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Non-heterosexual marriages and the 'registers' of conscience
Pitting truth and dignity against freedom

Abstract
Conscientious objection claims have a long and varied history, spanning military service, abortion, euthanasia, contraception, vaccination, and more. Religious belief is frequently called into play as the motivation behind the objection. This essay focuses on the religiously grounded objections made by public officials tasked with registering same-sex marriages (or unions) in Italy, France and the US. An analysis of these cases sheds light on an underexplored aspect of these conflicts: the pitting of unilateral visions of both truth and freedom against each other to the subsequent impoverishment of both. When conscientious objection is claimed, the legal argumentation has mainly addressed whether/how to accommodate/support subjects—public officials with religious convictions—whose religious freedom is encroached upon in the performance of their duties. When objections are not accommodated, the argument is on 'practical' grounds (state employees must obey the law without exception) or 'dignitarian' or 'identitarian' grounds (the dignity or identity expression of the denied party is threatened). Religiously oriented arguments likewise claim that the dignity and identity of the objectors is being denied. None of these positions, however, address the relational implications of what is being assumed as 'truth' and what as 'freedom'. 'Dignity' in these contexts becomes a kind of wild card whose relational nature is not considered. Instead, there is a silently operating moral architecture which defines truth, freedom and dignity in advance, invalidating and negating all three. There are instead relational understandings that could reanimate these terms to more successful ends. However, until this dynamic is addressed, meaningful solutions that respect the democratic constitutional contexts that host them will be difficult to achieve.

Keywords: Conscientious objection, Marriage, Registrars, Same-sex, Intercultural Law

1. Introduction – Brief reflections on the philosophical profiles of conscientious objection

Any analysis of conscientious objection would do well to begin by declaring its position on the underlying conceptual premise of what conscience is, what it consists of. While a comprehensive analysis of the topic is undoubtedly beyond the scope of this essay, at least a few observations should be made. First, the following text assumes conscience "not as an unvarying constant, but as a feat of human invention with a distinctive and eventful history all its own."[1] The challenge, particularly in its

[1] Strohm (2011). Indeed, noted historian Richard Sorabji's *Moral Conscience Through the Ages* offers just such a history from the 5th century BC through the 20th century, culminating in a summarizing 'core concept.' While I do not share many of his conclusions, one useful idea is his observation that conscience "draws on values which need not take the form of laws, but which are in danger of reflecting merely local convention, and therefore require constant reflection and awareness of

interfacing with the law, is that ontologically speaking, conscience is a kind of empty vessel that can be filled with any kind of moral content.[2] Its invocation often functions as a place holder for a not-immediately-perceptible or easily defined set of principles. While a claim propelled by moral conscience is often a negative response, a refusal to act in a particular way, its justification or motivation is not easily articulated. In both Kantian and Christian views, the contents of one's conscience are furnished by an interior understanding. For Kant conscience is an 'internal court of man' and for Christians, it consists in the dictates furnished by the divine gift of natural reason. Rousseau's conception is a kind of secularized Christian understanding which sees conscience as an "innate principle of justice and virtue" located "at the bottom of our hearts."[3] Joseph Ratzinger also famously described such an innate and bodily conscience stating, "something like an original memory of the good and the true (the two are identical) has been implanted in us."[4] These accounts of conscience, particularly in today's pluralistic societies, run headlong into the wall of incommensurability when one person's moral intuition is in direct opposition to that of another. If conscience is universally implanted, then how can there be differing positions? If the good and the true are identical, innate, embodied, how can difference be accounted for?

The values that constitute what is 'good' must originate somewhere, and here one deviation between religious and non-religious conscience emerges. Religious conceptions of the good are only partly furnished by 'innate morality', what is 'written on the heart'. Some of their substance comes from the dogma of religious traditions, and this reveals a differing emphasis on individually vs. collectively based claims. It also entails a private/public distinction. While conscience, as elaborated above, is largely seen as an internal reckoning, religiously rooted conscience claims are not easily extracted from their dogmatic contexts. Conscience emerges in the act of its expression, becoming a visible sign of connection with credo, with religious beliefs and rules. The Christian conscience has been described as sharing with ecclesiastical norms a rootedness in an objective order of justice, grasped by human reason and enlightened by theological virtues.[5] This commixing of an external order of justice and internal human reason echoes the biblical verses in St. Paul's epistles, " (Indeed, when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law. They show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts sometimes accusing them and at other times even defending them.)"[6] In this way St. Paul makes a distinction between the general law of right and wrong written by God in human hearts from its fallible application in particular human cases.

The etymology of the Latin word itself, *con + scientia* , where *scientia* (knowledge) is held *con*, ('together with') evidences the interior-exterior or individual-communal bridge created in conscience. This finds a parallel in the Catholic context. Since the salvation of souls is the primary mission of the

other values", Sorabji (2014: 202). This essay will attempt to contribute such reflection. Zucca (2018) offers a history of conscience and its relationship with law and religion, reflecting on the issue of marriage registrars as well. He concludes with the statement that, "Religious claims of conscience cannot be aimed at undermining the conscience of the law". While I agree with the general direction of his argument, the risk of ossifying both conscience and law seems to remain. It is not, in my view, solved by turning to 'accommodations'.

[2] Giubilini (2024).

[3] Rousseau (1762,1921: 253).

[4] Ratzinger (1991, 2010: 529–538).

[5] Ruscazio, (2023: 647).

[6] Romans 2:14-16

Catholic church, in addition to individual pursuit of right conduct, the theological obligation is towards the collective. The entire Catholic community shares the obligation to assist one another towards right conduct. Conscience claims therefore are doubly weighted in the sense that they stem from both individual and communal obligation. If in the secular domain the distinction between civil disobedience as a political act and conscience objection as a private act might hold, in the religious domain there is an intermingling of these positions. Democratic systems include their own kind of intermingling in the concept of duty, often used as a kind of trump card in cases of conscientious objection of public officials, as will be elaborated further on. More generally speaking, legal systems wrestle with the extent to which values are within their purview.[7]

Across the secular-religious spectrum, the concept of conscience nearly always calls up the figure of identity. The act of the conscientious objector becomes a means of setting out or realizing a *persona*, a self by which to be identified both internally and in relation to others, and this may be responsible for some of its social force.

What is missing from most accounts of conscience is precisely what was stated above as a premise: conscience cannot be meaningfully understood as an unvarying constant. Defined in secular terms by the ancient Greeks, becoming religiously grounded around the 6th century and then returning to a strongly secular concentration in the 17th century, conscience has never been static at a public/political level.[8] Private or personal conceptions have also fluctuated, at times focused on conscience as a person's belief about what would constitute right action in a future moment, at others the capacity for such beliefs; even from a grammatical point of view, beliefs may be 'the things believed' or 'the believing of them'.[9] Some philosophers have even taken the hard determinist stance that conscience cannot be autonomous because there is no such thing as autonomous choice, that 'our preferences, tastes, character, moral values and ultimately acts are dictated by our genes, brain activity, childhood experiences or traumas, socialisation, environment, and unconscious cognitive and emotional factors – all of which are beyond our control".[10] Of course there are a numerous and vociferous arguments to the contrary such as the 'the social intuitionist model' which argues that moral truths exist a priori and are grasped by people through a perceptive process in which one "just sees without argument that they are and must be true" as in Thomas Jefferson's declaration that certain truths are 'self-evident'.[11] If conscience is, as Aquinas proposed and as many modern philosophers would have it, the application of knowledge[12], then its very formulation depends on a constantly changing entity, since what we 'know' changes from second to second and century to century.

These very brief reflections point towards the complexities that arise when claims of conscientious objection are made. Whether personal and private or public and communal, conscience claims are driven by deeply held values whose origins and objectives may be murky and yet carry the force to insist on disobedience or exemption from legal rules. For their part, legal rules impose duties that are part and parcel of the social contract that legitimizes democratic systems of government. It should be noted

[7] For an in-depth treatment of values and law in the domain of conscientious objection in Italy, see Cardia (2009), but see also, specifically on marriage, Vecchi (2024) and references therein.
[8] Sorabji (2014: 202).
[9] Sorabji (2014:217).
[10] Nehushtan, Danaher (2018: 24) and references therein.
[11] Haidt (2001: 814)
[12] Thomas Aquinas (1.79.13).

that both historically and today there is a distinction to be made between conscience and religious belief or religious freedom insofar as conscience can reside inside or outside of religious parameters[13]. It is for this very reason that arguments are made in defense of a specific legal provision for conscientious objection even when religiously motivated. This essay focuses on the religiously grounded objections made by public officials tasked with registering same-sex marriages in Italy, France and the US. This narrow vista has been chosen because it captures the contrasts that emerge around a fundamental legal institute (marriage) and conscience as a source of both "'higher demands' to which a person sees himself as subordinate'"[14] as well as a source of law. The hope is that through this window some of the mechanisms of ossification concentrated in conceptions of truth, freedom and dignity that prevent the development of optimal solutions might be better observed. Alternative modes of engagement responding to the needs of both objectors and governments will then be proposed.

2. The legal landscape in Italy, Spain and France regarding same-sex unions and conscientious objection

The long-standing status of Catholicism as the majority religion and the presence of the Holy See in the territory make Italy an important focal point in considerations of conscientious objection in the West.[15] Also relevant to the topic generally is the significant presence of conscientious objection in the Italian medical field, paralyzing the legalized right to abortion in many regions.[16] Though same-sex marriage is, at the time of this writing, legal in 38 countries throughout the world (22 in Europe) Italy is not among them. Same-sex unions were instead legalized with the 'Cirinnà law' (law 76 of May 20, 2016), granting same-sex couples many of the same rights as married heterosexual couples. The question of conscientious objection by public officials tasked with registering these unions has therefore garnered attention[17]. The Catholic church declared its position more than a decade before the legalization of same-sex unions, stating in the 2003:

> In the presence of the legal recognition of same-sex unions, or the legal equalization of the same to marriage with access to the rights that are proper to the latter, it is incumbent on us to oppose it in a clear and incisive form. One must refrain from any kind of formal cooperation in the promulgation or enforcement of laws so grossly unjust as well as, as far as possible, from material cooperation at the level of enforcement.[18]

[13] Thus the phrasing in the United Nations Universal Declaration of Human Rights, "Everyone has the right to freedom of thought, conscience and religion" (Art. 18), among many other such declarations and norms.
[14] Nehushtan and Danaher (2018: 3).
[15] For a detailed analysis of the spectrum of conscientious objection in Itay, see Turchi (2010).
[16] Vazquez (2019: 169-171), Vazquez (2018).
[17] Ruscazio (2015), Ruscazio (2023), Vecchi (2024), Decimo (2015), Cardia (2009), Castet (2024), Dolan (2013), Konnoth (2024), Madera (2017), Turchi (2010), Cocco-Ortu (2013), Macini and Rosenfeld (2018)
[18] Original: "In presenza del riconoscimento legale delle unioni omosessuali, oppure dell'equiparazione legale delle medesime al matrimonio con accesso ai diritti che sono propri di quest'ultimo, è doveroso opporsi in forma chiara e incisiva. Ci si deve astenere da qualsiasi tipo di cooperazione formale alla promulgazione o all'applicazione di leggi così gravemente ingiuste nonché, per quanto è possibile, dalla cooperazione materiale sul piano applicativo", Ratzinger (2003), par. 5.

