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Marriage and So-Called Civil Unions in Light of Natural Law

Gifford A. Grobien

Although the natural law has not been universally respected, Christians typically have assumed that one who considers the natural law seriously could never use it to argue for homosexual relationships. However, the natural law was occasionally appealed to in antiquity to support homosexual acts and relations as expressions of mutual love. This approach has been bolstered since the 1990s, when the first scientific claims for the genetically determined nature of homosexual orientation were made. A 2010 article by Jean Porter, “The Natural Law and Innovative Forms of Marriage: A Reconsideration,” argues for homosexual unions not only on the basis of mutual love, but also on the grounds that homosexual unions can support the broad sense of procreation by raising adopted children.¹

In the face of such developments, Lutherans might be tempted to retreat to the comfortable theology of human depravity and the corruption of human reason, and to give up the argument in the public square. After all, current developments seem to reinforce the notion that sin has corrupted human reason to the extent that it is unusable, and that the only way to bring about recognition of true sexuality is to preach the gospel so that some will be converted, and then to teach the truth of sexuality directly from the Scriptures.

This study will demonstrate that although the role of the natural law is limited in the discussion of marriage, it is important nevertheless because it operates just as the revealed law does. It serves humanity by all three functions of the law. More than this, the natural law holds forth for the Christian a glimpse of the life redeemed, resurrected, and restored by Christ. The Son took on flesh to enter our natural world in order to redeem us so that we would fulfill our nature and, indeed, take on the glorious

¹ Jean Porter, “The Natural Law and Innovative Forms of Marriage: A Reconsideration,” *Journal for the Society of Christian Ethics* 30, no. 2 (2010): 79–97.

nature of the world to come. Where we still have a glimpse of the natural law today, we also have a glimpse of this redeemed, incarnate life.

While acknowledging the limits of the natural law, I submit that a recategorization of the natural law can actually reinvigorate its role. In doing so, I will review the traditional and contemporary natural law arguments in the area of marriage and show that the errors of contemporary arguments rest in a false understanding of the role of natural law.

I. What is the Natural Law?

As we begin, we should disabuse ourselves of the notions that 1) the natural law is comprehensive and that 2) all its precepts are rigidly binding.² The idea that natural law is a systematic structure of moral philosophy to which all people will submit after they think long and hard enough about it is a modern conception. Specifically, it is a rationalist development intended to marginalize theology. Until the Enlightenment, natural law theory worked hand-in-hand with theology. But in hopes of leaving Christianity behind, philosophers of the seventeenth century and beyond attempted to build elaborate rational arguments for universal moral laws apart from scriptural considerations. In other words, Enlightenment natural lawyers hoped to set up a system of morality that did not depend on theological presuppositions.

The natural law was never intended to operate independently of theology, or at least of moral commitments. The limitations of natural law and its dependency on some kind of foundational commitments, whether Christian or otherwise religious or philosophical, were long evident in the tradition. Historically, the actual claims for the natural law were much more modest than the goal of setting up a comprehensive moral philosophy.

In the historical Christian perspective, natural law is promulgated through a kind of participation of all creatures in the divine law.³ Thus, natural law and divine law are fundamentally harmonious. Furthermore, this participation in the divine law differs across creatures. Organisms access or participate in the divine law in different ways, according to their natural capacity. Some participate according to biological nature. That is, the physical structure of creatures naturally aims at certain processes

² Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids: Eerdmans, 2005), 24.

³ Thomas Aquinas, ST I-II. 90, in *The Summa Theologica of St. Thomas Aquinas*, 2nd edition, trans. Fathers of the English Dominican Province (1920), <http://www.newadvent.org/summa> (accessed November 20, 2012).

because of divine design. Other creatures also participate in the natural law by appetite or natural desire. Animals desire certain things that are natural, such as to defend themselves from harm, to nourish themselves, and to procreate. These appetites naturally direct animals according to divine purpose. Finally, human beings, unique in the natural world, participate in the divine mind through reason. Human reason judges certain actions to be good or evil because of its God-granted access to the divine mind. Thus, traditionally, the natural law could be considered in three categories: 1) that which nature teaches all substances—sustenance and preservation, 2) that which nature teaches all animals—procreation and raising offspring, and 3) that which nature teaches human beings according to reason.⁴ Furthermore, these manners of participation in the natural law are not mutually exclusive. Trees participate as biological substances. Animals participate as substances and as animals with appetites. Human beings participate as substances, animals, and as endowed with reason. Thus, to the extent that a creature naturally participates in divine law, it is directed with respect to action.

