBT people against discrimination in jobs, public accommodations, and housing (Greenberg et al. 2019a). There is, however, ongoing resistance to, and advocacy against, such legislation by the USCCB, which has written to Congress encouraging it not to pass the Equality Act, commissioned lawyers to write an *amici curiae* brief to SCOTUS in support of employers in the three cases cited above, and encouraged Catholics to write their state and national legislators to vote

against non-discrimination legislation. The USCCB argues that the Equality Act and a ruling by SCOTUS in favor of the plaintiffs that would revise the term “sex” in the Civil Rights Act to include sexual orientation and gender identity would violate the common good and human dignity (USCCB 2019a). In what follows, we critically analyze the USCCB’s underlying legal, theological-anthropological, and ethical arguments against the Equality Act. We begin with its argument on the interrelationship between law, morality, and the common good.

### **The USCCB on Law, Morality, and the Common Good**

In its letter to Congress opposing the Equality Act, the USCCB reaffirm its commitment to human dignity, stating that “each and every person should be treated with dignity and respect.” Part of that dignity requires each person’s right to employment free from “unjust discrimination.” “Rather than offering meaningful protections for individuals,” however, “the Equality Act would impose sweeping [legislation] to the detriment of society [and the common good] as a whole” (USCCB 2019a).

In its backgrounder statement opposing the Equality Act, the USCCB explains why the act is detrimental legislation. First, it claims that there is not widespread or systemic discrimination against the LGBT community like there was to warrant the Civil Rights Act protecting people on the basis of sex, religion, and race. “On the contrary,” it states, LGBT “people today are often held in high regard in the market, as well as the academy, local governments, and media. Some studies suggest that people who identify as homosexual earn higher incomes than the national average” (USCCB 2019b). Second, it claims the Equality Act would undo legal protections in Title IX for women and girls by allowing men who self-identify as women to compete for athletic scholarships. Proponents of the Equality Act argue that courts can decide individual cases of unfair claims to gender identity, which would occur only in isolated incidents that do not warrant legislative intervention. The backgrounder responds that there is no basis for this assertion. “When opportunities for taking unfair advantage of a system exist, there will unfortunately be people who do so. Laws should function to curtail such behavior, not ignore it” (USCCB 2019b). Third, “a consistent approach of dismissing individual instances and focusing on systemic problems supports the contention that the Equality Act is unnecessary” (USCCB 2019b).

We briefly respond to the backgrounder’s claims in order to move to a more serious critical analysis of underlying arguments from the USCCB. The first claim on the widespread support of the LGBT community in certain segments of society ignores the cultural sin of homophobia and the rejection of gay and lesbian individuals that lead some to suicide and perpetuates discrimination and violence against them. Significant statistical data is available and instructive here. LGB youth consider suicide about three times more often than heterosexual youth and are nearly five times more likely to have attempted suicide compared to heterosexual youth; 40% of transgender adults reported attempting suicide and of those, 92% did so before the age of 25; LGB youth who come from families who reject them are 8.4 times as likely to attempt suicide in comparison to LGB peers who report no or low levels of such rejection (Trevor Project); 40% of homeless youth who are provided social services identify as LGBT (Martin). 85% of LGBT students (ages 8–18) experienced verbal harassment at school; 58% of them felt unsafe at school because of that harassment; 43% felt unsafe due to gender identity; 27% of LGBT students have been physically harassed because of their

sexual orientation and 13% because of their gender identity. For transgender students, the harassment is worse: 54% have been verbally harassed; 24% physically attacked; and 17% left school because they were treated so badly (Martin 2020). The most extreme forms of this violence are the murders of transgender women, of which over half are women of color. The American Medical Association has dubbed this wave of violence an “epidemic” (Healio 2019). In addition, nineteen states have hate-crime laws that include sexual orientation and eighteen states have laws that include gender identity. These data indicate that, far from being a negligible issue, prejudice, discrimination, and violence against the LGBT community is, and remains, an ongoing social issue that requires legislation to protect this vulnerable population.

Second, it is unclear why the argument that postulates that people who take advantage of the system because laws are not in place to prevent them is applied only to transgender athletes and not also to landlords, bankers, employers, and educational institutions, including Catholic employers and educational institutions, who choose to discriminate based on sexual orientation or gender identity when non-discrimination laws are not in place to protect against it. Third, it is precisely the “systemic problem” or social sin of homophobia, discrimination, and violence against members of the LGBT community that requires such legislation. The USCCB seems to have a difficult time understanding the concept of social sin and its often-indirect impact on attitudes that shape people’s perspectives on issues of race, sex, gender, and religion. This lack of understanding is evident in the recent USCCB (2018) document against racism, “Open Wide Our Hearts,” that mentions social structures that underlie, create, and sustain racial inequality, but then ignores those structures and focuses only on the individual racist acts they provoke. Most people are not consciously or deliberately racist, but they do participate in a society that has racist laws, structures, and institutions that perpetuate racism through white privilege, which is never mentioned in the document. Similarly, in its statements against non-discrimination legislation, the USCCB fails to recognize the cultural reality of powerful, dominant men and weak, submissive women and how this cultural reality spawns widespread violence against women. It fails also to recognize that its own stance contributes to attitudes and acts that directly or indirectly perpetuate the structural sins of homophobia and discrimination against members of the LGBT community. A more fundamental concern with the USCCB’s stance on the Equality Act that perpetuates the divisive and polarizing narrative of the new politics is its understanding of the relationship between law, morality, and the common good. To that understanding, we now turn.