Catholic doctrine retains same-sex unions to be unjust, so any required participation is, for the Church, grounds for conscientious objection. As has been pointed out in the scholarship[19], however, the use of the phrase 'as far as possible' when describing non-cooperation would seem to at least crack the door open on the possibility that the Church recognizes that competing obligations may have to be met. Much of the discussion in the Italian scholarship centers on the tension between protection through individual/'personal' norms vs. constitutional protection. This leads immediately to questions of fundamental rights. If marriages or unions are fundamental rights, then a right to objection to their enactment or transcription will be in direct conflict. Many authors argue in favor of the need for strong protection of conscientious objection motivated by the view that legal norms should recognize and safeguard individuals' rights to act in accordance with their deepest ethical and moral convictions, viewed as central to personal dignity.[20] Legal scholarship in Italy has primarily addressed 1) whether a specific conscientious objection law should be enacted and 2) whether there are provisions within Canon law that might be applicable to the topic.

The issue of a specific conscientious objection law in the domain of religion is in line with other questions in the field of law and religion such as whether there should be a specific religious freedom law. The risk of enacting more narrow laws in this domain lies in the very nature of the objects of protection. Both religion and conscience are paradigmatic instances of the realization of individual personality, broadly and deeply supported in constitutional protections such as the Italian Constitution's articles 2 and 3 which protect equality and the full development of the human person (more on this below). To constrict protection within highly sector-specific norms would seem to contrast with the spirit of freedom that inspires the creation of legal instruments with a decidedly broader and more open semantic scope. It would beg the question of how religion is defined—in an increasingly plural social context—and therefore in what specific circumstances it can or cannot be protected.[21] While defining religion for these purposes would likely lead to confusion between religion and denomination, defining conscience could risk externalizing and making superficial something which many define as internal and profound. Discussions regarding Canon law and its possible uses in the domain of conscientious objection have considered for example the ecclesiastical institutes of grave inconvenience, dissimulation and tolerance, but for various reasons all three have been found to be incompatible with a legal solution to the challenge of objecting marriage/union registrars.[22]

Same-sex marriage was legalized in Spain with Law 13/2005, passed on July 1, 2005, amending the Spanish Civil Code to allow marriage between two people regardless of their gender. This event did not go without contrast from Catholic authorities. The head of the Vatican's Pontifical Council on the Family, Cardinal Alfonso Lopez Trujillo was particularly vociferous, decrying the Spanish law and urging Catholics to claim a right to conscientious objection:

> Paragraphs 69, 73, 74 of Evangelium Vitae speak of objection of conscience. This means a person can use his or her right to object out of conscience and refuse to comply with this crime which represents the destruction of the world. [...] All Christians, including state employees, have a duty to avail themselves of conscientious objection because the law of which we are speaking inflicts a deep moral wound on the Christian faith. Moreover, the question involves the entire world and is creating a universal scandal for all religions and all

[19] Ruscazio (2015: 46).
[20] For one example see Turchi (2010) but also references therein.
[21] De Gregorio (2020).
[22] Ruscazio (2015: 35).

> cultures. It calls for a world response. Conscientious objection was not invented by the Church: the Christian must object and make his or her faith respected like doctors who refuse to carry out abortions. Conscientious objection is used not only to protest against abortion or same sex 'marriage' it is used against all bad laws. And this law is particularly evil and bad and therefore provokes conscientious objection.[23]

Though debate about including a 'conscience clause' allowing officials to refuse to officiate same-sex weddings did take place soon after the passing of the law, in its ruling n. 3059 of May 11, 2009 the Spanish Supreme Court rejected the right to conscientious objection on the part of a civil registrar who refused to perform a marriage between two persons of the same sex. The argumentation applied relies on the duty of public officials to uphold the law regardless of personal beliefs. Parliament members from the Popular Party in Spain challenged the same-sex marriage law and much like in Italy argued (as reported by the Court) that "the institution of marriage configured by the challenged Law renders the institution unrecognizable, distorting it in such a way to make it incompatible with the institutional guarantee". The Spanish constitutional court was, however, more than ready to contrast the challenge stating that the new law "develops the institution of marriage in accordance with Spanish legal culture".[24]

As in Spain, in France the 'Taubira law'[25] amended the civil code to stipulate, "*Marriage is contracted by two persons of different or of the same sex*". A challenge was immediately filed with the Constitutional Council by the Union for a Popular Movement party, but on 17 May 2013, the Council declared the law constitutional. In October 2018, the European Court of Human Rights followed suit, dismissing an appeal from 146 mayors in the case. In contrast to both Spain and Italy, one scholar has convincingly argued[26] that the arguments for conscientious objection to same-sex marriages in France have largely lacked religiously motivated sentiment. The 'Manif pour tous' (MPT), the main organization opposing same-sex marriage from its legalization to the present insists that they are areligious, composed of both gay and straight people, and that their opposition to same-sex marriage is in no way a criticism of homosexuality and has nothing to do with religion. The author argues that the primary motivation is more of a desire to define 'Frenchness' in a particular way and in contradistinction to ideas claimed to be American imports, such as 'gender theory'. MPT's desire to represent itself as a non-sectarian movement that encompasses a broad political spectrum is, in this reading, "a sign of the continued

[23] Agenzia Fides (2005)

[24] This citation is taken from Winkler's excellent and detailed analysis of the evolution of same-sex union status in Italy as seen through the lens of the utterly unique case of Alessandra Bernaroli. After Bernaroli's petition for sex reassignment and name change, her marriage certificate was 'annotated' by the *Ufficio dello Stato Civile* as invalid on the grounds of law no. 164/1982, subsequently amended by Article 7 of law no.74/1987 which included gender reassignment as grounds for divorce. Bernaroli had no desire to divorce, however, leading to a jurisprudential trail that went from the Cassation Court to the Constitutional Court and back again. The author concludes that the case is emblematic of Italy's outlier status; in the domain of same-sex marriage, Italian courts have refused to follow any of the models set forth by other European countries beginning more than a decade ago. In fact, in 2015 Italy was found by the European Court of Human Rights' to be in breach of the convention for its failure to ensure respect for private and family life by protecting against discrimination and providing legal recognition for non-marital relationships, including same-sex partnerships (*Oliari and Others v. Italy*, application no. 18766/11). See Winkler (2018) and ample references therein.

[25] Article 143 (Book I, Title V, Chapter I) of the Napoleonic Code

[26] Gunther (2019).

influence of the French republican model and its requirement that political demands be made in universalist terms"[27]. Most important, then, is the idea that to be French is to embrace laïcité.

The structure and contents of the law reflect this reading. In fact, the law does not create a new norm or right but rather opens the existing civil system of marriage to same-sex couples living in France, supported by the technical changes required such as arrangements regarding surnames, references to 'spouses' rather than 'husband and wife' etc. The law also recognizes same-sex marriages performed abroad, including (retroactively) their children adopted legally in France or abroad. One issue that emerged after the passing of the law was a possible discrimination in the case of certain bi-national couples. Initially, the act did not apply to some nationals[28] because–according to the Ministry of Justice– it would breach bilateral agreements that stipulate the predominance of the foreign national's state law over French law. This limitation was tested in court. Two people of the same sex, one French and the other Moroccan, decided to get married. The Court of Appeal authorized the union. The public prosecutor filed an appeal in Cassation, considering that the marriage violated the 1989-Moroccan Convention. The Court of Cassation, however, made the following considerations. First, though Article 4 of the French-Moroccan Convention provides that the law of one of the two countries may be excluded where it is manifestly incompatible with public policy, this exclusion must be balanced against the fundamental right to marry. In light of the fact that same-sex marriage is recognized only by a minority of States, the Court determined that the law of the foreign country may be excluded only if one of the following conditions is met: 1) there is a connection of the future foreign spouse to France (in this case, the Moroccan national was domiciled in France); 2) the State with which the agreement was concluded does not allow same-sex marriage, but does not reject it universally. As both conditions were met in the case, the appeal was rejected, and the marriage was allowed to take place. The Court's solution "thus respects equality between persons of Moroccan nationality and other foreign nationals to whom the Civil Code allows marriage in France, with a same-sex spouse."[29] In its conclusion that "same-sex marriage is a fundamental freedom to which an agreement between France and Morocco cannot be an obstacle"[30] the emphasis is quite clearly on inclusion to existing law, and equality above all, in keeping with French law's republican egalitarian character which additionally draws a solid line between religion and state (laïcité).

The entire formulation of the right to marry is dramatically different from the situation in Italy, and not only due to the distinction between unions and marriages. The influence of Italy's Catholic history determines a very different profile for the right to marriage, which does not extend to 'equality' for same sex couples. This has effects on conscientious objection as well, since in the French context objection is frequently areligious whereas in Italy religion is central.

This brief sketch of some of the differences in a few European national contexts in modes and means of conscientious objection underlines the complexity of the domain[31]. A closer look at the interaction between religiously motivated objection and Christian ideas of marriage in the most recent case law may help to illuminate these issues further.

[27] Gunther (2019: 152).
[28] Algeria, Bosnia and Herzegovina, Cambodia, Kosovo, Laos, Montenegro, Morocco, Poland, Serbia, Slovenia and Tunisia.
[29] https://www.rtw.fr/hmariage.htm
[30] *Ibid.*
[31] For a study of conscientious objection to same-sex marriage registration in the contexts of Canada, the Netherlands, Scotland and South Africa, see MacDougall (2012).

3. Under whose authority? Defining truth in the American case law

One of the most recent legal cases in the West of religious objection to state-sanctioned same-sex marriage is *Miller vs. Davis* (2015)[32]. Kim Davis, a county clerk in the US state of Kentucky began refusing to grant all marriage licenses to avoid granting them to same-sex couples. As a challenge to her refusal, one of the defendants asked, "Under whose authority?" She replied, "Under God's authority".[33] Davis argued that a marriage license for a same-sex couple conflicts with God's definition of marriage, "It is about marriage and God's word". This idea is common to most Christian traditions, particularly the Catholic tradition which has always defined marriage as being exclusive to a man and a woman. Religious dogma, like all dogma, seeks to define what is incontrovertibly true. This takes us immediately to the heart of the matter: the truth claims underlying every argument for conscientious objection. While the legal argument is that freedom of belief must be protected, there is no question about the nature of this belief. It is not defined as one set of values to be compared and contrasted with other sets of values, but rather as an uncontestable, incontrovertible state of reality. While oppositional placards protested, "You don't own marriage", many religious proponents in some sense believe that they do. The situation may seem almost paradoxical and embody a dialectic with no solution. This apparently paradoxical contrast, however, can be seen as a historical consequence, of sorts, with specific theological antecedents.

The Catechism of the Catholic Church has always stated that God is the 'author' of marriage and that the vocation to marriage is "written in the very nature of man and woman as they came from the hand of the Creator"[34]. In this conception, marriage is corporeal because it joins man and woman into a fused entity, united to have children, permanent because as a divine sacrament it cannot be undone, and thus clearly not a purely human institution. As is well known, marriage is one of the seven holy sacraments and is a fundamental part of the entire human mission on earth in preparation for ascension to heaven, and this pertains to both individuals and the entire Catholic community. The catechism confirms that "The well-being of the individual person and of both human and Christian society is closely bound up with the healthy state of conjugal and family life".[35] From a Canon law perspective, this vision is rendered even more clearly, "Marriage is not presented in the terms of a legal construction, but as a reality endowed with its own legality, prior to human positive laws. Nor could one think that marriage as a legal institution is a kind of human elaboration, a product of culture. The normative

[32] *April Miller et al. v. Kim Davis*, 15–5961 (Appellate Div., 6th Cir., 2015). The case continued in the domain of damages, with the most recent judgment issued on March 6, 2025 (Ermold v. Davis, 130 F.4th 553, 2025 U.S. App. LEXIS 5240, 2025 LX 31599, 2025 FED App. 0049P (6th Cir.), 2025 WL 716085 (United States Court of Appeals for the Sixth Circuit March 6, 2025, Filed). The Court found that the First Amendment's Free Exercise Clause does not shield a government official from liability under 42 U.S.C.S. § 1983 when the official wields state power to violate the constitutional rights of citizens. Davis's denial of marriage licenses to same-sex couples constituted state action, which the First Amendment does not protect. Furthermore, state religious freedom restoration acts (RFRAs) do not provide a defense to liability under § 1983 because state law cannot immunize officials from violating federal rights, including the right to same sex marriage. And finally, the district court properly denied the defendant's motion for judgment as a matter of law on damages because the plaintiffs presented sufficient evidence of emotional distress to support the jury's damages award. Indeed, as one journalist noted, "The testimony in the court record includes Davis agreeing that she told the couple she would not grant them a marriage license but would give one to a heterosexual murderer or rapist", Wells (2025).

