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THE UNIVERSITY OF QUEENSLAND  
ST LEO'S COLLEGE

ARCHBISHOP SIR JAMES DUHIG MEMORIAL  
LECTURE

7 AUGUST 2018

ARCHBISHOP DUHIG, POPE FRANCIS AND  
THE LGBT FAITHFUL – A PROTESTANT  
ACKNOWLEDGMENT

The Hon. Michael Kirby AC CMG

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*INTRODUCTION*

It is a privilege to be asked to deliver the thirty ninth memorial lecture that honours the memory of Archbishop Sir James Duhig KCMG, the third Roman Catholic Archbishop of Brisbane (1917-1965). Most of my predecessors in the series have been Australians raised as Catholics, although John Howard, as Prime Minister, was, like me, a Protestant exception.

Most of us derive our religious allegiance from our parents. We absorb its traditions, become aware of its liturgy and recognise its strengths and human failings. If we adhere to it, this Faith becomes a part of us, especially cherished because it reminds us of the precious years of childhood, our families and our educational experiences. Not only was I

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\* Text for the author's thirty ninth Duhig Lecture, delivered at St Leo's College Brisbane, 7 August 2018.

\*\* Justice of the High Court of Australia (1996-2009); Co-Chair of the International Bar Association's Human Rights Institute (2018-).

*not* raised in the doctrines and traditions of the Catholic Church, I must confess that my upbringing contained elements of the hostile denominationalism that was still common in Australia in the middle of the last century.

Archbishop Duhig's family derived, like mine, from Ireland. His parents came from County Limerick. Whereas my father's family were likewise from Limerick, my mother's forebears migrated from County Antrim in the early 1900s. They were not Catholics. Their family home is still there in Cullybacky, near Ballymena in Northern Ireland. They were adherents of the Church of Ireland. In my childhood, whilst ironing, my mother would speak to me of her family and of the divide between Catholics and Protestants in Ireland. These conversations would frequently turn to the instruction she had received from her father about the errors of Rome, the blessings of the Reformation, and the merits of British rule, then extending over a quarter of humanity, including to us in Australia. Mothers, whether Catholic or Protestant, play an important role in passing on religious beliefs and family traditions. My traditions were basically those of the Church of Ireland, as carried on in Australia by the Church of England, as that denomination was still known in my youth.

My school education was in public schools. Because of the separate system of Catholic school education, I met few Roman Catholic students at my schools. In accordance with a compromise that had been hammered out in New South Wales for public education in the 19<sup>th</sup> century,<sup>1</sup> such schools were secular but permitted a single period each

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<sup>1</sup> *Public Instruction Act 1880* (NSW), s 17, proviso. Similar provisions were enacted in other Australian colonies and States and a number still exist.

the week for instruction in “scripture”. The organs of church and state were basically kept separate in Australia and that included in education.

I attended the local Church of England parish church. I cannot recall any instruction there that was specifically hostile to Rome. We had all then recently gone through the Second World War together. Nor, for that matter was sexual morality much discussed. The parish priest (Reverend C.W. Dillon) had been an army chaplain. His focus was upon the need to avoid further wars and to proclaim a universal morality. To this end, he invited Pastor Martin Niemöller, of the German Lutheran Church, to speak to his congregation whilst in Australia about the importance of resisting the tyranny of Nazis and people like them. Anglicanism was the most numerous religion of Australia in those days. When I was confirmed as a member of that church, I was aware that I had joined the big battalions. Apart from occasionally listening to unsettling radio broadcasts by Dr Rumble,<sup>2</sup> Catholicism was basically a mystery, operating separately in its own educational institutions and social networks.

These things changed when I commenced my university studies at the University of Sydney in 1956. There I met many students whose education had been in Catholic schools. One, with whom I shared lecture notes at law school, was Murray Gleeson, an outstanding student and debater who had been educated at St Joseph’s College in Sydney. He would sometimes introduce me to his teachers and other Catholic acquaintances, some of whom were religious. He was loyal to his church, as I was to mine. He and I later served together on the Supreme

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<sup>2</sup> Dr Leslie Rumble MSC was a former priest of the Church of England who conducted a weekly question box program in Sydney on radio 2SM and for 20 years was Cardinal Gilroy’s official spokesman. His style was polemical and sometimes terrifying to young Protestants. See John Luttrell, *Gilroy – An Obedient Life* (St Pauls, Sydney, 2017)138 (hereafter Luttrell).

Court of New South Wales and the High Court of Australia, he as Chief Justice.

Seemingly believing that I deserved to be rescued from my religious error, Murray Gleeson at University would sometimes drop hints that I should “take instruction” to switch over to the Catholic Church. He even presented me with a book *Inside the Vatican*, hoping that this might steer me in the right direction. The book had precisely the opposite impact on me. Preoccupying my thinking at the time was the growing realisation of my sexual orientation and its implications. This was a reality that I knew I was expected to keep to myself. Fortunately, my discovery coincided with the widespread publicity given to the research of Alfred Kinsey and his colleagues in the United States. He taught that homosexuality was an insignificant natural variation in the human (and other mammalian) species; that it was not all that rare; and it affected many people even if they were obliged to keep that fact to themselves.<sup>3</sup>

Fortunately for me, I was rescued from the prolonged distractions of student politics when I met my partner, Johan van Vloten, in February 1969. Here again I knew the obligation of “don’t ask don’t tell”. During the early decades, our long relationship had to be kept to ourselves and only gradually emerged to public gaze after my judicial appointment in 1975 and specifically when the AIDS epidemic reached Australia in the 1980s. Johan and I then began to lose close friends to its then untreatable