This is a key phrase: “*to the extent* that a creature naturally participates in divine law, it is directed.” The difficulty is that, while creatures were created to participate properly in the divine law, after the Fall this participation is marred. In human beings, the natural law may fail both according to knowledge and according to sin.⁵ That is, a person may not properly discern the natural law, and a person may violate the natural law, even if he has proper knowledge of it, because of sin. The Formula of Concord affirms that humanity has at most a dim spark of knowledge of the divine or of the law, and that reason is capable, at best, of living honorably only to a certain extent (FC SD II 9 26). Therefore, it is impossible in our current state that the natural law could serve as a comprehensive system of morality that is compelling to all reasonable people.

In spite of this, the Christian tradition has affirmed the place of the natural law in theological and moral thought and practice. The robust natural law tradition of the medieval scholastics is well-known. Furthermore, Luther and the sixteenth-century confessors received the general contours of this tradition without disagreement. There is little primary discussion of the natural law in the Confessions or in Luther’s writings because it was not a matter of controversy. Where the Lutherans do turn to

⁴ Thomas Aquinas, ST I-II. 94.2.

⁵ Thomas Aquinas, ST I-II. 94.4.

the natural law, they speak of it favorably and much in the way of the scholastics.⁶

Yet, if the natural law does not offer a systematic moral philosophy compelling to human reason, what is its role? Properly, the precepts of the natural law are those that are known by nature, indemonstrable. Thomas Aquinas explains the natural law by comparing and contrasting it with what he calls principles of *speculative reason*. Speculative reason refers to theory and ideas. In Thomas' terms, speculative reason understands what is *necessary*, that is, things that are true. Today we might call this scientific knowledge. Speculative reason recognizes existence and truth. The natural law, however, does not deal only with what is, but with what ought to be. It deals with the practical that is, with action. The natural law, narrowly speaking, teaches not what is true, but what one ought to do. Because this has to do with action or practice, it falls under *practical reason*, not speculative reason. And just as speculative reason deals with things that are true and necessary, practical reason deals with matters that are contingent and good. The natural law directs us toward the good thing we ought to do.⁷

So, just as there is a first principle of speculative reason—that is, the question of being, if something exists or does not exist—so also there is a first principle of practical reason, goodness. Creatures naturally seek after their good; therefore, the foundational precept of the natural law is, “[G]ood is to be done and pursued, and evil is to be avoided.”⁸

Now, one might ask, “Is this whole discussion necessary just to come up with a rule that everyone knows, namely, that we should do good and avoid evil?” But, of course, that is the point. The natural law is naturally evident to all, so that, in spite of sin, the most basic and foundational precept of this natural law is known by all. We all know that we should do good and avoid evil. It is self-evident, and thus the first principle of the natural law.

Thomas goes on to say that other precepts of the natural law may be derived, but they are derived in reason by human beings. “Whatever the practical reason naturally apprehends as man’s good (or evil) belongs to the precepts of the natural law as something to be done or avoided.”⁹

⁶See, for example, Roland Ziegler, “Natural Law in the Lutheran Confessions,” and Gifford Grobier, “What is Natural Law? Medieval Foundations and Luther’s Appropriation,” in *Natural Law: A Lutheran Reappraisal*, ed. Robert C. Baker and Roland Cap Ehlke (St. Louis: Concordia Publishing House, 2011).

⁷Thomas Aquinas, ST I-II.94.2.

⁸Thomas Aquinas, ST I-II.94.2.

⁹Thomas Aquinas, ST I-II.94.2.