[33] Blinder, Pérez-Peña (2015).

[34] *Catechismus Catholicae Ecclesiae*, n. 1603.

[35] *Ibid*, 2250.

system of the Church presupposes that marriage, even in its essential legal aspects, is *a prius* to any cultural juridical system".[36] While I do not wish to disregard the differences among denominations (Davis is an Apostolic Christian, not a Roman Catholic) the continuities in the meaning of marriage are, I believe, relevant from a religious-anthropological point of view. At the very least they can shed light on how for some Christians, participating in granting marriage licenses to same-sex couples is impossible since such practice fails to recognize what marriage *is*, and could be seen to endanger what is considered by some to be a holy rite. What is at stake is not so much 'belief' as rather an ensconced truth claim, a reality that is understood to precede and supersede human belief. I will elaborate more on this below. But first, it could be useful to consider the counter argument.

It is often stated that the appropriate secular constitutional response to these kinds of dogmatic positions is that all government employees are required to obey the law, regardless of their personal convictions. But is this itself a dogmatic response? If the state has its own conception of marriage which state employees must uphold in their actions if not in their belief, perhaps this is evidence that the law is its own incontrovertible truth. Some have even argued (in Italy, but similar reasoning can be found in many contexts) that the marriage model has been so distorted by state initiatives that there are now *unbridgeable gaps* between legal solutions and the ethical and cultural values of marriage. That there is currently a 'confused approach' as to what belongs to the natural and legitimate domain of law and what, such as the sphere of human feelings, is being mistakenly involved, distorting the legal institute of marriage.[37] The distortion consists in privileging love as the foundation for marriage as opposed to the creation of heteronormative procreating families.[38] At least one US justice has explicitly done precisely this, stating in the concluding argument of the case that legalized same-sex marriage, *Obergefell v. Hodges*:

> No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.[39]

It should be noted that some of the language used here echoes traditional Christian ideas. Marriage embodies the ideal of family. The union of two people creates something different from the individuals they were before. Their marriage bond endures eternally. That the secular view here reflects Christian ideas is no coincidence; the historical process of secularization has guaranteed it. Every modern secular country has been shaped in its values and structures by its religiously rooted past and the agreements made throughout the secularization process. The very idea that all government employees must obey

[36] Errázuriz (2016:201-202) translation mine.
[37] "In treasuring these reflections, I will dwell on the current distortions made by the secular legislature on the traditional model of marriage and the now unbridgeable gaps between legal solutions and the ethical and cultural values of marriage," Vecchi (2024:24).
[38] A state-defined matrimony model is here characterized as a "hypotheses of labile cohabitation, as unstable as it is ephemeral, because it is deprived of the character of certainty of the basic value-organizing structure", (Vecchi: 2024: 25), translation mine.
[39] Justice Kennedy in *Oberfell v. Hodges*, 576 U.S. at 681.

the law—regardless of their personal convictions—reflects the foundational agreement of US secularization, a separation of church and state in which religious conviction is reserved for the private sphere and must therefore be eliminated from the public sphere[40]. Claims for the protection of religious freedom arise at this historically accorded divide between private belief and public practice.

To the point, civil disobedience would be the option available to those who disagree with the principles protected by state laws, and indeed some claimed that Davis was engaging in exactly this practice. But is there perhaps a mirroring between the reasoning that if Davis doesn't like aspects of her job she should quit, and the reasoning that if same-sex couples cannot get a license in their county they should go to another county? What remains unresolved is the truth question: is marriage what the state says or is it what a religious community says? Is the law able to rule over institutions without 'confusing' them with changing tides of human emotional claims? The argument that there can be a neutral position is, as I have argued in the past[41], a convenient fiction. As can be seen above, whether religious or secular, there is no definition of marriage without a value position.

The neutrality argument is frequently accompanied by pluralism claims. The argument is that in a pluralistic society, accommodations can and should be made to support minority positions. Just as same-sex marriage has been established to protect that minority, a conscientious objection clause should be established to protect religious minorities. But this sidesteps the underlying truth claims that remain no matter how the conflicts are navigated. This was put in further evidence just days ago at the time of this writing when lawmakers in the state of Idaho called upon the Supreme Court to undo *Obergefell v. Hodges*. The resolution stated, "Since court rulings are not laws and only legislatures elected by the people may pass laws, Obergefell is an illegitimate overreach"[42]. The reversal request is clarified further as a request to, "restore the natural definition of marriage, a union of one man and one woman". 'Natural' is of course used as a synonym for *true*, and this language is increasingly present on the political scene, particularly in the US and specifically in the domain of gender, unions and families.

On his first day in office, President Donald Trump signed an executive order entitled, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"[43]. Its purpose is to officially declare the 'biological truth' of sex over gender stating that, "Basing Federal policy on truth is critical to scientific inquiry, public safety, morale, and trust in government itself" and that the "ongoing and purposeful attack against the ordinary and longstanding use and understanding of biological and scientific terms, replacing the immutable biological reality of sex with an internal, fluid, and subjective sense of self unmoored from biological facts" must be stopped. This is nothing less than categorical epistemic violence[44], which is becoming increasingly common in public political discourse, and which to some extent is difficult to avoid, as every category choice will eliminate another; as Spinoza warned, all determination is negation (*omnis determinatio est negatio).* The inherent relationality of categories is however precisely what makes a priori truth claims impossible to

[40] The sanctity of the importance of performing one's duty at work may be traceable to a Protest ethic, see Vazquez (2019:164-166).
[41] Vazquez (2022: 46-56).
[42] State of Idaho House Joint Memorial No. 1 in the House of Representatives by State Affairs Committee, Sixty-eighth Legislature First Regular Session – 2025. As of April 2025, Symbolic legislation that calls on the Supreme Court to overturn Obergefell has been introduced in Idaho, Michigan, Montana, North Dakota and South Dakota. See Collins (2025).
[43] Exec. Order No. 14168, (2025).
[44] Ricca (2025)

sustain. The trouble with staking authority claims on a priori truth claims is that both appear to be exercises in power. The argument to eradicate the use of the term 'gender' and replace it with 'sex' to emphasize a biologically claimed duality is not so distant from arguments in support of 'traditional' marriage models considered immutable and intrinsically related to the 'biological reality' of procreation. The sticking point here is of course that there are disputed versions of truth. Arguments for the human dignity of people can be used to support both traditional and newer models for the marriage institution.

Important to this discussion is the distinction between belief and action, which can become murky within truth claims. Does truth lie within belief and thus within the internal forum? Or is it also inherently part of individual actions? This issue—possibly definable as the 'topography of truth'— has been very much at the heart of key conscientious objection cases related to marriage registrars. In the 2009 landmark case *Ladele v London Borough of Islington,* which eventually went before the European Court of Human Rights[45], the claimant requested exemption from officiation at civil partnership ceremonies due to her Christian beliefs. When she was denied, she claimed religious discrimination. She lost on appeal based on the reasoning that "Ms Ladele was employed in a public job and was working for a public authority; she was being required to perform a purely secular task, which was being treated as part of her job; Ms Ladele's refusal to perform that task involved discriminating against gay people in the course of that job."[46] From this perspective, believers cannot claim a right to be exempted if that claim constitutes violating the law, particularly if discrimination is involved. This of course is the classic question of the balancing of freedoms and rights. Grégor Puppinck, director of the Centre Européen pour le Droit et la Justice and member of the OSCE panel of experts on freedom of religion or belief has argued that there is a distinction to be made between religious and moral objection, namely that a moral objection can claim to be objectively just (e.g., it is unjust to kill an innocent being) whereas a religious objection cannot claim to be just in itself (e.g., working on the Sabbath day is not unjust in itself, it is ungodly).[47] By this reasoning, the claim of a religious objection is based not on justice, but on a person's freedom to conform to his or her religious beliefs. But would a religious perspective necessarily distinguish between unjust and ungodly? The harmonization of these is central to at least the Catholic faith. Puppinck goes on to say that "a *true* moral objection [...] must tend to respect right and good and oppose evil".[48] Here he returns to a kind of categorical epistemic violence. Who will be allowed to define truth? Right? Good? Evil? If we bump up against incommensurability in truth claims, then the domain of rights and freedoms will undoubtedly be affected. Distinguishing between moral and religious objections seems to introduce a hierarchy that does not address the incommensurability issues that arise with competing truths and the epistemic status of each.

Indeed, the issue of whether a belief or opinion is objective or subjective comes up repeatedly in cases involving religious freedom, as in the historic 2010 UK case *McFarlane v Relate (Avon) Ltd*[49], wherein a relationship counselor lost employment for refusing to counsel same sex couples because of his Christian beliefs. The case was dismissed by the Court which included in its judgment the following declaration:

[45] Final judgment available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-111187%22]}
[46] Court of Appeal, 15 December 2009, par. 52.
[47] Puppinck (2018).
[48] *Ibid.*
[49] *McFarlane v Relate (Avon) Ltd*, [2010] EWCA Civ 880, [2010] IRLR 872

> The promulgation of law for the protection of a position held purely on religious grounds cannot therefore be justified. It is irrational, as preferring the subjective over the objective. But it is also divisive, capricious and arbitrary. We do not live in a society where all the people share uniform religious beliefs. The precepts of any one religion – any belief system – cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other. If they did, those out in the cold would be less than citizens; and our constitution would be on the way to a theocracy, which is of necessity autocratic. The law of a theocracy is dictated without option to the people, not made by their judges and governments. The individual conscience is free to accept such dictated law; but the State, if its people are to be free, has the burdensome duty of thinking for itself.[50]

The distinction between democracy and theocracy can certainly be appreciated. There is, however, a vaguely despotic tone to the vehemence with which those who exercise their conscience are deemed to be in acceptance of 'dictated law' while the State can 'think for itself'. Are we certain that the precepts of the law are uniformly shared, or as seems implied, should be? Can it be said that they are always and everywhere 'objective'? As has been extensively argued, "the judicial exercise of reasonableness is always a post-factum activity"[51] which is to say it is determined/formed *after* not before the 'fact' that is presumed relevant for the law occurs. Only the process of interpretation can construct it. In response to the Court then, it could be noted, we do not live in a society where all the people share uniform beliefs of any kind, religious or otherwise, and would therefore do well to tread carefully when addressing conscience and religion, particularly in the name of freedom.

4. Rights, trumps, freedom

In the Italian context it has been argued that supporting religious freedom is required as a means of respecting the dignity of the human person because faith expresses a person's innermost identity.[52] Support for the freedom to express and live one's identity is part of most Western constitutions such as in the iconic formulation of Article 3 of the Italian constitution:

> All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country[53].