### **The Interrelationship between Law and Morality**

We first consider the relationship between law and morality by introducing a caveat on the USCCB’s confusion between legal and moral arguments in a pluralist society. David Hollenbach and Thomas Shannon (2012) note, “Catholic moral tradition has long stressed that civil law should be founded on moral values but need not seek to abolish all immoral activities in society.” Catholic bishops are free to assert that government and secular agencies should exclude homosexuals and transgender people from employment and from becoming foster or adoptive parents. That, however, is a moral argument seeking to regulate life in the public society (Laycock 2012). Should such a moral argument be codified in legislation? It is one thing to claim an exemption for a religious institution from a just law on the basis of conscientious objection to the moral contents of the law, it is quite another to seek repeal or

prevention of a law based on that objection. The bishops have not made this distinction in their resistance to the Equality Act and seek to make Catholic moral imperatives on homosexual orientation and gender identity national legal imperatives. They claim that the Equality Act is an “unjust law” because it promotes immoral sexual conduct. They note that it is essential to understand the distinction between conscientious objection and an unjust law. Conscientious objection applies to a just law and seeks a religious exemption from that law. “An unjust law is ‘no law at all;’ it cannot be obeyed, and therefore one does not seek relief from it, but rather its repeal” (USCCB 2012). Laycock notes correctly that “The difference between exemption and repeal is the difference between seeking religious liberty for Catholic institutions and seeking to impose Catholic moral teaching on the nation” (Laycock 2012). The Bishops fail to note this distinction in their arguments but we present their arguments with this distinction in mind.

In a pluralist society, we should avoid two extremes when considering the relationship between law and morality. One extreme is that a single moral perspective should be privileged and codified into law; the other extreme is that morality and the law should have little if anything to do with one another. Our concern is with the first extreme, which reflects the current perspective of “cultural warriors” such as Archbishop Chaput, Cardinal Burke, and the USCCB who believe that the law should reflect the Catholic moral perspective in every respect on ethical sexual and life issues (see Chaput 2015; Burke 2009; USCCB 2009).

In his encyclical *Evangelium Vitae*, Pope John Paul II (1995, no. 72) appears to justify this perspective. “The doctrine on the necessary conformity of civil law with the moral law [as defined by the magisterium],” he writes, “is in continuity with the whole tradition of the church...[and] is the clear teaching of St. Thomas Aquinas” (see Aquinas, *S.T.* I-II, q. 93, a. 3, ad 2).

Despite John Paul’s claim of Aquinas’s “clear” teaching on the relationship between law and morality, Aquinas provides a helpful formulation of this relationship that can shed light on his and the USCCB’s perspectives. On the legality of prostitution Aquinas writes: “In human government . . . those who are in authority rightly tolerate certain evils, lest certain goods be lost, or certain greater evils be incurred: thus Augustine says: ‘If you do away with harlots, the world will be convulsed with lust.’ Hence, though unbelievers sin in their rites, they may be tolerated, either on account of some good that ensues therefrom, or because of some evil avoided” (Aquinas, *S.T.* II-II, q. 10, a. 11). When Aquinas wrote this in the 13th century, there was no separation of church and state; the divine church largely dictated law and policy to human government. If Aquinas made a clear distinction between law and morality in his historical context, it is inexcusable that the pope and bishops, guided by Catholic social teaching that forbids discrimination, do not make that distinction in the 21st century.

Parsing Aquinas’s statement on human government and its relationship to law requires discerning tolerated evils, goods that might be lost, and greater evils to be incurred in relation to homosexual orientation and gender identity. In the cases of homosexual orientation and gender identity, there is debate about the evil that is being tolerated. Homosexual orientation, the Catholic Church teaches, is objectively disordered but not evil. From the perspective of Catholic teaching, evil arises only if and when someone engages in homosexual acts, but there

is no intrinsic link between laws that prevent discrimination based on homosexual orientation and gender identity and homosexual acts. In addition, as we discuss below, the ethical concerns and arguments Catholic teaching presents to defend its absolute norm prohibiting homosexual acts are debatable. There is a clear evil to be avoided, discrimination against human beings; and non-discrimination is an essential consideration of the virtue of justice, which guides Aquinas's assessment of the relationship between law and morality.

Aquinas emphasizes justice, rendering every person his or her due, as the central virtue that should guide the legal system. The purpose of legal justice and the law is to facilitate the well-being of relations with one another in the community as *one aspect* of the common good. The common good is *broader* and *more comprehensive* than legal justice. A further question for Catholic teaching in general and the USCCB in specific is the interrelationship between law and the common good.

### The Common Good and Law: Two Perspectives

Drawing from, and building upon, Aquinas and the Catholic tradition, *Gaudium et Spes* defines the common good as “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment.... Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family” (Vatican II 1965b, GS 26). Fulfillment is normally identified with human dignity, integral human development, human flourishing, human well-being, or some similar cognate. For Aquinas, a central function of law is the promotion of the common good. Law that promotes the common good facilitates human dignity; law that threatens the common good frustrates human dignity. He notes that “human law cannot punish or forbid all evil deeds: since while aiming at doing away with all evils, it would do away with many good things, and would hinder the advancement of the common good” (Aquinas, *S.T.* I-II, q. 91, art. 4). In other words, law facilitates some dimensions of the common good and human dignity and frustrates others. Similar to the relationship between law and morality, there are different perspectives on the relationship between law and the common good.

The first perspective, represented by people like Pope John Paul II, Cardinal Burke, Archbishop Chaput, and the USCCB, focuses on absolute norms and intrinsically immoral acts. From this perspective, the law must prevent immoral acts to protect the common good. In his discussion of voting and cooperation in wrong-doing, Burke (2018, 107) presents a clear hierarchy of values and asserts that the law must realize and protect what he calls “the economy of life;” that is, “the respect for the inviolable dignity of innocent human life and the integrity of marriage and the family are so fundamental to the common good that they cannot be subordinated to any other cause, no matter how good it may be.” Protecting and realizing these values is foundational to the common good and a just society and should be prioritized in law before any other values. From this perspective, non-discrimination legislation based on sexual orientation and gender identity assaults the integrity of marital union, threatens the common good, and is an unjust law.