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<sup>3</sup> Alfred C. Kinsey et al, *Sexual Behaviour in the Human Male* (1948) and *Sexual Behaviour in the Human Female* (1953). Cf W.K. Eskridge Jr and M.D. Hunter, *Sexuality, Gender and the Law* (University Casebook Series Foundation Press Inc, New York, 1997) 145 ff. See also A.J. Brown, *Michael Kirby: Paradoxes and Principles* (Federation Press, 2011, Sydney) 31-32 (hereafter A.J. Brown) and M. D. Kirby, *A Private Life* (Allen & Unwin, Sydney, 2012) 29-33 (hereafter *Private Life*).

impact. I honour the leading role that was played at that time by the Sisters of Charity and St Vincent's Hospital in Sydney.

At the time my relationship with Johan began, neither of us could have expected that so many changes in the law and in society would occur affecting LGBT rights as have happened in the past 50 years. Some changes have been slow in coming. However, the spread of the changes and the depth of their acceptance in many countries, including Australia, have proved nothing short of a social revolution. Despite that, many churches and faith communities have, until very recently, resisted change and continued to insist that discrimination, denial of civic equality and exclusion of full membership of the religious community were unarguable and immutable requirements of scripture and of longstanding religious tradition. This stance may have softened somewhat in Australia in recent years. However, it is still a significant feature of religious communities (not only Christian) in many countries and of their places of worship and places of religious instruction. Whilst change is happening, it is coming slowly. It often faces fierce resistance.

To derive some possible lessons from these changes for this Duhig Lecture, I propose to divide my remarks into three parts:

- \* First, I will say something about the life of Archbishop Duhig and suggest some lessons from his life for the contemporary challenges of Christian Churches, including the Catholic Church, in addressing LGBT issues. I do not believe that memorial lectures should ignore any lessons that may emerge from the life of the person being honoured. Certainly, I honour Archbishop Duhig;

- \* Secondly, I will return to the urgent context that remains important today for the resolution of the inconsistencies and incompatibilities in the way faith organisations are tackling the challenges of sexual minorities, specifically the global AIDS epidemic; and
- \* Thirdly, I will reflect on the significant effect that the election of Pope Francis seems to be having for the LGBT community both in the Catholic Church and in other religious institutions, including my own Church. I will conclude with some remarks about the slowness of the Christian Churches in Australia to embrace change and to escape from the inconsistent disharmony of their present responses to a full embrace of the dignity and needs of LGBT people in the present religious and social context.

### *ARCHBISHOP JAMES DUHIG*

The life of Archbishop Duhig is recorded in his book *Crowded Years*,<sup>4</sup> comprising various essays that he had written to that time. An extensive note on his life by T.P. Boland appears in the *Australian Dictionary of Biography*.<sup>5</sup> Various entries about his life also appear on the internet.<sup>6</sup> For my purposes it is sufficient to concentrate on the broad contours of his life and ministry. And to consider the way, in his own time, he tackled the challenges he had to face.

Like most of the leaders of the Catholic Church in Australia in the 19<sup>th</sup> and early 20<sup>th</sup> Centuries, Archbishop Duhig was born in Ireland. He was born

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<sup>4</sup> 1947, Angus & Robertson, see <http://trove.nla.com.au>.

<sup>5</sup> T.P. Boland, "Duhig, Sir James (1871-1965)", *Australian Dictionary of Biography* (1891-1939) Vol. 8, 356 (hereafter "Boland")

<sup>6</sup> Including the entry on James Duhig in *Wikipedia* available [https://en.wikipedia.org/wiki/james\\_duhig](https://en.wikipedia.org/wiki/james_duhig).

in September 1871. His father had died at an early age and the future archbishop was raised by his mother to whom he was devoted. In 1885 she brought him and most of her children to Australia, where they settled. He was educated at St Joseph's College, Gregory Terrace in Brisbane, where his talent was noticed and his interest in a vocation in the Church was encouraged.

In 1896, he travelled to Rome for higher education. This opportunity afforded him a different experience to that of most of the Irish leaders of the Church. In effect, it helped to make him European rather than specifically Irish in his general outlook. However, like many Irish people of his era, he was not anti-British. Far from it. Like his later colleague, Cardinal N.T. Gilroy, he was not republican and there were many aspects of his British heritage that he admired.<sup>7</sup>

Soon after his return to Australia in 1896 as a priest, he was assigned to St Stephen's Cathedral in Brisbane where his particular talent in administration was refined. In 1905 he was consecrated Catholic Bishop of Rockhampton. This was a post he held until 1917 when Archbishop Michael Kelly of Sydney consecrated him Archbishop of Brisbane.<sup>8</sup> Unlike Kelly's counterpart in Melbourne, Archbishop Mannix, Duhig supported the British and Australian engagement in the Great War. The conduct of two plebiscites in 1916 and 1917 concerning overseas military service by Australians, drew no opposition from him. He condemned the Easter Rebellion in Dublin in 1916 and lamented the later division of Ireland and its sectarian consequences, including in Australia.

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<sup>7</sup> Reflected in his acceptance of a knighthood and earlier the honour of Companion of the Order of St Michael and St George. Tobin, 358; cf Cardinal Gilroy in Luttrell, 374-5.

<sup>8</sup> Tobin, loc cit.