[50] *Ibid.*
[51] Ricca (2020).
[52] ...the protection of religious freedom increasingly emerges as a necessary guarantee and minimum threshold of respect for the dignity of the human person. Religious faith, for the multitudes who find support for their existence and a reason for hope in it, represents what is most precious to them, since it expresses their innermost identity, the guardian not only of moral values but often also of civic traditions and family affections, which constitute the most cherished resource of each person. In fact, faith is born and transmitted in the family or is the outcome—as well as rejection—of a personal quest that builds one's identity and way of relating to the world and other people." Cavana (2017: 2).
[53] Italian Constitution available in English at:
https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

Challenges arise, of course, when one person's human personal development is in contrast with another's. Commonly, rights language is invoked. The right to religious freedom becomes the foundation for conscientious objection claims in the case of marriage registrars. On the opposing side of the ring, we find the right to same-sex marriage. Both rights would seem to belong to the domain of development of the human person. When pitted against each other, they take the form of what Dworkin called 'rights as trumps'. This refers to an instrumental use of rights in which category decisions made previously determine the decisions that follow. As legal scholar Jamal Greene succinctly summarizes, "When rights are trumps, they favor rhetoric over judgment, simplicity over context, homogeneity over diversity. The frame requires us to formulate constitutional politics as a battle between those who are of constitutional concern and those who are not"[54]. Either side can make the claim that their rights are being violated in a contest of wills. But again, "Our rights culture cannot constitute us unless all rights count, and all rights cannot count if all rights are absolute"[55]. In short, when truth/rights claims absolutize one world view to the exclusion of another, the foundational ethos of the constitutional democracy is threatened.

I am arguing that the truth or naturalness claimed of any given category (gender, sex, marriage, family) is inextricably related to an ensuing definition of 'freedom' as something already confined to certain limits. Any freedom once locked into pre-existing limits is no longer free. In the case of objection to same-sex marriage registration, religious freedom is being contained by fixed ideas about both religion and its expression, specifically about what marriage *is*. For a Catholic, it may make perfect sense to reject participation of any kind in what they do not see as a real or true marriage. But this view simply cannot be imposed on others. It cannot be used as a foundational definition upon which the law depends, substituting existing norms. For a non-Catholic, Catholic beliefs are not *true* and therefore cannot be used to impel any conduct. In a pluralistic democratic society, there must be space for many truths, even those that contrast, if freedom is to be available to all. Also, all freedom arrangements in such a society are inescapably relational. There is no such thing as a pre-existing freedom since from any given spot the view changes, and each person's freedom depends on others. Respecting conscious claims in the name of the dignity of the human person risks eclipsing the dignity of those who are then denied. Equality before and within the law is the only shared dignity that can be invoked. If the freedom and equality of citizens required for the full development of the human person and the effective participation of *all* is at the foundation of constitutional democracies, then competing ideologies must be engaged *relationally*.

This is particularly relevant when it comes to religious positions since it is common to all religions that belief cannot ever be forced. To be genuine, belief must be a profound personal conviction that arises within the human person, without external interference. A person can be 'shown' the path but must choose of her own volition to follow it. To insist in the name of religious belief that another person cannot be married, then, is by extension to impose belief on another, to naturalize and universalize a particular belief. In the case of Catholic conscientious objection, and particularly in the Italian legal literature, there seems to be a perilous conflation between canonical understandings of marriage and civic marriage. Italy is a secular state, and civic marriage is as such a civic law institution. Catholics may very well have a different conception of what marriage is, but this should rightly apply to *Catholic* marriages, *canonical* marriages, not civic marriages, which are objectively a different institute.

[54] Greene (2018: 34).
[55] *Ibid.*

What right does any religious denomination have to dictate the institutes of secular civic law?[56] There are plenty of equivalents between religious rules and secular rules but in no case can one impose upon the other, as this separation is the very foundation of a secular arrangement.

In Italy, the historical roots of canon law undoubtedly wield an important influence on many fundamental legal institutes, perhaps especially that of marriage, which long preceded civic marriage. Among the strongest characteristic elements of canonical marriage—as asserted by theologians and canonists—is its conception as emerging from natural law. Because canon law defines marriage as a sacrament that preceded all others, marriage is understood to be inherent to humanity. As such, it is a universal and eternal institution whose essential outline and natural foundations are unchangeable[57]. This is certainly a key reason for the concerns expressed regarding the progressive distancing of civic models of marriage from the canonical one, particularly when it comes to the dissolution of marriage.[58] The imbrication of canonical marriage with natural law cannot, however, justify exercises of equivalence with civic forms of union or marriage. Once again, they are different institutes with differing foundations. While putting them in dialogue is, in my view, the only way for solutions to emerge, this requires dedicated processes of intercultural translation, as I will argue in detail further on. Declarations of what marriage 'is' fortified by natural law claims when imposed as such become merely tautological in a heterogenous legal context[59].

While religious beliefs regarding institutions such as marriage should not be imposed on non-religious others, at the same time, no democratic government can (should) impose belief upon its subjects. Again, attending to the relationality of freedom and equality would seem to be the most useful approach. The case of the marriage registrar offers some clarity because the conscientious objector is a state employee, and as such represents a prime example of a subject called upon to fulfill the implications of the social contract. If one is employed by the state, a part of the state, and is asking the state for protection and support, then the principles and norms of the state must be reciprocally respected. Conscience cannot be a law unto itself[60]. In cases where wedding services are at issue, it has been argued that religious freedom claims must outweigh the 'mere inconvenience' of having to seek

[56] In fact, as has been rightly observed, the numerous accords made and revised over the years between civic and religious authorities in Italy regarding marriage recognize that there are *aspects* of marriage law that coexist, that can and should be delegated to the civil sphere to ensure effectiveness and uniformity of the legal situations arising from marriage, and aspects that concern, without any external interference, religious faith and belonging to that faith for example the celebration of the marriage rite. Bilotti (2015: 3).

[57] Dalla Torre, (2022: 187).

[58] Boni (2018).

[59] A tremendous amount has been written about the correct interpretation of Art. 29 of the Italian Constitution which states, "The Republic acknowledges the rights of the family as a natural institution founded on marriage. Marriage is based on the moral and legal equality of the spouses within the limits set forth by law to guarantee the unity of the family". At least one prescient observation was made by a member of the Constitutional commission on the contradiction of opposing 'natural society' and marriage, an institution of positive law. Piero Calamandrei observed during the preparatory works, "I believe it is a huge mistake to connect the idea of natural society—which recalls natural law — with the subsequent sentence 'grounded on marriage,' that is an institution of positive law. To say that a natural society arises out of marriage, which in substance is a legal transaction, is in my opinion a patent contradiction." Session of April 23, 1947, 2 *La Costituzione della Repubblica nei Lavori Preparatori della Assemblea Costituente* 1201 (Camera dei Deputati, ed., 1976). Winkler (2018: 121). With the benefit of hindsight, it could be argued that this 'contradiction' is nothing more than a revelation, a peeking through the curtain, of the silent overlap between the Catholic understanding of the relationship between natural law and marriage.

[60] U.S. Supreme Court, Employment Division v. Smith, cit., p. 890

non-objecting service providers.[61] Is convenience, however, the real issue? The hypothetical scenario where services are extremely difficult to obtain because there are no non-objecting providers has proved real in other contexts[62], and the terrain is being prepared for an increase in this stance.[63]

A relational approach to freedom and equality would instead shift focus away from absolutes and towards shared agreements. Identitarian arguments which put differing worldviews in direct opposition miss the opportunity to instead consider constitutionally based possibilities for alignment, however provisionary.

5. Dignity, truth and relationality

What, then, does the term 'relationality' actually mean in this discussion of conscientious objection? As advocates across the political spectrum maintain, conscience has meaning not only in the *forum internum* but in its expression out in the world. To be meaningful, it must express itself in action. Any action taken by a person, of course, will have an impact on others. The expression of a conscientious objection under analysis in this essay consists in the refusal to transcribe a union or marriage. A couple presented with an objector, then, risks having their legal right to union infringed, and this in the name of 'God's word'. More careful attention to Christian teachings, however, reveals that God's word (in the Catholic tradition but also in many other religious traditions), even in its most fervent support of a single truth, does not support the idea of the forcing of such truth upon another. Among the most lucid expressions of the relationship between universal truth, freedom and dignity with specific regard to freedom of religion and conscience is Pope Paul VI's 1965 "Declaration on religious freedom *Dignitatis Humanae* on the right of the person and of communities to social and civil freedom in matters religious".[64] The document is a call for government support of religious freedom but in the text, one specification is continually repeated: divine truth requires that its acceptance be *free*. To wit: "The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once

[61] Dolan (2013: 1144). But see MacDougall (2012) who points out that obliging same-sex couples to make "'one or two' more phone calls" to find someone who will register their wedding "ignores the humiliation inherent in all discrimination, which is, after all, based on assertions of superiority. This burden is unwarranted given that there are clearly ways of accommodating religious objections without putting same-sex couples to this inconvenience and humiliation". MacDougall (2012: 161).

[62] Vazquez (2018).

[63] On June 30, 2023 in the case *303 Creative LLC v. Elenis* the 'plaintiff' asked for a preemptive opinion from the Supreme Court on whether she would be legally supported were she to deny website creation services to same-sex couples. The Court decided in her favor on expressive speech grounds, ruling that the designer cannot be compelled to create work that violates her values. *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 584 U.S. 617 (2018), is the other key case in this domain. Here the Court ruled that there had been a lack of religious neutrality in the case, violating the plaintiff's right to free exercise. A second case was brought against Masterpiece Cakeshop in 2018 for its refusal to bake a cake for a transgender woman, but ultimately the case was dismissed by the Colorado Supreme Court on technical grounds (lack of standing) and the question of discrimination was not addressed. Florists and beauty salons have subsequently brought suits to defend their right to refuse service to LGBTQ people on religious grounds. President Trump's establishment on February 7, 2025 of the White House Faith Office sets the stage for a ramping up of religions liberty claims directed at denying services. For a recent Italian commentary on this case see Camoni (2024).

[64] Available at:
https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html

quietly and with power." And then, "Religious freedom, in turn, which men demand as necessary to fulfill their duty to worship God, has to do with immunity from coercion in civil society." A person coerced would be robbed of their right of reason, a gift from God. And this freedom to believe/think *what one will*, this freedom of conscience, is the foundation of human dignity, which is the foundation for religious freedom, per the catechism:

> … the right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.
> It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. *However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature*. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed.[65]

In this understanding, then, the highest truth is that of the nature of the human being which consists in being endowed with reason and free will. These qualities, which in turn constitute the dignity of the human person, are to be respected at all costs. Even more explicitly, "God calls men to serve Him in spirit and in truth, hence they are bound in conscience, but they stand under no compulsion. God has regard for the dignity of the human person whom He Himself created and man is to be guided by his own judgment, and he is to enjoy freedom".[66] Who, then, is the civil servant to contradict God's word? How could God respect someone forced to worship Him, in direct denial of His gift of reason and free will? And if the person so coerced is imposed upon by one of God's own, is the wrongdoing not doubled? From a Catholic point of view, dignity is universal, it belongs to all. So how can one person justify acting against the dignity of another?

Regardless of one's religious beliefs, the relationship between freedom, conscience, truth and dignity must necessarily exclude coercion or imposition of any kind. This is because negating another person's freedom to find and maintain their own truth could only be understood as an exercise of power. In any context, how could a person be said to be respected if they are forced to believe something they do not believe? What dignity could be recognized in someone who has no genuine and free understanding of the meaning of a given truth? Dignity depends upon freedom.