There are several concerns with Burke's and others' absolutist stance on a strict hierarchy of values that the law must ensure and protect, which rules out the possibility of competing values that can be recognized legislatively. First, Burke's perspective resembles what we might

call a scorched earth legislative policy, in which the foundational values the Catholic Church prioritizes, especially its absolute norms on heterosexual marriage, should be instituted legislatively without compromise, and non-discrimination based on homosexual orientation and gender identity fundamentally threaten this norm and, therefore, the common good. This perspective simply fails to acknowledge conflicting values and perspectives in a pluralist society, such as non-discrimination legislation based on sexual orientation or gender identity.

Second, Cathleen Kaveny (2012, 258) asserts that Burke's perspective of the common good is "deeply inadequate" since it is layered, and we can only move to a higher layer when a foundational layer is fully realized. In the case of the Equality Act and the common good, since the integrity of heterosexual marriage is an absolute, there can be no compromise with legislation, such as the Equality Act, that would threaten this absolute. Alternatively, Kaveny proposes the common good as a herringbone pattern made up of various elements, including non-discrimination legislation, protections for conscience and religious freedom, the human dignity of all people and the right to protection in employment, housing, social services. "All elements . . . must receive due attention, even if not full attention" to insure the common good is realized (Kaveny 2012, 258). Kaveny's model of the common good more than Burke's, Chaput's, John Paul II's, and the USCCB's reflects Aquinas' perspective that recognizes conflicts between goods, discernment of tolerated evils, goods that might be lost, and greater evils to be incurred in relation to homosexual orientation and gender identity. It also finds support in the *Catechism* and Catholic social teaching.

### Church Opposition to Nondiscrimination Legislation

The *Catechism* (1994, no. 2358) teaches that "every sign of unjust discrimination is to be carefully avoided," and that homosexual people must be treated with "respect, compassion and sensitivity." Unfortunately, many individual Christians and Christian organizations, like the USCCB, use the qualification, "not unjust discrimination," as a rationale to justify discrimination against homosexuals and to violate their human dignity. The suggestion that there can be "just discrimination" against homosexuals simply because they are homosexuals is a contradiction in terms, for discrimination against them on this basis is always unjust. A gay man can be discriminated against in employment if he is not qualified for the job, a lesbian woman can be denied a driver's license if she is too young to drive safely, and they can both be discriminated against in the selection for a soccer team if they are not skillful enough, but there cannot be "just discrimination" against them simply because they are gay or lesbian. That the USCCB would implicitly support discrimination against homosexuals simply because they are homosexual and might engage in prohibited sexual activity is a fundamental violation of their inviolable consciences, human rights, and dignity. Yet the USCCB uses the principle of "not unjust discrimination" to promote discrimination against homosexuals in legislation regulating marriage, adoption, and employment.

Catholic social teaching is indisputably clear that discrimination is immoral. The *Catechism* (1994, no. 1935) teaches that "The equality of men [and women] rests essentially on their dignity as persons and the rights that flow from it: 'Every form of social or cultural discrimination in fundamental personal rights on the grounds of sex, race, color, social conditions, language, or religion must be curbed and eradicated as incompatible with God's design.'" The *Catechism* does not include sexual orientation or gender identity in this list and

the USCCB has vehemently resisted employment non-discrimination legislation on the basis of sexual orientation and gender identity. There are several responses to this resistance.

First, the USCCB asserts that such legislation would promote sexual immorality that threatens the common good (USCCB 2013). There is, however, no scientific or experiential evidence to support the claim that homosexual acts, by definition, frustrate human dignity and, therefore, threaten the common good. Besides, the Catholic Church is selective in what sexual immorality it opposes; it does not propose or support legislation to allow just discrimination against cohabiting couples, married couples who use contraceptives, or couples who use reproductive technologies, all of which the Catholic Church teaches are immoral and frustrate human dignity. That it does not support such legislation implies that immoral sexual acts are not its primary concern; the primary concern is homosexual or transgender persons who may or may not be sexually active. Directly targeting people based on their sexual orientation or gender identity damages human dignity and promotes clearly unjust discrimination. Second, by opposing the Equality Act, the USCCB is actually violating the protection of individual human dignity and, therefore, the common good on the basis of an unsubstantiated generalization that homosexuals *might* engage in immoral sexual activity. This generalization promotes unjust discrimination against celibate homosexuals who do not engage in any sexual activity.

Third, there is a more fundamental response to the USCCB's concern with homosexual orientation and acts, one that challenges its claim that homosexual acts are intrinsically immoral and destructive of human dignity. The Church has consistently taught that homosexual acts are intrinsically immoral, but that teaching and its theological bases are now seriously challenged and many surveys show that the majority of contemporary Catholics do not accept it (see Pew Research Center 2019). The fact that a large majority of Catholic faithful do not accept Catholic teaching on the immorality of homosexual acts should not be advanced as an argument for their morality, which is never determined by majority consensus. It is an argument, however, for theological dialogue on the issues and a loud demand for the Catholic Church to advance ethically sound reasons that convince both Catholic and non-Catholic citizens that its teachings are true.