His great project to build the *Holy Name Cathedral* in Brisbane fell through in acrimony, in partial consequence of the advent of the Great Depression.<sup>9</sup> From this spectacular setback, he turned to the building of hundreds of parish churches throughout his huge archdiocese and the promotion of Catholic schools for the separate education of the children of the faithful. He also became strongly involved in university education, establishing Catholic colleges in the University of Queensland, including St Leo's, and serving for decades on the University Senate which named the University Library after him.

Whilst Archbishop Duhig was quite conservative in the political positions that he embraced (including opposition to bank nationalisation in the 1940s and support for the legal dissolution for the Australian Communist Party in the 1950s) he was in other ways enlightened and modern. He distained rabid Irish nationalism and later accepted imperial honours, including an order of knighthood. He was devoted to improving the social position of his flock through education. He knew that this would only happen if increasing numbers completed high school and proceeded to university. He encouraged debating and literary interests. He resisted a highly centralised administration of church affairs with its concentration on hierarchical power and rules. He was committed to the role of the laity in the Catholic Church, a view which at first appeared disharmonious with the imperial view of the papacy held by Pope Pius XII. In this regard, his views preceded, but were overtaken by, the Second Vatican Council of 1962-5.

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<sup>9</sup> Tobin, 357.

Archbishop Duhig's willingness to listen to, and learn from, the laity helped him to avoid some of the apparent remoteness of other leaders of the Church in Australia who expected that their word would be obeyed uncritically because of their offices. In this sense, he effectively mirrored, and anticipated, the predominant response to the encyclical of Pope Paul VI at the conclusion of the Vatican Council, *Humanae Vitae* on the gulf that subsequently opened up between the instruction of the Church on sexual matters, particularly contraception, and the actual conduct of the laity. His posture was one of engagement and listening. This was specially relevant in the more educated laity that was, in part, a product of his educational passion.

The reforms in the Church, in turn, reflected big changes that were happening everywhere in Australian society and in its educational expansion. An imperial control of the laity was less likely to survive in such times. James Duhig appreciated this. On his retirement as Archbishop in 1965 his service was widely lauded. He was comfortable with the enhanced expectations of ecumenism. He formed friendly relations with leaders of other churches in Queensland. Although Irish by birth, his outreach and ecumenical spirit were more Australian and in tune with his era than the remote autocracy that marked other church leaders of the time.<sup>10</sup> We study history and the lives of earlier leaders because, from that study, we can secure important reflections on earlier times and occasional lessons for our own.

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<sup>10</sup> Cf. Luttrell, above n. 2, 395 ff.

## *AIDS AND SEXUALITY*

Archbishop Duhig lived and died before the world became aware of AIDS. The earliest cases of this epidemic were identified in the early 1980s. One of “the key populations” primarily affected by AIDS were gay men in developed countries. There were other vulnerable groups, including people who underwent blood transfusions for haemophilia, sex workers, people who injected drugs and prisoners and other persons in confined detention. But the noisiest minority were young gay men. This fact was brought home to Johan and me by the loss of several friends in the 1980s. That loss resulted in our engagement, in different ways, with the AIDS epidemic. Johan became an “Ankali”, providing friendship and voluntary work for people living with HIV and AIDS. I became involved in activities, mostly international, addressing the governmental responses worldwide to the epidemic.

In the earliest days there were few useful medications. Much of the international effort was directed after 1987 by a Jewish American epidemiologist, Dr Jonathan Mann. He insisted that a completely different approach should be taken to the AIDS epidemic. Instead of isolating people most at risk, the most effective response was, paradoxically, to win the confidence of, and engage with, such marginalised communities. In many countries, including Australia, this was difficult. The law frequently targeted the key populations and criminalised gay men for their sexual acts even where consensual, occurring in private, and involving consenting adults of full capacity. Society isolated such people and turned its back. Religious leaders taught that they were manifestations of evil, condemned by the scriptures.

The lessons of Jonathan Mann were increasingly accepted in developed countries. This contributed to the reduction in the rates of HIV infection. Important leadership was given in Australia by scientists and specialists in public health. These included Professor David Cooper of the University of New South Wales, who was elected President of the International AIDS Society, and Professor Charles Gilks of the University of Queensland, who played a leading role in the work of the World Health Organisation and UNAIDS. Professor Gilks and I met recently in Amsterdam at the International AIDS Society's Conference. Such conferences were accompanied by a number of developments reinforcing the paradoxical lessons of outreach to marginalised populations.

Scientists in Australia issued a strong statement urging the need to continue Jonathan Mann's outreach strategy to minorities at special risk.<sup>11</sup> The United Nations Development Programme (UNDP) convened particular sessions. These included one updating an earlier UNDP report, to which I had participated, of the Global Commission on HIV and the Law.<sup>12</sup> The UNDP also convened a special expert group to consider the initiatives that needed to be taken to expand the United Nations engagement with LGBT people worldwide. That strategy was not only important to help contain the spread of HIV and AIDS. It was also important to overcome the remaining criminal laws that isolate and stigmatise LGBT people. Moreover, that approach was essential if the United Nations *Strategic Development Goals* were to be fulfilled,

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<sup>11</sup> François Barré-Sinoussi et al, "Expert consensus statement on the science of HIV in the conflict of criminal law" *Journal of the International AIDS Society* 2018, 21 at 25161. L-G Bekker et al, "Advancing Global Health and Strengthening the HIV Response in the Era of the Sustainable Development Goals: The International AIDS Society – Lancet Commission" in *The Lancet* (July 2018) available: [www.thelancet.com](http://www.thelancet.com), 1-2.