Therefore, natural law stems from a common, universal basis, but may differ for people of different vocations and circumstances. The first precept of the natural law is universal, but as the circumstances and conditions of action develop further detail, various courses of action may be derived rightly from the precept, "pursue the good, and avoid the evil." Thus, besides the variation in action that occurs due to sin and the lack of knowledge of the natural law (because corrupt reason does not rightly comprehend the mind of God), action also varies according to circumstances. The more detailed the conditions, the more difference in action. Therefore, the natural law is not a comprehensive set of laws that stand for all circumstances; rather its precepts are derived according to one's nature and according to one's circumstances.

Thomas uses the example of property that is held in trust. The natural law generally would dictate that such property be restored to its owner. But he notes that under such circumstances where a man intended to use his property to injure others, the property should be withheld. Or again, natural law commands people to marry, except in the circumstances in which a person is celibate. Thus, variation according to circumstance is not a kind of situation ethics, which finds excuses to break the law, but rather obeys the good of the circumstance. Thus, at a foundational level, the natural law directs people to do what is good in their circumstances. Sin greatly hinders the ability of human beings to derive proper precepts in their circumstances. However, the basic, theoretical knowledge of the natural law—that one ought to pursue the good and avoid the evil—can never be blotted out. This is the singular, universal precept of the natural law that is comprehended by all.¹⁰

This, then, is the benefit of the natural law, not that we can set forth a system of morality to be accepted *carte blanche*, but that we can affirm the capacity, albeit limited, to use reason and to "distinguish good and evil and derive . . . norms" in agreement with this distinguishing.¹¹ Instead of announcing the moral law in the public square and assuming that all will fall in line behind it, the natural law appeals to the moral sense so that we question each other about the good. By exploring what is good, we question, challenge, and encourage one another to act rightly. When faced with a moral question, then, the natural law calls on us to clarify the situation, asking, "what is the good in these circumstances?" A fine example can be found in the failure to use natural law in this way in the

¹⁰ Thomas Aquinas, ST I-II 94.6.

¹¹ William C. Mattison III, "The Changing Face of Natural Law: The Necessity of Belief for Natural Law Norm Specification," *Journal for the Society of Christian Ethics* 27 no. 1 (2007): 253.

historic discussions over abortion. The question has simply been about the best choice for the mother, without asking the more fundamental question of what is the basic good here—the life of the unborn.

In asking what the good is, however, we are faced with further difficulty, for even when we stop to reflect, we do not all agree on what the good is. This is our challenge especially in a deconstructionist and pluralistic context. Until recently, it seemed to be self-evident that sexual relations between male and female were good and that homosexual relations were evil, at least in the general understanding. But that is no longer the case, as is plain by the development of arguments for homosexual relations on the basis of natural law. Homosexual relations in this understanding are actually good. They promote human flourishing. So now we appear to have reached a foundational problem in the discussion over marriage. Natural law appears to be unusable, because there are competing conceptions of the good. In answering the question of what is the good act in these circumstances, those in favor of homosexual relations affirm its goodness, while those opposed deny it.

As noted earlier, people fail to follow the natural law for at least two reasons: the corruption of sin and the details of any given circumstances that can befuddle the unwise. Indeed, even the wise may be unable to determine the right action in a difficult dilemma. Thus, in our fallen world the natural law is insufficient. It “underdetermines” our action due to the effects of sin and foolishness. Of course, the ultimate remedy is the death and resurrection of our Lord, which forgives, heals, and grants eternal life to us who fail to keep the law, natural or otherwise. Yet even in the limited realm of the knowledge of the law, something else is needed. Direction is required beyond the use of reason. We need to be taught what is good.

In the face of reason’s inability to discern the good clearly, many philosophies and religions have been developed to fill this void. We might call such philosophies and religious “systems of value” or belief commitments. In other words, what a person believes, or the values to which a person is committed, informs him of what is good. The values or commitments of a person therefore hold an authority beyond pure reason. This is not to say that reason is dismissed, but that reason is informed by belief, and choices about what is good will be determined by these beliefs.¹²

Thus, in this understanding, the natural law is still the foundational principle for practical reason. It directs us to do what is good and to avoid what is evil. This requires reflection about what is good and what is evil in

¹² Mattison, “The Changing Face of the Natural Law,” 257–260.

given circumstances. Yet the content of what is good is also provided not by reason alone, but by belief commitments.