We agree with Hollenbach and Shannon (2012) that “the church should not ask the State to do what it has not been able to convince its own members to do.” It should not ask the State to enforce in law a teaching against homosexual acts that it cannot convince the majority of its own members to accept. The burden of proof is on the Catholic Church to demonstrate that homosexual acts are destructive of human dignity and cannot serve “the good of the person or society,” and so far it has not offered any compelling argument. An unproven assertion should not be advanced as the basis for preventing or repealing Equality Act legislation and imposing the Catholic Church's morally questionable doctrine on the broader society. The bishops have every right to advocate for their moral position and to protect religious institutions from participating in what they perceive as immoral activity, but they do not have the right to impose their moral teachings legislatively in a pluralistic society. That, we conclude, would be the very worst kind of proselytism.

Another question on the relationship between law, morality, and the common good is the Catholic Church's proper role for engaging in the public realm to promote its vision of the

common good. On the one hand, the USCCB emphasizes that every person's human rights must be protected. On the other hand, this "should be done without sacrificing the bedrock of society that is marriage and the family and without violating the religious liberty of persons and institutions" (USCCB 2009). Clearly, for the bishops the Equality Act presents a conflict of values between protecting human rights and protecting religious freedom, marriage, and family as these are defined by the bishops. Hollenbach and Shannon (2012) succinctly state the challenge this conflict poses: "When and how is civil legislation an appropriate means for the promotion of the moral norms taught by the Church's magisterium?"

They respond to that question by arguing that there needs to be a shift in focus that both reevaluates the Catholic Church's role in defining and realizing the common good and how this definition and realization should impact the church's involvement in the political realm. First, the Catholic Church considers the primary purpose of law and politics to be the promotion of the common good. While the common good is a foundational and absolute principle in the Catholic tradition, realizing it in a pluralist, democratic society that adheres to a separation of church and state is a complex process, and navigating the normative and legal implications of the common good can, and often does, provoke conflict. The recent debate between the USCCB and the Obama administration's Affordable Care Act highlights this conflict. On the one hand, Catholic teaching and the common good condemn employment discrimination: "Access to employment and to professions must be open to all without unjust discrimination" (*Catechism* 1994, no. 2433). On the other hand, Catholic teaching condemns homosexual acts and "transsexual surgery."<sup>1</sup> The question then arises as to which of these Catholic teachings should take priority as the higher value, Catholic social teaching or absolute Catholic sexual norms?

The Catholic moral tradition recognizes possible legal, normative, and value conflicts and proposes a way to settle them (Aquinas, *S.T.* II-II, q. 10, a. 11). It emphasizes that civil law should be grounded on moral values, but "it also stresses that civil law need not seek to abolish all immoral activities in society" (Hollenbach and Shannon 2012). The arguments to justify this stance go back to Thomas Aquinas and were more recently advocated by John Courtney Murray. The goal of civil law, we argue, is to promote *public* morality that secures public order as compared with *private* morality that secures religious order, but there is a debate whether the concerns of the Catholic Church on homosexuality and gender identity are public or private morality. If they are private morality, the Catholic Church can teach "not unjust discrimination" based on homosexual orientation and gender identity but can also support public laws that prevent discrimination on the basis of homosexual orientation and gender identity. If its teachings are public morality, it needs to balance its moral teachings on human sexuality with teachings on nondiscrimination and realize the impact of pluralism on definitions of public morality and how those definitions evolve and change. SCOTUS' decision to legalize same-sex marriage in every state is a good example of this evolution and change. What was once considered public morality and was legislated against in laws

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<sup>1</sup> In its condemnation of "transsexual surgery," it argues that "the physical integrity of a person cannot be impaired to cure an illness of psychic or spiritual origin. . . . It is different with psychic sufferings and spiritual disorders with an organic basis, that is, which arise from a defect or physical disease: on these it is legitimate to intervene therapeutically" (Jones 2018, 317 n. 10).

prohibiting sodomy is now considered private morality. What was once illegal, same-sex marriage, is now legal. With this evolution in the legal and social definition of morally and legally acceptable relationships in a pluralist, democratic society, there needs to be a corresponding evolution in the perception of religious freedom, and recent Church tradition this evolution.

When there are moral or religious disagreements, *Dignitatis Humanae* (or the *Declaration on Religious Freedom*) decrees, governments should favor religious freedom. “In matters religious, no one is to be forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits” (Vatican II 1965b, *DH* 2). These due limits are correlated with public order and *Dignitatis Humanae* (Vatican II 1965b, *DH* 2 n. 7) offers three guidelines: justice or rendering each person his or her due; public peace, which demands the avoidance of the kind of polarization we find in the culture and ecclesial wars on sexual issues; and standards of public morality on which consensus exists in society. As we have seen, standards of public morality on homosexuality and gender identity have changed radically in the US in the last twenty years. This change has created much more social acceptance of homosexual and gender-identity related issues, but it has also created greater polarization between conservative religious individuals and institutions and society, thereby threatening public peace. Catholic bishops need to engage in ongoing discernment to prioritize the values at stake. Are permissive nondiscrimination laws with respect to homosexual orientation and gender identity in the public work place a grave threat to human dignity, social life, and the common good?

In light of the above considerations, we propose a definition of the common good to serve as a hermeneutical lens for guiding the relationship between law, morality, and the common good. That definition is informed by Catholic holistic human development, applies to both individuals and communities, and evolves in light of social, cultural, sexual, and structural considerations. The common good must consider the complex interrelationship between individuals, groups, and social structures, competing perspectives of values and meanings, and it must bring forward legislation that promotes, and does not violate, human dignity. This raises the question of how we define human dignity in relation to gender identity, sexual orientation, and the common good.