<sup>12</sup> United Nations Development Programme, Global Commission on HIV and the Law, *Risks, Rights and Health* (July 2012) ch. 3.3 "Men Who Have Sex with Men" pp 44-51. See also *Supplement* (July 2018), 37 ("Boys and Men: The Price of Masculinity").

promising access by 2030, for people everywhere, to medical therapies and technologies essential to life and wellbeing. In convening this expert group, UNDP is following earlier initiatives of the UN High Commissioner for Human Rights in supporting a new mandate of the UN Human Rights Council, with responsibilities as an Independent Expert on Sexual Orientation and Gender Identity (SOGI).

Global developments of this kind have not occurred without opposition. In the Russian Federation and many of the countries of Eastern Europe and Central Asia, new laws have been enacted penalising LGBT advocates in so far as they challenge “traditional” concepts of sexual identity and human relationships. Many Arab and Islamic countries are also strongly opposed to such reform initiatives. A cohort of countries that regularly oppose changes to the laws inherited from colonial times is found in the English-speaking countries of the Commonwealth of Nations. A number of these opposing nations joined together to attempt to terminate of the UN human rights mandate on SOGI.

The attempts to terminate the SOGI mandate had the support of many national representatives at the General Assembly of the United Nations which were members of the Organisation of Islamic Cooperation (OIC). They also had the support of the representative of the Holy See. Votes were persistently pressed to terminate the mandate. They came within a whisker of success. However, ultimately, the mandate survived.<sup>13</sup>

Mr Victor Madrigal-Borloz of Costa Rica is presently serving as the independent expert on SOGI. However, his mandate continues to have

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<sup>13</sup> M.D. Kirby, “A Close and Curious Vote Upholds the New UN Mandate on Sexual Orientation and Gender Identity” [2017] EHRLR (#1) 37.

multiple opponents. In part, their opposition is bad news for the strategy of outreach that has proved successful in responding to the HIV epidemic. But in part, it is also important for reducing the violence and discrimination against LGBT people worldwide, based on their sexual orientation and gender identity. Opponents of the mandate, and of other initiatives of the United Nations in this area, repeatedly emphasise the need for the UN to respect the distinctive cultural norms and religious beliefs of opponents. However, these norms and beliefs need to be assessed in the light of the harms and disadvantages occasioned by them to millions of people on every continent on the basis of their sexuality.

Although, important changes have been secured in countries such as Australia, to remove the criminal laws that target LGBT people and by the adoption of new laws to permit relationship recognition,<sup>14</sup> in many other parts of the world the ordinary lives of LGBT people are greatly burdened by legal, cultural and religious hostility. This is the actuality of the lives of the key populations. The hostile laws in the Russian Federation, Eastern Europe and Central Asia have been strongly supported by Orthodox Christian Churches. The hostile laws in the Caribbean, African and other Commonwealth countries have been supported by Christian churches and by the consequential timidity over law reform on the part of politicians. The laws in Islamic countries have been supported by the Organisation of Islamic Cooperation (OIC) and by Muslim faith leaders. Even in Hindu and Buddhist societies the path of reform has been impeded by traditional viewpoints that are now hard to reconcile with the recent advances in

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<sup>14</sup> M.D. Kirby, "Marriage Equality, Law and the Tale of Three Cities" (2016), 22 *The University of Auckland Law Review*, page 11; and M.D. Kirby, "The Centenary of Sir Harry Gibbs: Constitutional Methodology, Lawmaking and the Marriage Plebiscite" (2016) 35 *University of Queensland LJ*, 239.

social science, occurring in the footsteps of Alfred Kinsey over the past 50 years.

Reform is also sometimes difficult to attain in developing countries. Although recent statements of the Vatican have insisted that violence and unfair discrimination against LGBT people cannot be tolerated, this is a relatively new development. It is also inconsistent with other messages of hostility to the LGBT “lifestyle” Before the election of Pope Francis in 2013, the Holy See strongly contested changes in the legal, educational and social contexts upon the basis that these would undermine accepted family values and promote unhealthy conduct, contrary to the order of nature. These attitudes of the organised Catholic Church have been reinforced by many evangelical Protestant advocates with their hostility against gay people. It is also extremely rare to hear any voices in the Islamic world raised against such violence and discrimination. Far from things improving for LGBT people, the situation in most Islamic countries is deteriorating, including in Indonesia, Bangladesh, Brunei, Afghanistan, Iran, Iraq and Egypt. All of these countries voted to terminate the mandate of the UN independent expert on SOGI that were only narrowly defeated.

### *CHANGES AND LEADERSHIP IN THE HOLY SEE*

During his service as Prefect of the Congregation on the Doctrine for the Faith (CDF), Cardinal Josef Ratzinger (later Pope Benedict XVI) expressed views on the “homosexual condition itself”. Whilst indicating that “the particular inclination of the homosexual person is not a sin, “he suggested that, “It is more or less strong tendency ordered toward an intrinsic moral evil and thus the inclination itself must be seen as an

objective disorder”.<sup>15</sup> He also contested that “sexual orientation” was a human rights issue equivalent to race or ethnicity. He declared that it was “not unjust discrimination to take sexual orientation into account”.<sup>16</sup> He argued that the Catholic Church must “protect man from self-destruction”. These remarks led to much anguish (and some criticism) among LGBT Catholics. This was not ameliorated by the Pope’s insistence that violent malice in speech or conduct against homosexuals was “deplorable” and “deserves condemnation from the Church’s pastors wherever it occurs”.<sup>17</sup>

As one would expect, the statements by Cardinal Ratzinger were anchored in the language of the *Catechism of the Catholic Church*. In its text on “The Vocation to Chastity”, art 2337 states:

“Chastity means the successful integration of sexuality within the person and thus the inner unity of man in his body and spiritual being. Sexuality, in which man’s belonging to the bodily and biological world is expressed, becomes personal and truly human when it is integrated into a relationship of one person to another, in the complete and lifelong mutual gift of a man and a woman.”