This is why two people who think reasonably can come to very different conclusions regarding what the natural law has to say about a question. A person who has commitments that affirm the acceptance of homosexual relations will be able to justify the goodness of homosexual relations and the resulting actions authorizing so-called homosexual marriage. A person with commitments that exclude the goodness of homosexual relations will not be able to justify homosexual acts or the authorization of so-called homosexual marriage.

It may be helpful at this point to consider more deeply what exactly is meant by nature and natural inclination ruled by reason, because how one understands nature is foundational to one's belief commitments and, consequently, to the way natural law is used in reflection. So-called natural arguments in favor of homosexual relations are made today on the basis of personal desires and experience and on scientific hypotheses about the genetic character of homosexual orientation. These arguments may be couched in the language of traditional arguments, such as the claim that homosexuals also can exhibit mutually loving relationships with lifelong commitment, but when the concept of nature is understood at a deeper level, the arguments fail.

Modern conceptions of "nature" typically have an empirical perspective in mind. In this view, nature is simply the facts that can be observed. Such a reductive observation of facts essentially limits its claims to the physical, chemical, or biological realms. These observations merely report the way things are. At most, this empirical notion understands nature's principles as accounting for "organic behavior." Such observations, when verified, can be called scientific law. Yet, these are laws in that physical forces, chemicals, and biological cells grow or operate in a certain way.¹³ There is no claim that the facts observed suggest a natural purpose, as though forces, chemicals, or organisms act in a certain way in order to reach a goal. What things are does not, in this view, indicate an end or purpose. Nature is "mechanistic," but "non-normative."¹⁴ Thus, natural laws, in this case, are not broadly normative.

Natural tendencies perceived at the empirical level may, however, be considered normative for that in which it was observed. For example,

¹³ Stephen J. Pope, "Scientific and Natural Law Analyses of Homosexuality: A Methodological Study," *Journal of Religious Ethics* 25, no. 1 (Spring 1997): 93.

¹⁴ Pope, "Scientific and Natural Law," 92.

general observations about sex organs do not suggest to the empiricist that homosexuality is unnatural. It may be unnatural for most, but there is no ordered purpose to the sex organs that compels all of that species. If certain individuals of the species are inclined to engage in homosexual acts, fine for them. In fact, that they are inclined toward homosexual acts is itself a supposed argument from nature. So, in other words, if a particular individual feels a homosexual attraction, or it is perceived that he has a genetic predisposition toward homosexual acts, then homosexual acts would be natural for him. This understanding of nature is empirical and individual, not generally suggestive of norms for all of a species.

Such however, is not the understanding of nature in the natural law tradition. Classically, nature included the end, goal, or *telos* of natural things. The order observed in nature has purpose generally for the species. The observable development of organisms suggests a goal of maturity. Reproduction suggests the goal of perpetuation of a species. Natural acts such as birds building nests or spiders fashioning webs suggest goals of shelter and means of sustenance. Creatures are understood “through a teleological analysis tracking the ways in which the structures, functions, and organs of a given creature contribute to its overall well-being, or to the existence and wellbeing of” its kind.¹⁵ This teleological analysis does not view the “organs or functions seen in isolation from the overall life of the organism,” that is, in a simple mechanistic way.¹⁶ In other words, the natural law argument for male-female sexual relations is not merely based on the observation that the sexual organs seem to fit well.

Among plants and animals, such natural order generally follows without extensive aberration, because order is according to biological process or animal instinct. But in human beings, order and purpose are integral with what is particular to human nature, namely, reason. Thus, following the purpose of the created order depends on human beings reasonably choosing natural action. In other words, natural order does suggest proper action that may be chosen by reason or rejected due to passion and sin. The term “according to nature” is a technical term referring to the broad structure of nature. Such structure and purpose is foundational and goes beyond the desires of particular individuals. Purpose, rather, is implicit in the general order suggested by the whole species. Aberrations, such as infertility, disrupt the natural law, but do not disprove the natural law. They indicate, rather, that the foundational structure of the natural law has imperfections. As Christians, we know that

¹⁵ Porter, “The Natural Law and Innovative Forms of Marriage,” 82.