### **Theological Anthropology and the Equality Act**

Although the common good posits human dignity as a universal value, it can be defined from different perspectives with different ethical and legal implications. The Catholic Church magisterially defines sexual human dignity in relation to heterosexual marriage and reproductive-type sexual acts within marriage. Many Catholic ethicists define it in relation to *just and loving* heterosexual, homosexual, or bisexual relationships and acts, and both reproductive- and non-reproductive-type sexual acts within those relationships are deemed moral in general (see Salzman and Lawler 2008; Farley 2006). These are two fundamentally different perspectives on sexual human dignity with fundamentally different ethical and legal conclusions. There is anthropological and normative pluralism within the Catholic Church on human sexuality, which has implications for defining and realizing human dignity and the common good.

### Church Teaching on Transgender and Homosexuality: A Critique

Different definitions of human dignity lead to different ethical and legal conclusions with respect to LGBT persons. We consider and critique Catholic teaching on transgender ideology, homosexual orientation, moral norms governing homosexual relationships, and its advocacy for legislation preventing same-sex couples from fostering or adopting children. The Congregation for Catholic Education issued its document on gender identity, *Male and Female He Created Them: For a Path of Dialogue on the Issue of Gender in Education* (Congregation for Catholic Education 2019; hereafter CCE). It argues that “efforts to go beyond the constitutive male-female sexual difference, such as the ideas of ‘intersex’ or ‘transgender’, lead to a masculinity or femininity that is ambiguous” (CCE 2019, 25). It calls for the “integration of the biological, psycho-affective, social and spiritual elements” to understand “the totality of the person,” but it continues to prioritize the female-male sex binary as the foundational element integrating all other elements (CCE 2019, 4). In this perspective, female-male biological differences are ontologically and anthropologically definitive, determine the “constitutive identity” of a person, and serve as the point of departure for defining what it means to be human biologically, psychologically, relationally, and spiritually. Any sexuality that does not conform to the male-female sexual binary is judged to be guided by a false ideology and is a threat to the common good.

We argue, in contrast, that the exclusive female-male binary that grounds Catholic teaching on transgender and all sexual issues is grounded in a biologically rooted anthropology and is misguided scientifically, scripturally, and theologically (Lawler and Salzman 2020). Scientifically, the reality of intersex people and the reality of what Alice Domurat Dreger (2001) calls “mosaic genetics,” XX, XY, or other combinations of sex chromosomes, biologically challenge the exclusive female-male binary. There is a wide spectrum and combination of sex chromosomes that create not an exclusive sexual binary but a sexual continuum.

God’s relation with creation in general, and human beings in specific, precedes creation and the biological sex of humans as female and male. In Jeremiah, the Lord asserts that “before I formed you in the womb, I knew you and before you were born I consecrated you” (Jeremiah 1:5). How can that be? How can God know Jeremiah or anyone else before their created existence? Before God actually formed Jeremiah or anyone else, speaking humanly and analogically, God had an idea in his mind of what Jeremiah would be and from that idea God created Jeremiah, and so also with the rest of creation. Creation begins with an idea of creation in the mind of God and out of God’s relation to this idea comes *actual* creation. “In the beginning, when God created the heavens and the earth...the earth was without form or shape” (Genesis 1:1–2), in reality but not in the mind of God, who already had an idea of creation. Creation flows from an idea in the mind of God and from God’s relation to that idea; the idea of creation and God’s relation to it are prior and primary and creation’s materiality flows from its prior idea. Even in God’s creation of ‘*adam*, humankind, not an individual male person, “God created ‘*adam* [humankind] in his image; in the image of God he created them; male and female he created them” (Genesis 1:31). God creates humans from a prior idea of humans and God’s relation to that idea, and sexed bodies are a manifestation of that relational creation.

The Gospel of John affirms this relational prioritization. It begins with the relation between God creator and God savior. “In the beginning was the Word [*Logos*], and the Word was with God, and the Word was God . . . All things came to be through Him, and without Him nothing came to be” (John 1:1–4). The masculine pronoun *him* is used, as is common in male-dominated cultures when sex is unclear, to designate God as a spiritual, relational being, not a male-sexed, relational being. The relation between God and *Logos* is at the root of all creation, including the creation of male, female, and intersex. God’s relation with humans creates their every form and sex. Just as Jesus’s relation with God the creator was established before Jesus’s sexed humanity, so too humanity’s relation with God is established before their sexed humanity as male, female, or intersex. Relation is primary, biology very much secondary. In a wonderful way the reality of intersexed people, though statistically a created minority, confirms and privileges this relationality. It disrupts the exclusive female-male binary and the inadequate biological anthropology on which it is based. In intersex persons, there is no clear genital sex and, sometimes, there is no clear chromosomal sex but multiple combinations of chromosomes (Gudorf 1994; Hiort 2013). Despite any perceived ambiguity, however, there is the possibility of relation between males, females, and intersex, depending on persons’ discernment of their psychological, spiritual, and biological dimensions. The actualization of that possibility will follow from that discernment by an informed and autonomous decision of a mature adult.

We propose a holistic-relational anthropology that prioritizes personal relation over biology, though it includes biology as an essential and integral dimension (see Salzman and Lawler 2008, 124–61). We relate to God, self, neighbor, and the material world as embodied persons. Our holistic-relational anthropology views the human person as a holistic being, mind, soul, and body, where the relational is impacted by the psychological, spiritual, and biological. The biological functions not as *the* integrating dimension, but as *a* dimension integrated with all the other human dimensions. Constitutive human identity is not defined by biology, as it is in *Male and Female He Created Them* (CCE 2019) and much of the Catholic hierarchy’s and USCCB’s sexual anthropology. It is defined by a holistic-relational anthropology that integrates all dimensions of the human and evaluates transgender or homosexual ethical issues in light of these integrated dimensions.