The virtue of chastity is therefore upholding the integrity of the person and the integrity of the gift.”<sup>18</sup> Chastity is declared to be a moral virtue to which all baptised persons are called.<sup>19</sup> Lust,<sup>20</sup> masturbation,<sup>21</sup>

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<sup>15</sup> Cardinal Joseph Ratzinger, Letter to the Bishops of the Catholic Church on the pastoral care of homosexual persons, Congregation on the Doctrine for the Faith, Rome, 26 July 2013.

<sup>16</sup> Ibid, 227.

<sup>17</sup> Ibid, loc cit.

<sup>18</sup> Catholic Church, *Catechism*, 2341.

<sup>19</sup> Ibid, 2348.

<sup>20</sup> Id, 2351.

<sup>21</sup> Id, 2352. It is described as an “intrinsically and gravely disordered action.”



fornication;<sup>22</sup> pornography;<sup>23</sup> prostitution<sup>24</sup> and rape<sup>25</sup> are described as outside the permissible expressions of sexuality because “outside of marriage [they are] essentially contrary to its purpose.<sup>26</sup> Rape is described as always “an intrinsically evil act. Graver still is incest.”<sup>27</sup>

Homosexuality is conceded to be largely “unexplained” so far as its “psychological genesis” is concerned. But homosexual acts are described as “acts of great depravity”, so far as Scripture is concerned, and “intrinsically disordered” so far as church tradition is considered. This is said despite the acknowledgement that the number of men and women who have [natural to them] deep seated homosexual tendencies are “not negligible.”<sup>28</sup> Such persons must be “accepted with respect, compassion and sensitivity”.<sup>29</sup> Thus, “unjust discrimination” towards them should be “avoided”. Such persons are, according to the *Catechism*, “called to fulfil God’s will in their lives and, if they are Christians, to unite in the sacrifice of the Lord’s Cross. In response to the difficulties they may encounter from their “condition”,<sup>30</sup> they are “called to chastity”. For them “self-mastery”, “disinterested friendship” together with “prayer and grace” are ordained to gradually and resolutely help them to “approach Christian perfection”.<sup>31</sup>

At least where the fulfilment of what is natural to them in sexual tendencies and desires that may reinforce the deepest friendships and intimate

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<sup>22</sup> Id, 2353.

<sup>23</sup> Id, 2354.

<sup>24</sup> Id, 2355.

<sup>25</sup> Id, 2356.

<sup>26</sup> Id, 2352.

<sup>27</sup> Id, 2356.

<sup>28</sup> Id, 2358.

<sup>29</sup> Id, 2359.

<sup>30</sup> Id, 2358.

<sup>31</sup> Id, 2359.

relationships founded on human love make the suggested solutions of chastity, prayer and grace appear somewhat other worldly. Certainly, they seem unrealistic when addressed to the huge variety of LGBT persons (and others) throughout the world. If Catholic priests, with a declared vocation have found chastity extremely difficult to observe, it is impossible for most human beings. The demand is unreasonable and counter-productive because rarely available and contrary to natural design of human beings that links physical and mental health in most people to the fulfilment of such intimate behaviours. To deny the possibility of sexual fulfilment to millions of people in our world will be seen by most LGBT people (and others) as irrational and even itself unnatural. It appears to evidence what happens when 20<sup>th</sup> century studies of the science of sexual behaviour in human beings is ignored. That science suggests that the one sexual practice that is intolerable and completely unknown in species other than human beings, is celibacy.

To place such prohibitions alongside injunctions against discouraging violence and unjust discrimination is commonly viewed, certainly by most LGBT people as sending “inconsistent messages” to the recipients of such advice. Doubtless lives of chastity and special friendships without sexual intimacy can be achieved by a few. However, it is by no means an easy journey. It is quite unsuitable for the millions of LGBT people worldwide to whom the uncongenial instruction is addressed. Because, as a strategy of controlling sexual conduct in millions, it is doomed to fail in most instances, it is harmful not only to the persons immediately involved but also to the sexual partners whom such persons choose, especially in the context of the AIDS epidemic and the crisis of underaged sexual abuse.

<sup>32</sup> It is also harmful to respect an institution which demands it as a natural and realistic organisation preaching a message of human love.

Insofar as the Catholic and other Christian Churches or different faith-based organisations, resist acceptance of private, adult, consensual sexual conduct and reject the use of condoms and other protective devices on the ground of their “immorality”, they run counter to the repeated advice of UN bodies that has been part of the global strategy against the spread of HIV and similar diseases transmitted by sexual activity.