¹⁶ Porter, “The Natural Law and Innovative Forms of Marriage,” 82.

aberration is due to sin. Sin attacks the natural law, but it does not overthrow it.

We have, then, two conceptions of nature: 1) nature as basically general and indicating what is flourishing for all of a species, and 2) nature as “personalized and subjective.”¹⁷ How people conceive of nature or belief commitments determines the role of natural law. Those who believe that nature means empirically observed facts will assume different things than those who believe nature means underlying ordered purpose.

If natural law discussions in the public square are to have any fruitfulness, then, they must aim toward that fundamental question of the natural law: What is good? Or, to put it another way, what action will lead to greater human flourishing? Rather than focusing on what naturally seems right, which quickly degenerates into following emotions and other urges, we may reflect on what leads to human health, whether physically, relationally, emotionally, or spiritually. Research into these areas of health for those in homosexual relationships, and for their children, would play an important role here, addressing such questions as: do couples in homosexual and heterosexual relationships find similar emotional and psychological fulfillment? How does the emotional and psychological health of children compare between homosexual and heterosexual parents? Do homosexual relationships serve as worse, similar, or better relationships for serving the common good as do heterosexual couples? These are just the beginning of questions that might be asked with regard to the question of human flourishing in homosexual relationships. In other words, this is one way that the natural law—the pursuit of the good—can still operate in a pluralistic society.

Furthermore, Christians do not rely only on the natural law but are informed, corrected, and sanctified in their knowledge of the good, of what human flourishing really is. Such flourishing is grounded in the incarnation, by which Christ takes on our flesh and then proceeds to bear our sin, suffer on the cross for our forgiveness, and rise and ascend for our victory and glory. This flourishing is offered to Christians in the preached word, in taking the name of God in Baptism, and in the strength and nourishment that is given in the Lord’s Supper. So informed and united to Christ, Christians, too, have conceptions of what is good. Informed in this way, the Christian natural law tradition has many things to say to broaden and deepen human knowledge of God’s created order of marriage.

¹⁷ Erik Borgman, “Unfixing Nature: Homosexuality and Innovating Natural Law,” in *Homosexualities* (London: SCM Press, 2008), 73.

II. Marriage and the Natural Law

The natural law inclines toward marriage foundationally for the sake of offspring. This reason is hotly contested today. Many, including Christians, argue that the foundational purpose of marriage is mutual companionship and the qualities that go with it: a unique and personal way to express love, and, from the Christian perspective, a remedy for lust. Procreation and the raising of offspring, while integral to marriage, is secondary. Many Christians would say that procreation ought to occur within marriage, but not that procreation is the natural basis for marriage. The first purpose is to provide companionship.

Yet, the Christian natural law tradition has consistently held that marriage is commanded to serve procreation and raising offspring.¹⁸ More broadly, in fact, the natural law tradition holds that both procreation and mutual companionship are purposes of marriage, but that they are purposes that are integral and organic to each other. They are not purposes that may be separated so that one can be thought to occur apart from the other. Mutual companionship and procreation are the purposes of marriage, and they go together.

If nature inclined merely to reproduction, then marriage, in fact would not be according to the natural law. Reproduction can be accomplished just as easily outside of marriage as inside of it.¹⁹ But nature does not incline only to reproduction, but to the nurturing and education of offspring. For procreation to be effective, the offspring must mature. Human maturation takes not only years, but also special care in nourishment and education that are not seen among the animals. Furthermore, the education of human offspring requires the care of both a father and a mother, for “the needs of human life demand many things which cannot be provided by one person alone,”²⁰ and some household works are “becoming to men, others to women.”²¹

In this understanding of marriage, the natural law is not a facile mimicking of animal life, but it is a reflection on the unique aspects of the whole human nature—not just sexuality per se. From the sexual and rational nature of human beings—and directed by Scripture—we conclude

¹⁸ Porter offers a concise and insightful survey of the scholastic understanding of the purposes of marriage in “Natural Law and Innovative Forms of Marriage,” 81–89.

