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Robert George's Natural Law Argument against Same-Sex Marriage

Scott Stiegemeier

In every age, the Christian Church has addressed issues that pertain to understanding God and our life in Christ. Our calling is to be light for the nations. Ancient church fathers addressed gladiatorial games and infanticide while also clarifying and articulating the biblical understanding of the Trinity. The sixteenth-century reformers discussed two-kingdom understanding and vocation as well as forensic justification. Nineteenth-century church leaders grappled with slavery as well as the challenges of modernism.

As we enter the second decade of the twenty-first century, same-sex marriage is one of the premiere issues for traditionally-minded Christians. This is not a marginal topic, affecting only the very small number of people who desire to marry someone of the same sex. Defining marriage correctly affects everyone.

Christians must remember that marriage is a theological matter, first and foremost, not purely social or cultural. The Bible begins and ends with a wedding. Nuptial imagery is pervasive throughout the Old and New Testaments, where it serves to elucidate God's relationship with his chosen people. Redefining marriage undercuts our proclamation of the gospel. Our case is biblical and doctrinal. And yet, prudence requires that we equip ourselves to speak truthfully in a variety of settings, including contexts in which biblical proof-texting will not be accepted. We must do a better job of arguing persuasively in the public realm, on this topic and others, instead of congratulating one another. To the secularist, missional Christians must address his argument to the secularist so as to win the secularist.

Robert George is a Roman Catholic Christian who teaches law and philosophy at both Princeton and Harvard. In 2009, *The New York Times Magazine* called him this country's "most influential conservative Christian

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thinker.”¹ Along with Sherif Girgis and Ryan T. Anderson, George maintains in their recent book, *What is Marriage? Man and Woman: A Defense*, that serious social harms will result from the further destabilization of marriage that the same-sex debate incurs.² There are a number of ways to respond to this issue. George and his colleagues, as proponents of natural law, provide pastors and churches a helpful tool for discourse in the public square. The authors intentionally determined to make a reasoned defense of the traditional view of marriage without reference to sacred texts. They begin by explaining that the contemporary controversy over marriage equality is not really about whom we allow to marry, but about the essence of marriage. They argue that, by definition, marriage can only exist between one man and one woman. All other bonds, even if sexual and domestic, are not marriage. There can no more be a non-marital marriage than there could be a square circle. States that legally redefine same-sex unions as marriage are not expanding marriage rights, but redefining the institution.

People on both ends of the political spectrum may fail to see the harm of same-sex “marriage.” Libertarians may say that marriage is a private matter with no public significance and call, therefore, for the state to get out of marriage altogether. Those on the left deny the distinctive public value of traditional marriage and conclude that a society may redefine marriage to accommodate a variety of arrangements.³ Some go even further and claim that this is an issue of justice, meaning that a just society *must* permit same-sex unions.

The law has always set terms for some human relationships and not others. George argues that the state does have an interest in marriage, which is why every society has laws regulating marriage. The law does not set terms for our platonic friendships, but marriage is different because “friendship does not affect the common good in structured ways that warrant legal recognition and regulation; marriage does.”⁴ We all have an

¹ David D. Kirkpatrick, “The Conservative-Christian Big Thinker,” *The New York Times Magazine*, December 16, 2009, http://www.nytimes.com/2009/12/20/magazine/20george-t.html?_r=0; accessed December 8, 2013.

² Sherif Girgis, Ryan T. Anderson, and Robert P. George, *What Is Marriage?: Man and Woman: A Defense* (New York: Encounter Books, 2012). Though George had two co-authors, I will refer to the book by his name for the sake of expediency.

³ Girgis, Anderson, and George, *What Is Marriage?*, 37.

⁴ Girgis, Anderson, and George, *What Is Marriage?*, 38.

interest in our neighbors' marriages because marriage serves as a stabilizing force in society.

George and his co-authors define two views of marriage at work today: the traditional view, which he calls the conjugal view, and the revisionist view. The conjugal view, which has long informed civil law, says that marriage is a bodily as well as emotional bond, distinguished by its comprehensiveness and its inherent ordering toward procreation. It is comprehensive in the sense that it joins the two in body as well as mind and emotion. It is also characterized by exclusivity and permanence.