Critics of the position adopted by religious institutions that adhere to such instruction must, of course, be familiar with the passages of scripture and long-standing traditions of the Church that support the foregoing instructions. So long as such understandings of scripture and tradition exist, it is extremely difficult to persuade religious adherents to accept change. For many, belief in the inerrancy of scripture, <sup>33</sup> apparently demanding death for those guilty of such heinous sins, needs to be countered with persuasive contrary arguments, grounded in science and arguments of rational persuasion. But once exceptions are accepted, the question becomes where they will lead. Inevitably, that question raises the provision of protection against violence and discrimination and differentiation in legal rights and specifically the circumstances under which relationships will be recognised and protected because of the individual and societal advantages of the same.

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<sup>32</sup> Australia, *Report of the Royal Commission into Institutional Response to Child Sexual Abuse, Final Report*, 2017, vol. 16, book 2, section 13.11.7 (pp 731-770) “Celibacy and Clericalism”.

<sup>33</sup> Such as *Genesis*, Ch.19; *Leviticus* Ch. 20, v.13.

It is into this moral and spiritual environment that the election of Pope Francis intruded. Cardinal Bergoglio of Argentina was elected Pope on 13 March 2013. From the start he took many steps that seemed to indicate the choice of a new path, certainly a new tone, on LGBT issues. This, his papal name itself appeared a signal of his devotion to personal humility. Many actions underlined his commitment to engagement with the laity and emphasis upon mercy. These were accompanied by special commitment to the poor and also and disadvantaged and also an increased embrace of ecumenical dialogue. His decision to live in a guesthouse rather than the palatial papal apartments, the comparative simplicity of his vestments and his embrace of several instances of prudent change have indicated new directions for the papacy whilst continuing with core teaching on such issues as the ordination and consecration of women; the legal status of abortion; and the issue of priestly celibacy.

However, virtually from the start, Pope Francis indicated his support for measured actions affecting sexual minorities. These have included:

- \* As Pope, including in an interview on the aircraft returning him to Rome from Argentina soon after his election, he answered questions on gays in the Church. He became the first Pope to use the colloquial expression “gay”. Specifically, he said: “If someone is gay and is searching for the Lord and has good will, then who am I to judge him?”<sup>34</sup> He even invoked, in support of this approach, the “beautiful” language of the *Catechism*, apparently contemplating the

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<sup>34</sup> Press Conference of Pope Francis during the return Flight, Holy See, 28 July 2013.

passages that rejected violence and unjust discrimination whilst overlooking the language about the “intrinsic evil” of homosexuality;

- \* He became the first Pope to receive in audience a transgender man, who had transitioned from female to male and who attended the occasion with his wife;
- \* In Chile, he met a victim of sexual abuse by a priest who had pursued the accusation of this wrong although warned that it exposed him to public revelation of his sexual orientation. To this person (who was not deterred), the Pope said: “God made you like this. God loves you like this. The Pope loves you like this and you should love yourself and not worry about what other people say”,<sup>35</sup>
- \* Whilst opposing same-sex marriage, he was publicly reported as receiving, whilst in the United States, a gay friend from his days in Argentina, together with that friend’s male partner; and
- \* In July 2018 a statement issued by the Vatican referred, for the first time to the position of “LGBT” persons an identifying category. In doing so the Holy See moved away from identification of such persons by reference to their particular sexual acts. This had earlier been a point of differentiation and apparent rejection of the wholeness of the identity of the persons concerned.<sup>36</sup>

Whilst other acts and statements by Pope Francis have been disappointing to LGBT admirers, the progress achieved under his leadership stands out, especially because of the seemingly

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<sup>35</sup> Pope Francis tells gay man “God made you like this”, *The Guardian*, retrieved 12 June 2018.

<sup>36</sup> Olivia Rudgard, “Vatican recognises ‘LGBT’ for first time” *The Telegraph* (London) 19 June 2018.

uncompromising position adopted by the immediately preceding Popes, John Paul II and Benedict XVI. The increasing change of tone involved has been important. It reduces significantly the “inconsistent signals” expressed in the Vatican’s rhetoric and in some of its formal actions.<sup>37</sup>

Small but significant steps were taken by Pope Francis, offering other symbols of change. Thus he reached out to other Christian churches, specifically to the Lutherans in Sweden as they commemorated the opening of the 500<sup>th</sup> year of Martin Luther’s actions in 1517 that had commenced the Reformation. There was also his reported assertion to the Primate of the Anglican Church in South America, resident in Argentina, that he regarded the personal ordinariates, established for former Anglican priests who wished to be recognised as priests of the Roman Church as “quite unnecessary”.<sup>38</sup> Such changes of tone have obviously disclaimed an imperious dismissal of new ideas. They demonstrated the embrace of notions that seem more in harmony with contemporary values, including on matters of sex and particularly amongst the young.

In an article published recently in the *New York Times*,<sup>39</sup> the director of the American Catholic organisation Faith in Public Life, John Gehring, illustrated also the willingness of other leaders of the Catholic Church in the United States to pick up from Pope Francis and to press further the logic to which the Pope’s interventions point, most notably in connection with LGBT people within the Church:

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<sup>37</sup> For example, when France in 2016 named as its intended Ambassador to the Holy See a distinguished diplomat who was openly gay, the credentials were left unaccepted until a different nominee was propounded.

<sup>38</sup> St James Martin, “Why I wrote about the Catholic Church and the LGBT community” *The Washington Post*, 31 May 2017. Defenders of the Ordinates suggested that the words used were those of the Anglican Bishop of Argentina, Bishop Gregory Venables, and not those of the Pope.

<sup>39</sup> *New York Times* (International Edition) 7 July 2018.