The philosophies exploring the meaning of truth range far and wide, but most involve an idea of correspondence between experience and meaning. They feature assertion, coherence, verifiability and/or the satisfaction or even conclusion of a path of inquiry.[67] There is also quite a lot of tautological and/or conditional language in definitions of truth for example, "the aim of inquiry is to ascertain what beliefs would be agreed upon by the community of inquirers were inquiry to be pursued

[65] *Ibid*, italics mine.
[66] *Ibid*.
[67] I refer to Peirce's famous assertion that truth is the end of inquiry (asymptotically pursued), "truth is what would be agreed upon, were inquiry to be pursued as far as it could fruitfully go" explored in detail in Misak (1991: 42 ff)

indefinitely far" or, the "'Cartesian criterion'—'Whatever I am clearly convinced of is true'"[68]. It seems fair to say that secular moderns would likely agree, along Peircean lines, that "the aim of inquiry is to get beliefs which the community acknowledges as being the best beliefs possible, and that therefore "we ought to plod along, settling our own beliefs by making them coherent with experience and with our other beliefs" with the expectation that "in the long run, there would be a consensus within the community".[69] In this view, truth is inescapably relational, that it is, it exists only insofar as it relates to experience and consensus. This only serves to reinforce the idea, from a secular point of view, that truth, no matter its nature, cannot be imposed. Truth relies on freedom and freedom is self-determining. If there is such thing as an 'objective dignity', then it relies upon the relational duo of truth and freedom.

In more concrete terms regarding the conscientious objection of marriage/union registrars, the right to disagree with a definition of marriage or union (supported by the State, no less) cannot be confused with an alleged right to impose that definition on others. Again, for Catholics, same-sex unions are unacceptable, but for others they are not. Regardless of whether or not a sustained position is part of majority or minority belief at a given historical moment, it simply cannot be inflicted upon others except as an exertion of power. And this, as I have tried to show, is completely coherent with Catholic conceptions of belief. The 1965 declaration cited above begins with the words, "A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty."[70] A responsible freedom is one that seeks equality before the law and even this is clearly articulated by Pope Paul, "government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens"[71]. The relationship between truth, dignity and freedom requires making space for each and steering clear of absolutist positions. How, then, to negotiate the contrasts that emerge between the objector and the objectee? One fruitful direction is that of intercultural translation upon to which I will now turn.

6. Authentic pluralism and intercultural translation

In an ideal formulation, the law applies to all universally. Yet, as I have tried to show, many of the key tenets upon which it relies (truth, dignity, freedom) are relational, that is, the meaning, respect and actualizing of each depends upon the others. The moment a control-seeking action takes place, one that moves from power in defiance of respect for those impacted, fissures are created in the pillars of justice. Claims for freedom, including those of conscientious objection, must therefore try to avoid reliance on power, whether it is based in majority or minority[72] positioning. Freedom does not belong

[68] *Ibid*, 80-81.
[69] *Ibid*, 81.
[70] *Dignitas Humanae*, at note 59.
[71] *Ibid*.
[72] In the Western modern social and political landscape, power moves based on minority rights are ever more frequent. In the case of conscientious objection of marriage/union registrars, both religious contingents and same-sex couples can (and do) claim discrimination as minority groups.

to the past, but rather to the future. The determination of its substance is an act of human creation, in constant evolution. It cannot survive incarceration whether the bars of the cage are called 'institution', 'family', 'heritage' or anything else. When, in 2005, Cardinal Alfonso López Trujillo spoke out against the same-sex marriage law in Spain he revealed the albatross of conflict in the question of conscientious objection. In one interview, when asked how a Catholic could protest the same-sex marriage law he responded as follows:

> Paragraphs 69, 73, 74 of Evangelium Vitae speak of objection of conscience. This means a person can use his or her right to object out of conscience and refuse to comply with this crime which represents the destruction of the world. Conscientious objection has always been respect [sic] in the laws and constitutions of all nations and the State is bound to respect it without threats.
> [...]
> All Christians, including state employees, have a duty to avail themselves of conscientious objection because the law of which we are speaking inflicts a deep moral wound on the Christian faith. Moreover, the question involves the entire world and is creating a universal scandal for all religions and all cultures. It calls for a world response. Conscientious objection was not invented by the Church: the Christian must object and make his or her faith respected like doctors who refuse to carry out abortions. Conscientious objection is used not only to protest against abortion or same sex 'marriage' it is used against all bad laws.
> [...]
> A citizen is always allowed to have recourse to conscientious objection unless the state is totalitarian. It would be pure totalitarianism if a person were sacked for conscientious objection. Democracy always respects personal freedom and to overlook this principle would be very dangerous and very grave. How can a state which fails to respect the individual and de-humanises the human person look towards a future worthy of humanity?[73]

On the one hand, there is the use of extreme language such as 'crime', 'destruction of the world', 'universal scandal', 'dangerous' and 'grave' to assert moral power. The anchoring of the argument in global history is another way of claiming power. On the other hand, the final reflection is on democracy and respect for personal freedom. Indeed, lack of such respect is deemed *dehumanizing*. In this framework, then, to deny conscientious objection would be dehumanizing. The result of such objection, however, could fail to respect the individual who wishes to exercise a legal right to marry another person of the same sex. Lack of respect is not merely rhetorical; the Italian case of doctors refusing to perform abortions to which the Cardinal refers has had not just moral but fatal consequences[74]. It is as if the reasoning exists on two separate islands with no visible connection: 'objection at all costs' lies moored across the water from 'respect for the human person'.

[73] Agenzia Fides (2005).

[74] On the 16 of October 2016, Valentina Milluzzo, in the 19th week of her pregnancy with twins, died of sepsis. Though the profile of conscientious objection was subsequently excluded from the formal accusations (which were instead professional incompetence, imprudence, and negligence), the parents of the victim repeatedly claimed that the doctors told them that as long as there was a heartbeat (one of the twins had died in utero) they could not interfere because they were objectors. Initially sentenced to six months in prison (suspended), the doctors involved were acquitted upon appeal with the ruling that ""the facts grounding the offence do not exist". See https://www.lasicilia.it/cronaca/valentina-milluzzo-le-accuse-dei-genitori-riaprono-la-disputa-sullobiezione-di-coscienza-laborto-lavrebbe-salvata-959287/, https://www.scienzainrete.it/articolo/morire-di-aborto-mancato-italia-nel-21%C2%B0-secolo/maria-cristina-valsecchi/2025-02-21 , and https://www.safeabortionwomensright.org/news/italy-appeal-court-acquits-four-doctors-who-refused-to-save-the-life-of-a-woman-who-miscarried-in-their-hospital/

The bridge, I would like to propose, is intercultural translation. Such translation is based upon an assumption that pluralism is "the principle according to which no worldview, cultural or religious tradition, or existential orientation can claim a monopoly on public truth: it presupposes coexistence, but also confrontation, the possibility of disagreement without exclusion, and the ability of institutions to build common sense without nullifying otherness"[75]. Confrontation is abundant at the moment, but the possibility of disagreement without exclusion requires that each position be brought to the fore without the defensive masks of power plays, revealing instead the values that are at the core. While each side may find the other abominable, democratic society requires that blanket judgments yield to more nuanced understanding that need not deny either side but instead makes space through internal categorical shifts.[76] This involves expanding one's vision to include areas where values lurk to see whether there might be room for movement. When, in 2013, Pope Francis was asked about gay priests and responded, "Who am I to judge?" he was perhaps engaging in just such an opening. Indeed, 10 years later he made history by authorizing blessings to same-sex couples with the Declaration "*Fiducia supplicans*" issued by the Dicastery for the Doctrine of the Faith. The authorization took great pains to distinguish its limitations, specifying that it was in no way an expression of approval of same-sex marriages or unions, focusing instead on the nature of blessings. As the Vatican reports, "After analyzing blessings in Scripture, the Declaration offers a theological-pastoral understanding. Those who ask for a blessing show themselves 'to be in need of God's saving presence' in their lives by expressing 'a petition for God's assistance, a plea to live better' (par. 21). This request should be received and valued 'outside of a liturgical framework' when found 'in a realm of greater spontaneity and freedom'" (par. 23)"[77]. The categories of blessing, liturgy, God's assistance are all being opened up out of respect for the current societal moment, for the needs of the people who, after all, are all to be considered God's children according to the catechism. It is an example of an expression of freedom, termed by the Church 'couples in irregular situations', that was exceptional to the common language of blessings, but has now been folded into that language. A request for blessing has sparked a reconsideration of what blessing should be.

At the moment, the 38 countries who have legalized same-sex marriage have mostly removed gender provisions, opening the institute to all gender combinations in the name of neutrality. Those who have not tend to remain firmly grounded in the idea that the definition of marriage cannot be changed without causing grave harm to the social fabric. In a democracy, however, it is not the social

[75] Original: "Il pluralismo, in questo senso, è il principio secondo cui nessuna visione del mondo, nessuna tradizione culturale o religiosa, nessun orientamento esistenziale può rivendicare per sé il monopolio della verità pubblica: esso presuppone la convivenza, ma anche il confronto, la possibilità di disaccordo senza esclusione, la capacità delle istituzioni di costruire senso comune senza annullare l'alterità". (translation mine), Pacillo (2025: 93).

[76] This entails something more complex than 'reasonable accommodations' not least because such accommodations are typically made without any opening of narrative frameworks, that is with a deaf ear to the values and social factors that constitute any given position. "The benefit of viewing the problem from a reasonable accommodation perspective is that it creates opportunities for practical solutions to clashes of principle. On the other hand, it has been suggested that reasonable accommodation may not be the best vehicle for solving these kinds of problems because it would generally work in favour of the more socially and economically dominant parties", and this precisely because no attempt has been made to level the playing field of *meaning*. MacDougall (2012: 162-163).

[77] Vatican News, *Doctrinal declaration opens possibility of blessing couples in irregular situations*, 18 December 2023.

fabric that must bend to the law, but rather the law that must recognize the social fabric.[78] Ironically, in the infamous judgment that legalized racial segregation in the US, Justice Brown in the majority opinion stated that an argument against legal segregation "assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured…except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals"[79]. The elements were nearly there, but all in jumble. It is certainly the case that legislation cannot, by simple enforcement, overcome social prejudices, and that mutual appreciation of merits is indeed required. But it is properly the task of legislation to *find mutual appreciation of merits.* Democratic states have a positive obligation to support and defend their people, whose support is their very legitimization. It is not enough to simply manage pluralism through technical compromises[80]; this is precisely why individual laws on conscientious objection or even religious freedom limited to such compromises are not well aligned with constitutional democracies. Instead, the task of the law is to keep its norms and the categories upon which they are founded open to the evolving hermeneutic needs and demands manifested by the societies they govern. Differences are not bothersome disturbances to be neutralized or filed away into exceptions, but rather opportunities for dreaming up new conceptualizations. Marriage itself has changed dramatically over the centuries, at times a legal contract determined by men and primarily used to solidify political alignments (sometimes possible for who today would be considered children), at others a civic duty, at still others, polygamous as a means of ensuring progeny. Only since the 18th century has marriage been widely recognized as a way of solidifying a love bond.[81]

'Conscious', whether an expression of freedom to choose one's spouse or an expression of freedom to abstain from registering such a union, is not separate from the public sphere. It is a call for institutional response, a request to be heard, and the duty of institutions is above all to listen. At least one dictionary defines pluralism as "the belief that the existence of different types of people within the same society is a good thing"[82] and I am here arguing that it is both good and necessary for the success of any democracy. Only through the transformation of subjective inputs into objective norms–which must then remain hermeneutically open to subjective inputs–can differences transform. There must be a process of translation, of transformation, that engages processes of inquiry to put it in pragmatist terms. Neither side can be content to say what marriage indefinitely is, nor what conscientious objection indefinitely is. So long as differences remain differences, defended behind the barricades of dialectical

[78] Notably, when same-sex marriage was legalized in Spain, its arguments in defense of the new law included the observation that it was in keeping with developments in comparative law and human rights law, and specifically, "This progress indicates that there is a new 'image' of marriage, gradually becoming more common though not totally standard as of now, which allows us to interpret the idea of marriage, from the point of view of Western comparative law, as a plural conception." S.T.C. Nov. 6, 2012 (No. 198, §8) (Spain), cited in Winkler (2018: 131).