I. The Nature of Conjugal Union

Any union of two people must include a bodily union to be comprehensive. If it did not, it would leave out a basic part of each person's being. Our bodies consist of numerous different systems: the cardiovascular system, the respiratory system, the nervous system, etc. Each system functions fully for the individual. The one organic system that is incomplete, in itself, is the reproductive system. These organs are not able to function fully without union to another body, one of the opposite sex. In sexual reproduction, a person's mate truly makes him or her complete. By contrast, "two men, two women, and larger groups cannot achieve organic bodily union: there is no bodily good or function toward which their bodies can coordinate."⁵ Organic bodily union cannot be comprehensive except in the matching of one man with one woman. Whatever else same-sex unions might be, they can never be a comprehensive bodily union.

George's natural law argument is that it is neither love nor sex that makes a marriage, but the comprehensive union. Of course, marriage also involves love and sex, but it is the unique biological ordering of men with women toward procreation that forms the foundation of all society. Feelings of affection are not unique to marriage. People can indeed form affectionate bonds with members of both sexes apart from marriage. People can also engage in sexual behaviors with people of both sexes, with or without love. Our bodies can be made to touch and interlock with other bodies in several fashions, but these actions, apart from conjugal marriage, have no generative significance.⁶

⁵ Girgis, Anderson, and George, *What Is Marriage?*, 27.

⁶ Girgis, Anderson, and George, *What Is Marriage?*, 36.

In his article, "What Marriage Is—And What It Isn't," George demonstrates that the problem is a redefinition of marriage. He points out, for instance, that everyone agrees that marriage is a relationship in which persons are united. He takes a step back and asks, "But what is a person? And how is it possible for two or more of them to unite?"⁷ The marriage revisionists begin with a false view of the human person. They assume a type of dualism in which the true identity of a person is the part that wills and desires. The body is merely a container. It is nothing more than an instrument to be used for the purpose of the person's will or desire. He summarizes their view this way: "The person inhabits (or is somehow associated with) a body, certainly, but the body is regarded (if often only implicitly) as a subpersonal reality, rather than a part of the personal reality of the human being whose body it is."⁸ In this view, the body is an instrument of the person to be used for extrinsic purposes such as pleasure or even procreation.

Marriage is a true union of persons. The revisionists agree. But, they would say that since the essence of the person is the will and emotions, not the body, then same-sex couples can achieve personal union as well as male and female couples. This collapses, however, if we understand the body as more than incidental to the person. If a person is a body-mind-soul unity, then a comprehensive union must include a bodily union. This unified view of the human person is what Isaiah Berlin once referred to as the central tradition of Western thought.⁹

One reason the marriage revisionists are making such progress with their agenda is because this dualistic understanding is widely held. If love, understood emotionally, makes a family, then the joining of a same-sex couple can qualify as a marriage. But if the defining feature of marital love is the comprehensive union of persons, then this can only occur between one man and one woman.

⁷ Robert P. George, "What Marriage Is—And What It Isn't," *First Things*, no. 195 (August/September 2009), 35.

⁸ George, "What Marriage Is—And What It Isn't," 35.

⁹ Robert P. George "Law and Moral Purpose," *First Things*, no. 179 (January 2008), 25. "According to this view, human beings are not nonbodily persons (consciousnesses, minds, spirits, what have you) inhabiting and using nonpersonal bodies. Rather a human person is a dynamic unity of body, mind and spirit. Bodily union is thus personal union, and comprehensive personal union—marital union—is founded on bodily union."

But why is the conjugal arrangement superior and deserving of special recognition and privilege? Quite simply, society depends on successful sexual unions ordered toward procreation and the rearing of children. "Relationships of two men, two women, or more than two, whatever their moral status, cannot be marriages because they lack this inherent link to procreation."¹⁰ The revisionists misconstrue the conjugal position when they argue that same-sex couples should be compared to heterosexual couples who are infertile.¹¹ Since, they argue, the traditional view does not deny that men and women who are unable, for whatever reason, to conceive and bear children still achieve comprehensive personal union, then the same privilege should be accorded to same sex couples. This is a false comparison. Male-female couples fulfill the behavioral conditions of procreation, regardless of whether there are non-behavioral factors that prevent conception from occurring.¹²

Only one man united to one woman can form a comprehensive union, and this is strongest when also characterized by exclusiveness and permanence. Conjugal unions must be exclusive because comprehensive union can be achieved *only* by two people. No act can organically unite three or more people bodily.¹³ It must be permanent to provide the ideal environment for the raising of children to be stable and productive members of society. Strong marriages are essential for a civilization to flourish.¹⁴ Almost every culture recognizes the inherent good associated with marriage and regulates it accordingly.¹⁵

¹⁰ Girgis, Anderson, and George, *What Is Marriage?*, 30.