- \* Cardinal Joseph Tobin (Newark) welcomed a pilgrimage of LGBT Catholics to the city's cathedral in 2017;<sup>40</sup>
  
- \* Cardinal Blase Cupich of Chicago called for “real not rhetorical” respect for gays and lesbians by the Church. He declared that the 2015 decision of the Supreme Court of the United States, opening up the status of marriage throughout that country to LGBT persons (which the Cardinal had earlier opposed), once given effect, provided an opportunity “for mature and serene reflections” as to what followed now that the legality and actuality of such marriages had changed;
  
- \* Cardinal Cupich proposed specifically that Church leaders in the United States should consider the proposal of the Vice-President of the German Catholic Bishops’ Conference, Bishop Franz-Josef Bode, that some form of blessings for Catholics in same-sex relationships might be considered, in response to the new “political reality”.<sup>41</sup>
  
- \* Given the recent dismissal of more than 70 LGBT church employees and teachers in the United States in recent times because of their status, a seemingly unjust differentiation was sharply disclosed that contrasted with the way heterosexual employees were treated although, for example using contraception or engaging in sexual activity before marriage;

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<sup>40</sup> Cardinal Tobin quoted by Gehring in *New York Times*, n.39.

<sup>41</sup> Cardinal Cupich quoted in Gehring, *ibid.*

- \* Recognising that young people were being driven away from the Church because of its opposition to LGBT realities,<sup>42</sup> Bishop John Stowe of Lexington Kentucky, declared that Church should take genuine steps to listen to their voices and to “make sure that [this undertaking] is more than just an applause line”;<sup>43</sup>
- \* The July 2018 issue of the *Catholic* magazine in the United States explained the situation of a Catholic deacon in a Florida diocese of the Church who movingly described the challenge presented by his transgender daughter to the Church’s previous rejection of “gender ideology”, a term used “to discredit the push for transgender rights”;<sup>44</sup> and
- \* In a Vatican sponsored world meeting of families in Dublin in 2018 the prominent American Jesuit priest and writer, Rev James Martin, was given the platform to urge the “building of bridges” with LGBT people. This call was in contrast to the previous conference where the discussion of LGBT issues was permitted to involve only gay Catholics who spoke about chastity, as the only seemingly tolerable stance permitted, consistent with the traditional of stance of the Church.

## CONCLUSION AND CONTRAST

The long list of distinguished leaders of the Catholic Church in the United States, collected by John Gehring, and other like studies, contrast

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<sup>42</sup> Cf B. Salt “Decline in belief doesn’t mean it’s fading away”, *Weekend Australian*, 11-12 August 2018, 19 pointing to the rise in “no religious affiliation” in the Australian census in the 21<sup>st</sup> Century and a continuing fall in the proportion of the population identifying as Catholic.

<sup>43</sup> Bishop Stone quoted *ibid*, *loc cit*.

<sup>44</sup> Deacon in St Petersburg, Florida, quoted in Gehring, *loc cit*.



markedly with the overall silence of the reformist viewpoint amongst leaders of the Catholic Church in Australia. Perhaps in the United States, the first amendment to the Constitution encourages all citizens, including religious, to speak up for their beliefs, in the conviction that doing so contributes ultimately to a dialogue that may be messy and even somewhat undisciplined but is a more genuine reflection of evolving viewpoints. *E pluribus unum* is, after all, the motto of the United States of America. By way of contrast, the motto of Australia is the partly self-congratulatory commitment to “Advance Australia”.

The only notable Australian Catholic, still in office, whom I can recall speaking up for LGBT rights (whilst acknowledging the still prevailing doctrines) is Rev. Professor Frank Brennan SJ. During the national debate in Australia over same-sex marriage, Fr Brennan regularly explained, in speeches published in *Eureka Street* and other church friendly bulletins, the need for hearing other points of view.<sup>45</sup> The country that would support the ‘White Australia’ policy for 60 years and deny land rights for its indigenous people for 150 years and defend criminalisation of LGBT people long after that punishment had been repealed in England is still not vocal in advocating reform and change, least of all within the Church.

Clearly, a measure of discipline is needed in any complex organisation, including a spiritual enterprise like a national and global church. In my own Anglican denomination, there are likewise very few voices to challenge the institutional hostility towards LGBT members. Nevertheless, such voices do exist. At the time of the postal survey on

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<sup>45</sup> See e.g. Rev. Frank Brennan, ‘Religious freedom in an age of equality’ – address of the Freedom for Faith Conference; Melbourne, 23 September 2016 published *Eureka Street* online; Fr Frank Brennan, “Same Sex Marriage and Freedom of Religion”, 14 November 2017, published *Eureka Street*.

gay marriage in Australia the Anglican Church in the Diocese of Sydney announced a donation of \$1 million to support the campaign for a “No” vote. At the same time a gift was made to the national campaign against family violence of a mere \$5,000. The priorities appeared unfortunate. However, church leaders of different views do exist in different states of Australia. Even within the city of Sydney parishes of the Anglican church, discordant voices are sometimes raised by the rectors of Christ Church St Laurence and St James’s Church, King Street (Rev. Andrew Sempel).

*Pace* Pope Francis, discordant opinions, still seem less prominent in the Roman Church in Australia. Listening to the laity, as Archbishop Duhig favoured, may be a model in need of revival. Inspiration to that end may be found in Pope Francis’s action in joining the Lutherans on their 500<sup>th</sup> anniversary.<sup>46</sup> It is harder today, at least in a county like Australia, to demand obedience without honesty in reasoning that appeals to the rational mind. Especially in a time of public trial of the Churches. But that appears to be the current path of most Church leaders, irrespective of what is happening in Rome.