[79] *Plessy v. Ferguson*

[80] Pacillo (2025: 88).

[81] In a monumental literature, see indicatively for a brief overview Hinkelmann (2022). For a compilation focused on the modern evolution of marriage see Simmons (2021). This collection includes a study featuring research in the UK, the US, Spain, France, the Netherlands, Japan, Korea, and Ukraine, *The Ties That Bind. Marriage and Social Networks in the Modern Age (1920-Present).* The authors observe, "Since the 1920s, people in most Western societies have witnessed *vast swings* in the importance of the marital tie in relation to other social connections" Hilda Bras and María Sánchez Domínguez in Simmons (2021: 71), emphasis mine.

[82] Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/pluralism

opposition as an end in itself, democracy is essentially disabled. Pluralism can only be authentic when it becomes common, related in a dynamic way to what is plural, different. Otherwise, it is reduced to serving as the outward trappings of a world destined to remain static. Intercultural translation engages the qualitative aspects of categorization schemes through transformation. It would want to open up the entire network of values and ideas that lie beneath differing conceptions of marriage, union, households, families, procreation, and more. It would look for common values in an attempt to generate something new, Peirce's 'thirdness', which is neither entirely one nor another of the initial 'players' but instead, a third new thing. The resulting social fabric would be one that organically bridges divisions between individuals and groups: "In this sense, personal identity is not a pathological fracture, but a physiological condition of democratic pluralism, a laboratory in which new forms of coexistence, new normative grammars, and new balances between individual freedom and collective cohesion are tested"[83].

The question, of course, is: how? How does intercultural translation in such a laboratory work? One answer is the three-step methodology inherent in the intercultural use of law, elaborated as follows[84]: 1) crossed narratives and semiotic discompositions, 2) crossed contextualizations and 3) intercultural translations/transactions. In the first step, the goal is to disengage from any power-based claims and commit instead to a process that seeks to elicit a context of signification, to understand meanings, something which, adopting this methodological outlook, can be defined 'inter-contextual ground'. In the case of the objecting civil servant, both the objector and the couple seeking union/marriage would need to engage in a mutual attempt to elicit the experiential knowledge and understandings each holds about marriage and union. Justice Kennedy (cited above) describes the parallels between traditional religious ideas about marriage and the civil marriage same-sex partners sought, both of which embody "the highest ideals of love, fidelity, devotion, sacrifice, and family" and hope for "a love that may endure even past death". The Catholic catechism speaks of a union established by mutual consent and ordered towards the good of the spouses, understood as a lifelong partnership that supports the mutual development of the personal gifts of each. Surely intersecting narratives from both 'camps' would share ideas about unions which endure even in the absence of children for as the catechism states, "The Gospel shows that physical sterility is not an absolute evil. Spouses who still suffer from infertility after exhausting legitimate medical procedures should unite themselves with the Lord's Cross, the source of all spiritual fecundity. They can give expression to their generosity by adopting abandoned children or performing demanding services for others"[85]. Same-sex couples may very well wish to marry in the hopes of accessing adoption, which in many states is otherwise impossible. Again, this would offer a profile of continuity with religious ideas about couples' obligation to procreate or otherwise care for children. The intention here is not to ignore Catholic positions advocating emphatically against same-sex adoption and calling into play strict ideas about what constitutes a family. In the interest of seeking inter-contextual ground, however, might it be observed that the original Holy family could be described as *non-traditional*? The Gospel tells us that

[83] Pacillo (2025: 90). Original: L'identità personale, in tal senso, non è una frattura patologica, ma una condizione fisiologica del pluralismo democratico, un laboratorio in cui si sperimentano nuove forme di convivenza, nuove grammatiche normative, nuovi equilibri tra libertà individuale e coesione collettiva.
[84] This process is discussed across Ricca's work but a detailed description of the three steps of the methodology are described in Ricca (2023:154-180).
[85] Catechism of the Holy See, n. 2379.

there was no act of procreation prior to the conception of Jesus. Despite the teaching that "A child does not come from outside as something added on to the mutual love of the spouses, but springs from the very heart of that mutual giving, as its fruit and fulfillment"[86], Jesus in fact came from the outside, as both a gift from and the incarnation of God Himself. Joseph was not his father, at least not in the *traditional* sense. Moreover, the idea of living in same-sex communities is not only not foreign but indeed pivotal to many religious traditions. It is precisely the most religiously dedicated who renounce family life to live in a different kind of family, one dedicated to prayer and worship, to brotherhood or sisterhood. Both people of different sexes and those of the same sex under many and varied circumstances choose to live together in love and support for one another; such choice can give rise to a third 'entity' that can encompasses and ontologically redefine them.

Thus, some of the crossed narratives that emerge upon reflection find a broad selection of qualities reposing within definitions of marriages and unions. To semiotically discompose is to peek inside the weave of the fabric of a given value such as 'union' and find shared colors, so to speak. Just as Pope Francis brought the Church to a new theological-pastoral understanding of the meaning of blessings, new understandings of unions could be at least considered, given the commonalities. This is not to say that the Church should consider changing its doctrine. What is at issue here is understandings of *meanings*, since again, conscientious objection is not targeting religious marriages but rather civic marriages. Is it possible that stereotypes about homosexual people are blinding the view of what same-sex couples seeking to marry are trying to accomplish by marrying? Do objectors have any knowledge of the number of complications that arise for couples who cannot marry when it comes to medical benefits access and planning, hospital visitations, succession planning, tax benefits and family life? Are we certain that the equality before God and the law that most religions teach is consistent with a denial of these rights and benefits? A process of crossed narratives and semiotic discompositions leads to a kind of self-interrogation in the light reflected by what the other-than-self projects. The cognitive habit of believing that the apparently foreign other is impossibly distant from us is only that, a habit. When we consider the experiences of others in conjunction with our own, we come to re-read ourselves, to understand better why our own habits and values are what they are[87]. We come closer to ourselves as we come closer to others.

Beyond qualifications of marriages and unions, there is also the consideration that all parties in these conflicts are co-nationals. They share the protections and obligations associated with their country and legal system. With this membership comes a certain expectation of acceptance of others and their life plans and actions, provided they abide by the law. When services are denied to same-sex couples, a common refrain is the taunt that they can 'seek services somewhere else'. This, however, could also be applied to religious proponents. If they do not agree with their governments' decisions regarding other people's rights, they are free to vote or otherwise engage politically to try to change the government or its policies. Alternatively, they can seek another country in which to live. Less contentiously, the protections and rights shared might be remembered as shared.

Which aspects of a given legal category or protection are to be brought to fore or instead made peripheral as social institutions such as marriage develop are not a given. The famed Article 3 constitutional protection in Italy that obligates the Republic to "remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full

[86] Catechism, n. 2366
[87] Ricca (2023: 157).

development of the human person and the effective participation of all workers in the political, economic and social organization of the country" is semantically broad and axiologically deep; it identifies the synthesis of differences as a main task of the republic. The full development of the human person and the participation of citizens in shaping how to be equal before the law should be everyone's concern, even and, indeed, especially when differences are present.

The second step in the intercultural translation methodology is 'crossed contextualizations' and here a turn towards the issue of adoption can be of use. In 2018, a child welfare agency in the Philadelphia (USA), Catholic Social Services, was discovered to be refusing to place foster children with same-sex couples because they stated that it violated their religious beliefs. The city ended its contract with the agency, and the agency then sued, arguing infringement of their First Amendment rights to free exercise of religion and free speech[88]. Please consider these US data points published by the Williams Institute School of Law at the University of California Los Angeles in their amicus brief to the case, with data subsequently updated in 2024:

- An estimated 167,000 same-sex couples are raising children, including 28,000 male same-sex couples and 86,000 female same-sex couples.
- Same-sex parents are *seven times more likely to adopt and ten times more likely to foster children* than different-sex counterparts.
- Among parents, same-sex couples adopt (21%), foster (4%), and have stepchildren (17%) at significantly higher rates than different-sex couples (3%, 0.4%, 6%). Approximately 35,000 same-sex couples parenting minors have adopted, and 6,000 are fostering children. Notably, 24% of married same-sex couples have adopted a child compared to 3% of married different-sex couples.

If, through a process of crossed narratives, we can grant that many same-sex couples may wish to marry so as to be able to raise children, the issue of adoption is of course key. While both men and women in same-sex relationships can contribute to the birth of child, they must rely on outside assistance to do so. It makes sense, then, that adoption rates for these couples are higher. But *seven times* higher? Fostering children, notoriously difficult as it frequently involves taking in children who are already damaged from family situations of abuse or neglect, is even more remarkable. One can only conclude that same-sex couples are willing to take on a role of love and support for the children of others at astonishingly high rates. The United Nations Convention on the Rights of the Child (UNCRC), to which the Holy See is a signatory, asserts the child's right to a family: "...the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."[89] The emphasis on the right of the child to the love a family provides are echoed by Pope Francis in *Amoris Laetitia*:

> Children, once born, begin to receive, along with nourishment and care, the spiritual gift of knowing with certainty that they are loved. This love is shown to them through the gift of their personal name, the sharing of language, looks of love and the brightness of a smile. In this way, they learn that the beauty of human

[88] *Fulton et al . v. City of Philadelphia, Pennsylvania, et al.*
[89] Principle 7 of the UN Convention on the Rights of the Child, available at https://www.unicef.org/child-rights-convention/convention-text

> relationships touches our soul, seeks our freedom, accepts the differences of others, recognizes and respects them as a partner in dialogue…Such is love, and it contains a spark of God's love![90]

Both the UNCRC and the *Amoris Laetitia* citations are taken from a document created by UISG Catholic Care for Children International's 2020 publication "A Family for Every Child: Catholic Care for Children". This report specifically describes how social science, Catholic teachings and the empirical experience of this international organization all conclude that "it is best for children to grow up in safe, nurturing families".[91] According to one report[92], at the end of 2021, there were more than 14,000 children in Italy living without a family in youth centers. If only five percent of these children were adopted, more than 500 children would see their right to a family environment fulfilled.

From a jurisprudential and more strictly positivistic point of view, despite the lack of access to marriage in Italy for same-sex couples, the Cassation Court has recognized more than once that a same-sex couple married abroad can get Italian legal recognition for their previously adopted child in Italy.[93] The reasons given by the Court for this support have primarily to do with the compatibility in Italy of the effects produced by the act abroad which must nevertheless respect a whole range of fundamental principles. These are, in sequence: self-determination, the relational choices of the minor and the prospective parents, the best interests of the child, non-discrimination protecting the right of the minor to identity to grow up in the family unit that best guarantees balanced psychological, physical, and relational development, as well as an attitude of non-discrimination that does not limit parenthood exclusively on the basis of the sexual orientation of the parents. Specifically called out is the "principle of solidarity that underpins social parenthood" and here reference is made to both domestic law[94] and living law[95] which, the Court continues, "have contributed to creating a plurality of models of adoptive parenthood, unified by the objective of preserving the emotional and relational continuity already established in the family relationship"[96]. Across both European and Italian jurisprudence, the importance of protecting the child's best interests—which consist in providing that child with a family—are consistently upheld.

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[90] Pope Francis, *Amoris Laetitia*, *'Amore di madre e di padre'*, n. 172.Both references cited in UISG Catholic Care for Children International's 2020 "A Family for Every Child: Catholic Care for Children" available at: https://catholiccareforchildren.org/wp-content/uploads/CCCI_Brochure_CO6.pdf

[91] *UISG Catholic Care for Children International's 2020 "A Family for Every Child: Catholic Care for Children" available at: https://catholiccareforchildren.org/wp-content/uploads/CCCI_Brochure_CO6.pdf*, 7.