¹⁹ Thomas Aquinas, ST A 41.1.

²⁰ Thomas Aquinas, SCG 3.122.6, in *The Summa Contra Gentiles* (New York: Hanover House, 1955–57), <http://dhsprpriory.org/thomas/ContraGentiles.htm> (accessed November 20, 2012).

²¹ Thomas Aquinas, ST A 41.1. See also ST A 65.1.

that sexual relations are interwoven with the raising of offspring, and thus the long-term commitment of husband and wife. But, could we not say that once the children are raised and out of the house divorce would be permissible? Or that marriage need not be absolutely indissoluble once the needs of the children were completely met?

Here the natural law recognizes and affirms the other purpose of marriage, namely, a trusting relationship of mutual love. Because marriage includes sexual relations and the partnership in domestic activity, it is the greatest of relationships. It is the greatest friendship. The greater a friendship, the longer it will last. Therefore, the greatest friendship should have no end.²² Modern science recognizes the physiological and psychological bonds shared by sexual partners. To rend these bonds would violate the closeness that is naturally encouraged through sexual relations.

Finally, life-long marriage is commanded by the natural law because it encourages virtue. Marriage demands fidelity, inspires the mutual care of domestic possessions, and improves relations with the in-laws.²³ That is, it calls a husband to act virtuously toward his wife and her family, as congruous to the intimacy of the relationship and mutual responsibility of raising children.

Regarding polygamy, it is true that one could procreate and provide basic educational needs to children in a polygamous marriage. Polygamy, however, violates the mutual character of marital love. The deep intimacy or greatest friendship of monogamy is inherently disrupted. Polygamy further undermines virtue because it breeds jealousy and discord. It violates natural justice, for the man is bound to multiple women, while each woman is not exclusively bound to the man. Finally, this contradicts the proper education of the children, for it sets a poor example before them. The same arguments could be used against polyandry.²⁴

Again, such reasoning for marriage is not a simplistic argument from nature that just considers the biological complementarity of male and female (although this is not unimportant), but draws conclusions from a thorough reflection about the rational, social, physiological, emotional, and sexual nature of human beings.

With this understanding of nature in mind, there are some further arguments to be made regarding marriage according to the natural law,

²² Thomas, SCG 123, 6.

²³ Thomas, SCG 123, 8.

²⁴ Thomas, SCG 123, 5; 124, 6; ST A 65.1.

specifically with respect to sexual relations. According to the natural order, the purpose of seminal emission is conception. This does not mean that every emission will lead to conception, nor that only male-female sexual intercourse is acceptable because of the physical match. Rather it is saying that sexual emission releases semen, and the purpose of semen itself is to fertilize an egg. Semen itself has no other purpose. Ejaculation, more broadly speaking, may have the purpose of fulfilling sexual desire. But the fact that ejaculation consists of semen, and not some other sterile liquid, means that the purpose of ejaculation also is to release semen for fertilization. Thus the purpose of seminal emission is procreation.

One could counter that ejaculation also fulfills sexual desire, so that this fulfillment is also a purpose of sexual relations. Indeed. From the perspective of the natural law, both purposes are in mind. Sexual relations are for procreation *and* for the fulfillment of sexual desire. The point here is that these are not to be divided from each other. Sexual fulfillment still includes the emission of semen, which purpose is fertilization. The emission of semen includes sexual pleasure. They are indivisible. Thus, according to the natural law, sexual relations are for procreation and for the fulfillment of sexual desire. When one purpose is to be fulfilled, the other purpose goes with it. Conversely, one ought not to seek one purpose apart from the other.

It is on this understanding that sexual relations themselves, as the natural act, lead to marriage. Bound up in sexual relations are not only mutual love and service and the fulfillment of sexual desire, but also procreation, nurturing, and education of offspring. These are not two separate purposes of marriage, but two organic purposes of marriage that are not separated. They serve each other. Sexual desire finds its fulfillment in sexual stimulation, which results in seminal emission for the purpose of procreation. Procreation, in turn, and the raising of offspring bind more closely the husband and wife in their complementary work in the household. In turn, this binding work serves virtue, and the greatest friendship, leading, if God wills it, to more children, and to an inseparable bond, until death does them part.