### *LEARNING FROM EACH OTHER*

This is why the embrace of ecumenical dialogue was such a welcome signal from Archbishop Duhig in his times<sup>47</sup>. My experience in dealing with my own sexual orientation illustrates the way in which we can make progress, learn by listening closely to those chiefly affected and by

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<sup>46</sup> Christina Anderson, “Pope Francis in Sweden urged Catholic-Lutheran Reconciliation”, *New York times*, 31 October 2016.

<sup>47</sup> Cf Luttrell, above n. 2. To some degree Cardinal Gilroy took a similar line.

respecting their “dignity”. That is a word often deployed by churchman but not always observed wholeheartedly in their actions.

It is 20 years this month since my mother, Jean Langmore Kirby, an Australian daughter from Protestant Ulster, died. With her I faithfully observed the rule demanded by my Church concerning my sexual orientation, although the truth was evident in several ways. It was just not spoken of. That was the rule in those days. Its purpose, I assumed, was to protect the unwilling from the undesired actualities of the LGBT minority, including among close family members. Shame was internalised. Silence was the coinage in which that shame was purchased.

As my mother neared her death, I felt uncomfortable because of my failure to speak frankly and openly with her, verbalising my sexual orientation. It seemed deceitful conduct. So, I took the occasion to tell my mother and to use truthful language which I had so long avoided. She looked at me with her Irish eyes. She paused and then said: “Michael, you have been bringing Johan to our Sunday night dinners [then] for 30 years. Do you think I came down in the last shower?” She knew all along, of course. Young and not so young people should not be placed in such a position of deception towards those they love most. Nothing much will change whilst such pretence and silence prevail.

After my mother was transferred from her home to Royal Prince Alfred Hospital, her only religious visitor was a Catholic chaplain. He was a young priest (Fr Brendan Quirk) who had met my mother when he was ministering to a community of Josephite Nuns who had established their residence opposite our family home. They had become good friends to

my parents. When it was clear that time was short, Fr Brendan said he could provide the Catholic prayers for a person on the brink of death. He offered to do this, and he had brought the necessary sacraments to perform this service. Thinking of my mother and her father from Ulster, whom she had loved so much, I felt uncomfortable. In her presence and with my father, I raised the question of whether such a distinctive Catholic procedure would be welcome to my mother. Could it not seem to be a rejection of the faith of her father and family? A kind of deathbed conversion like that of Oscar Wilde (whom my mother otherwise resembled in no way at all).

As my father was considering his answer, I noticed that my mother had placed her hands in a gesture of prayer. She was listening and had decided to accept the kindly offer of the priest. In doing so, she symbolised the way she was throwing off the prejudices and hostility towards Catholics of her childhood. Fr Brendan did the necessary. He blessed my mother. My father and I were grateful for his loving kindness. Most importantly, so was my mother. When I told my brothers and sister about this existential moment, they urged me to follow my mother's example. And to throw off the prejudice of denominationalism from the past. I have tried to do so. But not always with full success because it seems easier for human beings to cling to hostility rather than to embrace new love.

This may be the reason why churches and other religious organisations cling on to the old ways of disrespecting the dignity and human needs of LGBT people for love and full acceptance. My partner Johan tells me that I should cast off religious beliefs altogether because of the hostility of churches to women, to people who are different and gays. But I cling to

those beliefs, as I am sure Pope Francis and Archbishop Duhig would want me to do.

There is one further piece of evidence of change that is in the air since the advent of Pope Francis. It is the fact that this lecture has taken place at all. That, when I raised my proposed theme, it was accepted, as in keeping with the purposes of this Catholic College, discharging its function to nurture and advance the welfare of all its members and of the university community that surrounds it. Not for a moment do I believe that there will be adverse repercussions either for the College, or the students, or for me.<sup>48</sup>

Inevitably, listening to my words, will have been some who do not yet feel that they can be open about the issues of their sexuality. The inconsistent messages they have received from their surroundings, families and church will have led them to the cautious path of silence and pretence. There were so many subjects upon which I might have spoken to honour Archbishop Duhig. But I have a feeling that, armed with the knowledge of our times and encouraged by the advent of Pope Francis, he would have approved of my theme.

Before the arrival of Pope Francis, I do not believe I would have been standing here as a grandson of Protestant Ulster acknowledging the leadership that Pope Francis has given. Least of all talking on LGBT issues. It has been an intellectual and emotional leadership that has extended beyond his own church, beyond my church as well. Beyond the

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<sup>48</sup> Cf M. D. Kirby, "Riverview – A Modern Morality Tale" in M. D. Kirby, *Private Life* 111 and A.J. Brown, *op cit*, 316-317.

Lutherans and beyond Christianity. It has been a leadership important for theology, for human truthfulness and mutual kindness and for the love that passes all understanding.

We are not at the end of the journey in the relationship between Christian Churches and their LGBT members. To adapt Churchill,<sup>49</sup> it is not the end. It is not even the beginning of the end of all the tears. But it is, perhaps, the end of the beginning. For the leadership he has given on this issue for all Christian people in our world and for all people of spirituality who harken to his powerful words, I express humble thanks. I am grateful for this public opportunity to do so.

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<sup>49</sup> Winston Churchill, Lord Mayor's Luncheon, London, "The End of the Beginning", 10 November 1942. Speech after the second battle of El Alamein, 1942.