In sum, *Male and Female He Created Them’s* prioritization of biology over personal relationship in its theological anthropology, and its reliance on an exclusive female-male biological binary, is scientifically, scripturally, and theologically problematic and renders all of its teaching on gender/sex, at the very least, debatable, if not downright wrong. Personal, covenantal relations between God and God’s human creatures, not biology, is dominant in scripture. Females, males, transgender, and intersex persons can all enter into such covenantal relationships, imaging God in their own unique, God-created way. From this perspective, promoting discrimination based on a person’s sexual identification as transgender is a violation of human dignity and justice.

Homosexual orientation is, the Catholic Church teaches, “objectively disordered” and homosexual acts are “intrinsically disordered.” The former teaching means that homosexual orientation, though not sinful, “is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder” (CDF 1986: n. 3). The latter teaching affirms the tradition that “has always declared that ‘homosexual acts

are intrinsically disordered'. They are contrary to the natural law and close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved" (*Catechism*, 1994 no. 2357). On the basis of these definitions, the Catholic Church lobbies for civil legislation that prohibits same-sex marriage and homosexual adoption, and challenges legislation enacting non-discrimination based on homosexual orientation and gender identity.

There is a clear tension in Catholic language about homosexuality. The *Catechism* calls for "respect, compassion and sensitivity" towards homosexuals (*Catechism* 1994, n. 2358), yet Catholic teaching continues to describe homosexuality as objectively disordered (CDF 1986, 3), language that is disrespectful, lacks compassion, is discriminatory, and leads to discrimination. This anthropological claim is in serious tension with what the sciences tell us about homosexual orientation. Currently, there is no scientific consensus on the origins of sexual orientation, homosexual, heterosexual, or bisexual. Catholic teaching recognizes this lack of scientific consensus, declaring that the psychological genesis of homosexuality "remains largely unexplained" (*Catechism* 1994, no. 2357). Despite this acknowledgement, basing itself largely on a pre-Vatican II reading of scripture and tradition, Catholic teaching continues to claim that a homosexual orientation is objectively disordered. Relying on contemporary science and widespread experience, many Catholic ethicists challenge this claim.

Neuroscientific and genetic studies have evolved dramatically in their ability to identify areas in the brain that shape a person's sexual orientation. Basing himself on scientific research, Jacques Balthazart (2012, 3) asserts that "sexual orientation is probably under the control of embryonic endocrine/genetic phenomena in which there is little room for individual choice." This hypothesis has been substantiated by scientists employing different methodologies. Simon LeVay's extensive research on the origins of homosexual orientation begins with sexual orientation in humans and supports these specific observations in humans with animal studies (LeVay 2010). Balthazart's research comes from the other direction, beginning with sexual orientation in animals and then seeing how these studies apply to humans. Both scholars reach the same conclusion: "homosexuality in humans is to a very large extent, if not exclusively, determined by biological factors acting prenatally or soon after birth and that the social or educational environment plays at best a subsidiary role in this determinism" (Balthazart 2012, xi). Based on such studies, James Allison challenges the claim that a homosexual orientation is objectively disordered. "There is no longer any reputable scientific evidence of any sort: psychological, biological, genetic, medical, neurological—to back up the claim" (Allison 2009, 9). These studies provide scientific, biological explanations of the genesis of homosexuality and challenge the assertion that homosexual orientation is objectively disordered.

### Human Dignity and Homosexual Acts

The anthropological claim that a homosexual inclination is objectively disordered is contingent, in large part, on whether or not homosexual acts are intrinsically immoral. According to the CDF (1986, 3), "Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder." The reason why homosexual orientation is labeled objectively disordered is that it is a "strong tendency ordered toward an intrinsic moral evil." If it can be established that homosexual acts are not

intrinsically evil, then the anthropological claim that homosexual orientation is objectively disordered will have to be reconsidered. The Catholic Church teaches that homosexual acts are intrinsically disordered for the following reasons: they “are contrary to the natural law”; the principles of which are reflected in human nature itself; “they close the sexual act to the gift of life”; and “they do not proceed from a genuine affective and sexual complementarity” (*Catechism* 1994, no. 2357; CDF 2003, 4). We have deconstructed all these reasons in great detail elsewhere and we conclude the following regarding homosexual and heterosexual sexual acts (see Salzman and Lawler 2008; 2017).

Sexual acts are ethical when they are natural, reasonable, free, and expressed in a truly human, just, and loving manner that promotes the human dignity and flourishing of both partners. All the terms of this articulation are important and must be carefully understood. Sexual acts are ethical when they are *natural*, and they are natural when they coincide with the *nature* of the human person (Pope 1997). For men and women who are by nature heterosexual, heterosexual acts are natural and therefore ethical when they are freely chosen, truly human, just, loving, and a promotion of the human dignity and flourishing of both partners; for them homosexual acts are unnatural, unreasonable, and therefore unethical, even if all other requirements for ethical acts are safeguarded. For those who are by nature homosexual, it is the reverse. For them, homosexual acts are natural, reasonable, and ethical when they are free, truly human, just, loving, and a promotion of the human dignity and flourishing of both partners; for them heterosexual acts are unnatural, unreasonable, and unethical, even when all other requirements for ethical acts are safeguarded. Sexual acts are ethical when they are *reasonable*, and they are reasonable when careful attention to and understanding of all the relevant human circumstances leads a person to make an informed judgment of conscience that a given sexual action is according to right reason and facilitates the human dignity and flourishing of both partners. Sexual acts are ethical when they are *truly human*, that is, when they fulfill all the requirements of orientation, interpersonal, and affective complementarities (Salzman and Lawler 2008; Keenan 2007) and when they promote the human dignity and flourishing of both partners. Sexual acts are *just* when they are performed by mutual, *free* agreement and when they do no violence to either the persons involved or to the common good. Sexual acts are *loving*, following Aquinas’s (*S.T.* I, q. 20, a. 1, ad 3) definition of love as willing the good of another, when each person wills the human dignity and flourishing of the other.