[92] Reported by the Dipartimento per le politiche della famiglia which cites number 56 of the series *Quaderni della ricerca sociale* published by the Ministry of Labor and Social Policies (https://www.minori.gov.it/it/notizia/minori-fuori-famiglia-i-dati-del-monitoraggio-promosso-dal-ministero-del-lavoro).

[93] See Cass., sec. un., 31 March 2021, n. 9006, Cass. Civ., sec. I, ord. 31 May 2018, n. 14007, Cass. Civ., sec. I, sentence 11 January 2013 n. 601. Most recently, the Constitutional court with sentence n. 68/2025 declared unconstitutional art. 8 of law n. 40/2004, which prohibited a mother's recognition of her own child born in Italy through medically assisted reproduction legitimately practiced abroad.

[94] Law n. 184, 1983 modified by law n. 149, 2011 as well as the law on emotional continuity n. 173, 2015]

[95] See ECtHR sentence 21/04/2014 *Zhou against Italy* and *SH against Italy* with sentence 13/10/2015, as well as in Italian giurisprudence Cass., Sec. I, February 13, 2020, n. 3643 and Cass. civ., Sec. I, n. 1476/2021.

[96] Cass., sec. un. 31 March 2021, n. 9006, par. 16. As has been pointed out by noted legal scholars, even Italy has seen a progression in the conceptions of the family underlying legal norms, particularly since the 1975 reforms, "the reform has completed a process of renewal of civil code rules—up until then still mainly inspired by a 'nineteenth-century' conception of the family, derived from the Napoleonic Code—which has progressed in stages via the principles in the Constitution, special laws and decisions of the Constitutional Court" Alpa & Zeno-Zencovich (2007).

Nevertheless, traditionalist religious positions state that same-sex couples cannot provide a healthy environment for children. In extreme positions the claim is these couples, by the mere fact of their same-sex status, harm or damage children. However, the same research cited above instead finds that:

> • LGBTQ parents have a similar rate of divorce, separation, or widowhood as straight cisgender women, with both groups having a higher rate than straight cisgender men.
> • Higher percentages of parents who are not married or not partnered, regardless of whether they are LGBTQ, are living with poverty-level incomes.
> • The children of LGBTQ parents fare as well as children of non-LGBT parents.[97]

This last point is perhaps among the most hotly contested, since from a strictly religious point of view, such a result is impossible. Perhaps, however, a pross of crossed contextualizations could have an effect on this rigidity. For while one may very well be convinced of the moral incorrectness of 'homosexuality' this judgment need not condition to the point of exclusion evaluations of marriage and adoption. The very fact that 'sexuality' is continually named when discussing same-sex arrangements is a tip-off to the bias that seeps in from the beginning. Traditional marriages, to the point, are not called 'heterosexual marriages', and perhaps rightly so[98]. Are the practices of couples regarding sexual behavior relevant to the civil institute of marriage and child-rearing?[99] The sexual habits of couples are not the concern of the State, at least not in the modern era. From this point of view, the welfare of a child should not be conflated with the presumed sexual habits of their parents. As all parties would agree, one hopes, the fundamental goal is to ensure love and care for all children. And here we come to another facet that emerges from the Williams Institute study:

> Nearly 20% of youth in foster care in Los Angeles are LGBTQ—twice the number of LGBTQ youth estimated to be living outside of foster care. LGBTQ youth had a higher number of foster care placements and were more likely to be living in a group home, two challenges to finding permanent homes.

What about minors who identify as LGBTQ? Should they be explicitly denied a family home that shares their orientation?[100] These are in many cases young people who were expelled by their families of origin

[97] This claim is backed by a study done by Cornell University which "identified 79 scholarly studies that met our criteria for adding to knowledge about the well-being of children with gay or lesbian parents. Of those studies, 75 concluded that children of gay or lesbian parents fare no worse than other children". Full results available at: https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-wellbeing-of-children-with-gay-or-lesbian-parents/

[98] Winkler points out that when in the *Bernaroli* case the Constitutional Court stated that the preservation of Alessandra and her wife's marriage was impossible because the Constitution prohibits same-sex marriage, it was taking a stance in direct opposition to other European courts, "Nowhere in Europe [has] a court interpreted the constitution as imposing a heteronormative paradigm as a boundary in the protection of family. Nor is supranational law placing such a paradigm at the center of its provisions on family and marriage" Winkler (2018: 132).

[99] The ECtHR found as early as 1999 that homosexuality could not be used as a reason to deny custody of children *Salgueiro Da Silva Mouta v. Portugal* (Application no. 33290/96) as it constitutes a violation of Articles 8 (right to respect for private and family life) and 14 (prohibiting discrimination).

[100] The issue of children who themselves identify as LGBTQ is raised also in the context of objecting registrars, "Just imagine a still insecure lesbian or gay child of the refusing registrar. What disastrous signal does that child receive when his or her

because of their 'sexual orientation'. If same-sex couples are denied the possibility of adopting them, what possibility for self-determination remains for these children?

A process of cross-contextualization might help take some steps towards making axiologically peripheral the issue of sexuality and making central the issue of child protection and the safe-guarding of families in categorical terms. While from some religious perspectives a non-traditional family may be objectionable, once the web of narratives is opened, relevant profiles of semantically overlapping and interpenetrating significance between the conflicting perspectives emerge. Once again there is continuity to be found in divine law, and specifically in the Gospel itself, which recounts the attitude of Jesus toward children: "He took a little child whom he placed among them. Taking the child in his arms, he said to them, 'Whoever welcomes one of these little children in my name welcomes me; and whoever welcomes me does not welcome me but the one who sent me.'"[101] As a not-so-side note, the Williams Institute also found in its research that 3 million LGBTQ adults are religious, reporting that religion is an important part of their daily life or that they regularly attend services.[102] As can be seen, potential areas of semantic-axiological resonance between the parties here compared are far from negligible. Opportunities for overlapping or shared meanings abound.

To be clear, while continuity can be found in a shared desire to protect children, the issue of adoption is not inextricable from the issue of same-sex marriage. Cross-contextualization is easily found simply by assessing the desires of couples to form a legal union, with all of the benefits it entails. Such benefits are important to a long-term shared life. Furthermore, the European Court of Human Rights—to cite just one example—has already (fifteen years ago at the time of this writing) clearly acknowledged[103] the inclusion of same-sex couples under the right to respect for family life protected by Article 8 of the Convention calling it 'artificial' not to do so. The Court recognized the existence of axiological and semantic continuity in the positive benefits of a shared or inclusive definition. In fact, for the ECtHR, family life (including marriage) is now a sub-category of private life featuring the following constellation of elements[104]:

- The right to respect for private life includes the right to an individual life and the right to establish and develop relationships with other human beings.
- The right to establish and develop relationships includes both family and non-family relationships, including relationships 'of a professional or business nature'.

own parent is refusing to help a loving couple to formalize their family life? And what will the child feel when he or she sees that this refusal is being tolerated by the law?" Waaldijk (2013: 196).

[101] Mark 9:36-37 NIV

[102] Williams Institute, available at https://williamsinstitute.law.ucla.edu/press/fulton-media-alert/#:~:text=3%20million%20LGBT%20adults%20are%20religious%2C%20reporting,life%20or%20that%20they%20regularly%20attend%20services.

[103] In the ECtHR 2010 *Schalk* judgment it is stated, "the Court considers it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy 'family life' for the purposes of Article 8. Consequently, the relationship of the applicants, a cohabiting same-sex couple living in a stable de facto partnership, falls within the notion of 'family life', just as the relationship of a different-sex couple in the same situation would", *Schalk*, 53 Eur. Ct. H.R. 20, para. 94. For a recent assessment of the legal treatment of same-sex marriage across a wide array of countries, see Waaldijk, Kees, *'Same-Sex Couples under the International Right to Marry: Some Recognition of Their Right but More Recognition for Their Exclusion from It and for Their Existing Marriages'*, in Andreas R. Ziegler, Michael Lysander Fremuth, and Berta Esperanza Hernández-Truyol (eds), *The Oxford Handbook of LGBTI Law* (online edn, Oxford Academic, 23 Jan. 2024), https://doi.org/10.1093/oxfordhb/9780198847793.013.20, accessed 3 July 2025.

[104] Waaldijk (2013: 186 ff)

- The right to respect for family life includes marital and parenting relationships, as well as non-marital partnerships.
- The right to respect for family life includes different-sex and same-sex partners. Another possible avenue of continuity is the concept of 'the right to relate' and the social profiles it supports.

The above observation, supported by a plethora of cases, is part of one scholar's proposal for a 'right to relate'.[105] This formulation comes from a cross-contextualization of the rights approach. In this view, a focus on the development and nurturing aspect of relationships becomes central, and is proposed as means of determining which rights are most important for a couple, opening up the horizon of possibilities:

> Does the right to relate imply a right to become relatives? For children this can be important: will they get a permanent and legal link to a parent's partner who is in fact like a parent to them? And what if three or four adults, perhaps in two households, are in fact parenting together? Different legal systems are experimenting with different ways to meet the desire of some same-sex families to formalize all relationships in their de facto family.[106]

If continuity can also be found in a shared desire to protect children, then perhaps a path can be found to the third step in the intercultural translation methodology, namely, intercultural translation/transaction.

Once narrative frameworks have been revealed and continuities have emerged, the final step is to transact, transduct, move the legal reasoning or vision from one (metaphorical) place to another. This shift is an overlap due to 'condensation overlay'[107], which is what happens between different categorical circuits when a metaphor is created. This is perhaps the most difficult aspect of the process because the apparent objectivity and semantic rigidity of the legal positions that are the result of past interactions can make them resistant to change. In practical terms, this means that expressions such as 'marriage is' must be recalibrated by stripping them of their implicit claim to ontological absoluteness and eternal validity. In short, they should always be understood to proclaim 'marriage *at-the-moment* is'. All legal arrangements are necessarily temporary, since they can only reflect what has been decided *so far* with reference to values, ends, and principles that nevertheless project their meaning primarily into the future—as is, after all, the nature of all legal discourse. Marriage itself, as has already been observed, has shifted significantly in its legal meaning over the centuries. The cultural baggage that all legal systems carry is onerous. In Italy, the legacy of marriage as necessarily between a man and a woman is certainly in tight relationship with canonical marriage and Catholic theology for which this specific union and no other is a sacrament.

What I am suggesting, however, is that intercultural translation could start with a reconsideration of civil marriage and a historical-anthropological reinterpretation of its Christian roots. Recognizing common meanings between the canonical and secular models of marriage could serve as a basis for shaping new ways of ensuring protection and support for individuals, couples, and children. In pursuing this approach, members of religious communities are not required to change their religious

[105] *Ibid*, but see also Ricca (2019), on understanding the child who is the object of adoption in terms of his/her 'relational being', such that a 'right to relate' could extend also the children who part of same-sex families.
[106] Waaldijk (2013: 195).
[107] On the distinction between overlapping by means of 'juxtaposition' and 'condensation overlay' according to the theory of intercultural translation: see Ricca (2008).

opinions or beliefs. What could become the subject of critical evaluation is the implicit cultural characterization of secular norms as Catholic. If not openly recognized, the resilience of anthropological-religious elements in secular positive law formulations could undermine the need, rooted in the Italian Constitution and transnational and international charters of rights, to ensure universal and equal protection under the law for all subjects, including their differences. An intercultural translation of the current rules on marriage could make room for renewed legal formulations based not on tradition or gender, and perhaps not even on the precise protections or specifications currently in force. The goal would instead be to provide space for a thorough assessment based on semantically innovative dialogue between 'opposing' parties: a dialogue that includes active, reflective listening and is therefore capable of accounting for and responding to a wider range of needs. In this sense, the dialogue could potentially culminate in a marriage 'formulation' along these lines: 'a covenant between two adults, established through mutual consent, that is intrinsically ordered to the good of the spouses and the protection and education of children, if desired'. On closer inspection, this formulation is not far removed from the Catholic definition[108] with a few adjustments. What matters most, however, is that it could be adopted for a more inclusive civil definition of marriage, offered here with a specific view to the Italian context, but not in contrast with some of the ethical pillars of Catholic theology.