We see, therefore, all the importance of an emphasis on sexual difference for natural sexual relations. Not only the complementarity of male and female in the image of God indicates this, but also the fruitfulness that comes forth from sexual difference. The two become one flesh, not only in that complementarity reflects the image of God, but in that two become one in the procreation of new life. This one new life is the fruit of the love of the male and female. Just as the love of God, three persons, distinct yet perfectly united, overflows in creation, especially the creation

of humans whom God then invites into his fellowship through redemption, so the love of husband and wife, two persons, distinct yet united sexually, according to the natural order bears fruit in the procreation of a new human life.

When this argument about procreation is made, often the rebuttal is heard: what about infertile couples? Are they to be forbidden from marriage? By no means. The marriage and sexual relations of infertile couples in no way violates the natural law. For, as was noted previously, natural law refers to the foundational structure of creation, which nevertheless may not follow in every case due to the fallen nature of the world. Sexual relations between a husband and wife who are infertile do not violate the natural law because the couple is not seeking to avoid procreation. Their sexual act seeks and does not inhibit either sexual fulfillment or conception. That they are infertile is a tragic yet circumstantial—or to use a scholastic term, accidental—point. They are infertile ultimately by some mystery of God's will. That is God's determination. But inasmuch as they have control over their actions, they follow the natural law.²⁵

Marriage is built upon male-female sexual relations because the mutual love and procreation of male-female sexual relations reflects the image of God as loving and creative: "And God created man in His own image, in the image of God He created him; male and female He created them. And God blessed them; and God said to them, 'Be fruitful and multiply, and fill the earth, and subdue it'" (Gen 1:27-28a, NASB).

The instituting command of procreation is constitutive with the creation of man as male and female in God's image. Thus Thomas Aquinas could say in excluding non-procreative sexual activity from the natural law:

I am speaking of a way from which, *in itself*, generation could not result: such would be any emission of semen apart from the natural union of male and female. For which reason, sins of this type are called contrary to nature. But, if by accident generation cannot result from the emission of semen, then this is not a reason for it being against nature, or a sin; as for instance, if the woman happens to be sterile.²⁶

Here we finally have the natural law argument against homosexual relations. It is a sin "contrary to nature." Yet notice carefully the basis of this argument. Homosexual relations are sinful not merely because they

²⁵ Thomas, SCG 122, 5.

²⁶ Thomas, SCG 122, 5; emphasis added.

violate the male-female complementarity, but because they violate the purpose of the complementarity, procreation, while nevertheless seeking sexual stimulation and fulfillment. These are the sexual sins contrary to nature: those which seek to fulfill sexual desire separate from the procreative work of sexual relations. This includes homosexuality, but also any other sterile sexual stimulation. Homosexuality may be in many minds the paradigm of the violation of sexual complementarity, yet it is one kind of that larger category of sin, hindering the procreative end of sexual complementarity.

III. Conclusion

Proponents of homosexual unions in recent years have attempted to use natural law theory to argue for so-called civil unions or marriages in two ways: either through a changed definition of the term nature, or through the argument that homosexual unions do fulfill the purposes of marriage of mutual love and the raising of offspring, broadly understood, or both. But such arguments in fact violate natural law theory because they shift the very terms upon which natural law theory is based. They separate the purposes of marriage rather than properly distinguishing them, and they deny that the basis for the purposes of marriage lies in the very marital act itself, intercourse between sexual complements.

Christ fulfills the law, including the natural law. Where arguments over the content of nature remain, Christ forgives and sets forth the image of true incarnate life. Thus, for the Christian, the natural law, informed by Scripture, imagines the redeemed life. For the world, sexuality, love, and marriage continue to come up empty. But for the eyes of faith, they show forth the love of a Father for his creation, the new life that his love brings forth, and the final sanctification and glorification wrought by the Son for the true Bride, his church.