Theological arguments, science, and human experience all challenge both the Catholic Church’s anthropology that understands homosexual orientation to be “objectively disordered” and its normative claim that homosexual acts are “intrinsically disordered.” They also challenge, therefore, the Catholic Church’s defense of legislation that rejects fostering and adoption by homosexual couples.

### **USCCB Opposition to Homosexual Fostering and Adoption**

In addresses to pilgrims from Slovakia and Slovenia, Pope Francis expressed support for legislation prohibiting marriage equality and adoption rights for homosexual couples (Shine 2015). (Francis has, however, supported the legalization of same-sex civil unions both as archbishop of Buenos Aires and as pope. In that support, he makes a clear distinction between Catholic sacrament [marriage] and civil law [civil unions].) The Congregation for the Doctrine

of the Faith asserted in 2003 (7), without any supporting evidence, that permitting legal adoption by same-sex couples is “gravely immoral” and “would actually mean doing violence to these children.” In 2014, Pope Francis emphasized fundamental differences between men and women that are “an integral part of being human,” and said heterosexual marriages were essential for good parenting (Scammel 2015). In the United States, the USCCB has vociferously resisted same-sex marriage, homosexual adoption, and non-discrimination legislation that would protect homosexual and transgender people from employment discrimination. To justify its positions, the Catholic Church relies on the anthropological claim that homosexual orientation is an objective disorder, the normative claim that all homosexual acts are intrinsically disordered and are a threat to the common good, and the assertion that “every sign of unjust discrimination in regard [to homosexual persons] should be avoided” (*Catechism* 1994, no. 2358). The latter assertion implies the possibility in the Catholic Church’s judgment of just discrimination against LGBT persons.

The USCCB Statement against the Equality Act claims that it would threaten charitable organizations by forcing them either to violate their principles or to potentially shut down due, in part, to lack of public funding. One example it offers of a violation of principle is any legislation that would require foster care or adoption agencies to allow same-sex partners to foster or adopt. Such permission to same-sex partners would damage “children’s best interests.” In a footnote to the letter the USCCB (2019a) claims that “Children raised by a married mother and father are statistically more likely to have positive social, economic, and health outcomes than those raised by same-sex couples.” This statement is consistent with the Congregations for the Doctrine of the Faith’s assertion that same-sex couples would do violence to children (CDF 2003, n. 7). However, unlike the CDF’s statement, which provided no scholarly references to support its claim, the USCCB statement provides three references. Two of the references cite Paul Sullins, a Catholic priest who teaches sociology at the Catholic University of America, and one reference cites Mark Regnerus, a sociologist at the University of Texas.

In his articles, Sullins (2015; 2016a; 2016b) claims that children of same-sex parents are more likely to suffer from depression, suicidality, stigma, obesity, abuse, and parental distance in comparison to children of heterosexual parents. He concludes that households with gay or lesbian parents “may be problematic or dangerous” for the “dignity and security” of their offspring. He cautions, however: “As initial results, the present findings should be interpreted with caution and balance, based on the limited evidence presented, and (it is hoped) neither exaggerated nor dismissed out of hand on preconceived ideological grounds” (Sullins 2016a). The bishops’ do not acknowledge this caution and present it as an established conclusion to substantiate part of its argument against the Equality Act that would “Threaten charitable services” (USCCB 2019a).

Regnerus developed the “New Family Structures Study” (NFSS), which is an epidemiological study of lesbian, gay, bisexual parenting, surveying 15,000 people ages 18–39, to study the impact of LGB parents on children. His study concludes that people who had a parent in a same-sex relationship had a greater risk for negative outcomes such as “being on public assistance, being unemployed, and having poorer education attainment” (AAP, 1378).

The scholarship of both authors on same-sex parenting has been critiqued extensively. Nathaniel Frank, director of the “What We Know Project,” which has collected and analyzed over seventy-five studies on same-sex parenting, comments on Sullins’ study. He concludes that there are deep methodological flaws that do not set up a clear comparison between children raised in lesbian and gay households and heterosexual households, which might account for other factors such as disruptions, which impact the data collected from those parenting experiences. In addition, Frank claims that Sullins fails to distinguish in his sample between children who spent a limited amount of time with same-sex parents, and those who were raised by such parents from birth. Sullins sample is from subjects 12–18 years old who spent some time with a parent who, at some time, had a same-sex partner (Frank 2016). The publisher of the journal in which Sullins’ article appears posts an online “Expression of Concern,” stating that Sullins’ article “has been cited to support arguments about same-sex marriage that Hindawi believes to be hateful and wrong” (Hindawi 2017). It is difficult to make any credible or substantial conclusions based on Sullins’ limited sample that does not seem to control for a number of variables. Sullins responded to Frank’s methodological and data collection critiques (Sullins 2016). Notwithstanding that response, however, Sullins’ tenuous conclusions fly in the face of the vast majority of scholarly research and the conclusions on same-sex parenting by professional bodies, such as the American Psychological Association (APA) and the Child Welfare League of America (CWLA), both of which have vast experience with, and investment in, the pastoral and practical process of caring for children of same-sex parents.

Drawing from the extensive literature, Cheng and Powell consider Regenerus’ conclusions “fragile” based on his methods to collect and analyze data. They conclude, “when equally plausible and, in our view, preferred methodological decisions are used, a different conclusion emerges: adult children who lived with same-sex parents show comparable outcome profiles to those from other family types, including intact biological families” (Cheng and Powell 2015, 616–17). The critiques of Sullins and Regnerus fundamentally challenge their research methodologies and the conclusions they draw on the basis of those methods. There is, however, extensive research to support Cheng and Powell’s conclusion.