It must be noted, however, that the search for alternative models for marriage and unions has been on for quite some time in many legal contexts.[109] One model that has been in place since 1999 and seems to have enjoyed real success is the French *pacte civil de solidarité* (PACS). It was designed to bridge a perceived gap between marriage and the French institute of concubinage, or cohabitation. Among the key provisions is that the partners "commit to a life in common and to material aid and to reciprocal assistance". Here we can see precisely how the text in question seems to flow precisely from a process of cross-contextualization similar to that referred to above, with the elements of commitment and companionship taken as axes of the semantic spectrum corresponding to the category 'unions'[110]. In fact, the *consortium totius vitae* referred to in Canon 1055 and the *mutuum adiutorium*, which can be deduced from the same provision as an immediate implication of the *bonum coniugum*, manifest a relationship of immediate proximity—both axiological and semantic—with the anthropological and relational roots of Christian marriage.

[108] "A lifelong covenant between a man and a woman, established through mutual consent, that is inherently ordered toward the good of the spouses and the procreation and education of offspring".

[109] A recent study focused on the US but including analysis of international models is Culhane (2023). The goal of the text is precisely to come up with new solutions that move beyond current models using what the author terms the 'building blocks' of a designated beneficiary law, diverse domestic partnership laws, and the 'marriage lite' approach of the French PACS. The very practical objective is to "establish a uniform registration system for those who wish to opt into something more creatively flexible than marriage and recognize unregistered partners who are cohabitating" but the final conclusion is more philosophical, "It's well past time for the law to recognize that love and human relationships take many forms", (2023: 141). The urge here is to engage in that recognition through processes of intercultural translation.

[110] "The *pacte* has proved immensely popular: their number has steadily increased, and among opposite-sex couples, statistics show that there are about two issued for every three marriages…Once thought unlikely to gain much traction beyond the gay and lesbian couples it was primarily designed to help, the PACS was quickly embraced by straight couples too: they have consistently been in the majority of couples entering these unions. It is of course true that there are far more straight than gay couples overall, but the huge success of the law caught even its most optimistic proponents off guard", Culhane (2023: 131).

If religious parties were involved in the construction of a new formulation, after having been part of processes of crossed narrative and contextualizations, alongside the ongoing existence and protection of canonical marriage, perhaps the internal coherence of conscientious objection to the registration of same-sex marriages/unions, viewed through the lens of precisely the canonical and theological premises of marriage, could undergo a process of reflective reconsideration. In other words, when considering the consequences of refusal within a Catholic or Christian moral horizon, the objector could discover the need for a kind of 'internal recomposition' of the doctrinal positions. What could take place is a sort of internal collapse of the relationship between positions taken and theological assumptions. Subsequently, a new outcome could appear, something that is characteristic of intercultural translation processes: the dissolution rather than the resolution of the conflict. The very 'consciousness' at the heart of the objection could undergo an internal self-reflective transformation. Yet and still, it has to be said that the precise final outcome of a process of intercultural translation cannot be determined in advance, and certainly not in the abstract applying—in Kant's terms—*a priori* synthesis. If translation is to be successful, both sides must be amenable to change. It could even turn out that unexpected solutions will be found that give a wider margin to conscientious objectors. What is certain is that any meaningful solution will require genuine participation of all parties and a willingness to submit to a process culminating in an *uncertain* outcome. There must be shared trust in the prospect of coming up with solutions in which some things will be lost and others gained. The compass that all must hold points north to justice.

7. Conclusion

Both democratic legal orders and religious advocates are concerned with truth, dignity and freedom as foundational tenets for human flourishing. Both are also at risk of becoming Medusa-like, turning these tenets to stone and thereby evacuating their meaning. Instead, we must understand all three as 'on the horizon'. Their meaning today will only emerge tomorrow, and only tomorrow will create yesterday. If we accept the impossibility of fixing meaning, then we have every opportunity for creating it. The conscientious objector, when genuine, is trying to put in motion a certain way of living in the world. They are constructing meaning, building a world on a certain moral foundation. People who wish to marry are also attempting to build lives based on their moral beliefs, striving towards their hopes and aspirations.

In the case of religiously motivated conscientious objectors, the motivations for the objection must be considered in their full and rich theological context. As I have tried to elucidate, there are grounds for finding resonance across religions and secular ideas of union and marriage and some of these demand a kind of reckoning for those who take a firm theological stance. For Christians, *sacerdotium commune* (the common priesthood) refers to participation in the priesthood of Christ, applicable to all baptized persons by virtue of their baptism. It implies that every Christian is called to exercise those gifts of God bestowed upon them in the spirit of *imago dei* and to participate in the salvific mission entrusted by Christ to all the faithful. Furthermore, this participation may require a spiritual or pastoral (as seen above) approach to theology. To honor one's duties as a Christian (but this applies to all religious contexts) means embarking on a lifelong quest to evolve one's understanding of how

best to apply theological teachings, not only considering one's own unstoppable development, but also in the context of a constantly mutating world.

Pope Francis was perhaps among the most prodigious in his efforts to rethink the application of theology to mundane realities, his rethinking of blessings being just one of many openings. Catholicism is a universalist and universalizing faith whose mission is the salvation of souls. How could one possibly be true to such a mission by denying others their own attempt to achieve their life goals? In modern parlance, live their best life? If conscientious objection is made as a means of putting faith into action, it must contend with the possibility that the very values called into play may be betrayed because they are denied to the person who becomes the object of objection. In other words, and as argued above, if non-Catholics share the *moral ideals*—even if the morphological iterations differ—of devotion, solidarity, mutual care and support, self-sacrifice, care for children, and so on, denying others the possibility of putting these into action would cause those values to collapse in on themselves. Perhaps even more so because Catholicism is a universalizing tradition, it is not possible to be true to moral values while denying them to someone else. The 'common priesthood' does not allow it.[111]

When Jesus famously said "The Sabbath was made for man, not man for the Sabbath"[112] he was referring a pastoral understanding of theological rules that are made *for humans*, for their flourishing. Humans were not made to put into action the institute of marriage. Marriage was made to support humans in their uniting. The religious quest is to constantly evaluate the categories that are put into play in any given action, and to seek choices (in which some aspects will be privileged over others) that are organically and holistically true to the deep core of faith. The slogan popularized by the acronym printed on bracelets and such, WWJD or, 'What would Jesus do?' is a call to origins, an *interpretative* request. The bible is not an instruction manual; it is book of guidance but whose paths to meaning must be constructed by believers.

Fortuitously, and assuming it is considered from a processive perspective, secular law has a not-so-distant character. Legal codifications, in their more ethical manifestations are guidelines that can never be written in stone. They are constantly put to the test by ever changing societal actors. The meaning of a given norm can only be understood in the future, through its varying interpretations and applications. As discussed above, the Italian jurisprudence regarding the recognition of adoptions performed abroad by same-sex couples is forging a new path based on the rights of the child, respect for international law, respect for the family and the social development and realization of the individual, and so on. What are today exceptions to a legal code that otherwise denies adoption to

[111] The iconic biblical reference is of course to Matthew 22:37-40, "And he said to him, 'You shall love the Lord your God with all your heart and with all your soul and with all your mind. This is the great and first commandment. And a second is like it: You shall love your neighbor as yourself. On these two commandments depend all the Law and the Prophets.'"
[112] (Mark 2:27).

same-sex couples may not be so forever.[113] When enough exceptions are repeated, they become the rule[114].

It is all but undeniable that both 'sides' share some ideas about what marriage is and does. A process of legal intercultural translational, as I have tried to show, would aim to both draw out those commonalities and recognize, respectfully, the divergences. The legal conclusions reached will need to protect even a variety of perspectives on how best to protect couples and families, if justice continues to be the goal and the legal system remains democratic (neither of which can be assumed). In every case, 'listening' to the other is necessary, and in the end, unavoidable. The law in a democratic system must seek to understand the exigencies of minority positions if it is to execute justice[115]. Just so, people of faith must listen to others, even those they would like to convert, if they are to achieve their salvific mission. If a person's conscience consists of their deepest moral beliefs which provide for them uniquely strong or weighty reasons for doing or refraining from doing a certain thing, what better source of law could there be? The trick is that in a democracy *every* person's conscience counts, we are *all* filled with 'uniquely strong' beliefs, which are, in the end, maybe not so unique. At least that would be the hope. The idea of values collapsing in on themselves may sound destructive, but in the end it is precisely what leads to the creative emergence of new forms of protection for 'verified'—*made true* through processes of intercultural translation—values. What those values will be and how they will be supported cannot be known in advance. What is certain is that continuing to hide behind unspoken assumptions of what marriage is (or their tautological assertions) and yielding conscientious objection as a weapon to inflict discrimination on others will only escalate conflict; it will likely even weaken the ability to understand what one *believes oneself to believe*. Intercultural translation is uncomfortable in part because of its call to open up (or collapse) systems of meaning through engagement with others. But it is precisely this shared discomposition that enables transformation and the regeneration of categories of meaning, or profiles of significance. The authenticity of newly generated categorical profiles comes from mutual engagement with otherness, because only in the mirror of the other can we see ourselves. An idea which, perhaps ironically, also resides within the anthropological roots of marriage. The 'patrimony of humanity' is not so much marriage in itself as the result of a 'conscious' and responsible exercise of otherness-

[113] While adoption is not yet supported, registration of children born abroad is slowly becoming normalized. To wit, on June 24, 2025, on the occasion of the Pride Parade, the mayor of Genoa Silvia Salis announced that from the following day forward the Municipality of Genoa, would begin registering children born to two women. Such registration had been strongly opposed by the two previous center-right administrations, led by former mayor Marco Bucci, thanks to a "regulatory loophole," while other municipalities, such as Bologna, Palermo, Turin, Milan, and Naples, had already begun registering children. See https://tg24.sky.it/politica/2025/06/24/genova-silvia-salis-registra-figli-coppie-donne

[114] There are, of course, countless examples of such transformations in law and society. To take just a few that are relevant to the themes of this essay, in 1791 France became the first country to take homosexual acts out of the criminal law. In 1979 the Netherlands became the first country to offer legal recognition of de facto couples, and in 1981 Norway became the first country to explicitly prohibit anti-homosexual discrimination. Today, more than 80 countries have laws prohibiting discrimination based on sexual orientation in employment, with a smaller number offering constitutional protections. Denmark became the first country to introduce registered partnerships for same-sex couples in 1989, and today same-sex marriage is legal in 38 countries throughout the world. These transformations have been dubbed a 'standard sequence' as noted [...] "observing that, at least in Europe, there is almost a 'standard sequence' in which homosexuality is being legally recognized in more and more countries: a process that typically starts with the decriminalization of sex between consenting adults and the equalization of ages of consent, followed by the introduction of anti-discrimination legislation and later by recognition of same-sex partners and possibly same-sex parenting)", Waaldijk (2013:189).

[115] Alicino (2015).

responsive and relational *freedom*. For a peaceful coexistence, we must be willing to construct a common sense that is genuinely common, because only in this way can everyone be free. Alterity is not going anywhere; we have always contained multitudes, and this should be seen as a strength, not a weakness. It is impossible to know from which corner a new solution will emerge, but the first step is to make space for its emergence.

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