The APA conducted an extensive survey of more than thirty years of research on children of lesbian and gay parents and declared that since “lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children . . . [and since] research has shown that the adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish,” it opposes any discrimination based on sexual orientation (American Psychological Association 2012). The American Association of Pediatrics concludes that “it is in the best interests of children that they be able to partake in the security of permanent nurturing and care that comes with the civil marriage of their parents, without regard to their parents’ gender or sexual orientation” (American Academy of Pediatrics 2013, 1381). Furthermore, marriage equality and non-discrimination legislation that gives legal protections to married and unmarried LGBT persons in employment, education, and housing, help to reduce the social stigma experienced by lesbian and gay parents and their children. Directly addressing the bishops’ concerns about adoption and fostering of children by same-sex couples, “children should not be deprived of

the opportunity for temporary foster care or adoption by single parents or couples, irrespective of their sexual orientation. Public policy and community support [and religious support that does not promote not-unjust discrimination] are vital to the success of children in these circumstances” (American Academy of Pediatrics 2013, 1381).

The APA conclusion supports earlier conclusions on children raised in gay and lesbian households. The fiercely child-centered CWLA is also convinced by the available data that there are no significant differences between the parental attitudes and skills of heterosexual and homosexual parents (Sullivan). The CWLA’s policy statement, approved in 1994, recommends that “Gay/lesbian adoptive applicants should be assessed the same as any other adoptive applicant. It should be recognized that sexual orientation and the capacity to nurture a child are separate issues.” The League further recommends that factual information about gays and lesbians should be provided “to dispel common myths about gays and lesbians” (Sullivan 1995, 41). These recommendations fundamentally challenge a “presumption of harm” to children of sexually active gay and lesbian parents.

The conclusion of comparable outcomes has been substantiated by numerous authors and studies in several countries (see What We Know). The fact that the USCCB statement cites two authors whose methods have been seriously questioned and study results discredited by the scholarly community highlights another dimension of the New Politics and its interaction with scholarly research. Kellyanne Conway sums up this dimension with her “alternative facts” comment during a January 2017 interview on *Meet the Press*. Whether it relates to climate change, immigration, economics, or LGBT families, the new politics considers any factual claims legitimate, as long as they support its ideological perspective. There is no critical analysis of the authenticity of factual claims and scholarly experts in a given field that study these issues extensively are often discounted as ideologically driven and biased. By citing the research of Sullins and Regnerus as “evidence” of the danger of same-sex parenting to children, the USCCB implicitly supports the ideology of “alternative facts” promoted by the new politics, damages its own moral credibility, especially in light of the clerical sex-abuse crisis and its cover-up, and violates Pope John Paul II’s call for theology and science to be in ongoing dialogue and for each to learn and develop from the insights of the other.

We, therefore, reject the claim of the CDF, USCCB and others that “as experience has shown the absence of sexual complementarity in [homosexual] unions creates obstacles in the normal development of children who would be placed in the care of [gay and lesbian parents]” (CDF 2003, 7). The CDF provides no scientific evidence, here or elsewhere, to substantiate this claim and the USCCB’s “scientific evidence” is highly suspect, but there is abundant evidence to the contrary. While acknowledging that research on gay and lesbian parents is fast evolving, especially with respect to gay fathers, psychologist Charlotte Patterson (1995, 9) summarizes the evidence available from twenty years of studies.

There is no evidence to suggest that lesbians and gay men are unfit to be parents or that psychosocial [including sexual] development among children of gay men or lesbians is compromised in any respect relative to that among offspring of heterosexual parents. *Not a single study* has found children of gay

or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents (emphasis added).

In her overview of the research, professor of social work Joan Laird goes further to suggest that the scientific data indicate, in fact, that homosexual parents are somewhat more nurturing and tolerant than heterosexual parents and their children are, in turn, more tolerant and empathetic (Laird 1993). Patterson and Laird's statements are nearly thirty years old and yet their research and conclusions have been consistent up to the present. There are studies that detect negative impacts on the children of homosexual couples, mental stress, for instance, but the stress, they conclude, is a result not of homosexual parenting but of social discrimination towards them generated by the kind of myths propagated by the CDF and USCCB (see Crouch et al. 2014; Bos and Gartrell 2010).

### Conclusion

Catholic Church teaching on the truth of the meaning of human sexuality, that transgender is an ideology, that homosexual orientation is objectively disordered and homosexual acts intrinsically disordered, and its opposition to legislation prohibiting discrimination based on sexual orientation and gender identity is flawed and violates human dignity and the truth of God's unconditional love for all people. It is driving young people away from Catholicism, doing serious psychological, emotional, relational and spiritual damage to LGBT persons, and unintentionally promoting polarization and legitimizing hate-speech and violence against them in the era of the new politics. The Catholic Church must be open to redefining the meaning of human sexuality, allowing science and human experience to inform its anthropology, formulate revised norms that reflect that anthropology, and promote legislation that respects human dignity and promotes the common good. Such norms and legislation must base the moral evaluation of all sexual relationships on the principles of justice and love, rather than on a flawed biology, inaccurate interpretation of human experience, and an exclusive female-male sex and gender binary. These revisions in the definition of sexual human dignity and norms must, in turn, guide the Catholic Church's stance towards nondiscrimination legislation with respect to homosexual and transgender persons. Pope Francis has made some progress in this direction, but there is much work to be done, especially among many of his episcopal brothers, to truly and fully concretize human dignity and God's unconditional love for all.

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