¹¹ Patrick Lee and Robert P. George, "Quaestio Disputata: What Male-Female Complementarity Makes Possible: Marriage As a Two-In-One-Flesh Union," *Theological Studies* 69 (2008): 644.

¹² Lee and George, "Quaestio Disputata," 650.

¹³ Girgis, Anderson, and George, *What Is Marriage?*, 36. "In choosing such biological coordination, spouses unite bodily, in a way that has generative significance, and do not merely touch or interlock. This generative kind of act physically embodies their specific, marital commitment."

¹⁴ Girgis, Anderson, and George, *What Is Marriage?*, 38. "That state of economic and social development we call 'civilization' depends on healthy, upright and productive citizens. But regularly producing such citizens is nearly impossible unless men and women commit their lives to each other and any children they might have. So it is a summary, but hardly an exaggeration, to say that civilization depends on strong marriages"

¹⁵ Girgis, Anderson, and George, *What Is Marriage?*, 38.

II. Social Benefits of Conjugal Marriage

Conjugal marriage should receive special treatment under the law because of the distinctive way it benefits society at large. George says that “marriage exists as a protected legal institution primarily because of societal values associated with the propagation of the human race.”¹⁶ Precisely the thing that makes marriage different from every other human association is that it is uniquely capable of generating and nurturing future citizens. George maintains:

There is a reason that all cultures treat marriage as a matter of public concern and even recognize it in law and regulate it. The family is the fundamental unit of society. Governments rely on families to produce something that governments need—but, on their own, they could not possibly produce: upright, decent people who make honest, law-abiding, public-spirited citizens.¹⁷

The furtherance of the human race is dependent on men and women doing what comes naturally. Reason, supported by strong evidence, attests to the facts that marriage benefits both spouses and children, fights poverty, and limits state power.¹⁸

There is, first of all, a spousal benefit. George writes, “Marriage tends to make spouses healthier, happier, and wealthier than they would otherwise be.”¹⁹ And further:

men, after their wedding, tend to spend more time at work, less time at bars, more time at religious gatherings, less time in jail, and more time with family. The shape of marriage as a permanent and exclusive union ordered to family life helps explain these benefits.²⁰

The conjugal view does not disregard the emotional aspect of marriage; it is a natural law argument precisely because it posits that human beings are more inclined to be happy when they live according to their nature.

Stable conjugal marriage also greatly benefits children. Ample sociological data demonstrate conclusively that certain arrangements are generally superior for rearing children. The left-leaning research institution Child Matters offers this powerful analysis:

¹⁶ Girgis, Anderson, and George, *What Is Marriage?*, 44.

¹⁷ George, “Law and Moral Purpose,” 25.

¹⁸ Girgis, Anderson, and George, *What Is Marriage?*, 42.

¹⁹ Girgis, Anderson, and George, *What Is Marriage?*, 8.

²⁰ Girgis, Anderson, and George, *What Is Marriage?*, 44.

Research clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage. . . . There is thus value for children in promoting strong, stable marriages between biological parents. . . . It is not simply the presence of two parents . . . but the presence of *two biological parents* that seems to support children's development.²¹

We do not need to speculate about which kinds of household groupings are most advantageous to children. "Single-motherhood, cohabitation, joint custody after divorce, and step-parenting have all been reliably studied, and the result is clear: Children tend to fare worse under every one of these alternatives to married biological parenting."²² Married biological parenting is impossible for same-sex couples. When political and ideological goals are put to the side, the evidence demonstrates that the state must encourage stable conjugal marriages to the exclusion of some alternative arrangements. Indeed, any legal contract will exclude some parties.

Since the revisionist view is dependent on the premise that there are no important differences between same- and opposite-sex unions,²³ they should likewise claim that there are no important differences between these kinds of marriages in terms of how the children in these households fare overall. And yet this is demonstrably not true.

Children who grow up in a household with only one biological parent are worse off, on average, than children who grew up in a household with both of their biological parents. . . . regardless of whether the resident parent remarries. This point reinforces the idea that the state's primary interest is in upholding marital norms *to keep biological parents together*, and not simply in promoting two-parent households.²⁴

The link of traditional marriage to children's welfare is what makes marriage a public good that the state should recognize and support. Simple observation coupled with the best available sociological data tell us that conjugal marriages are the most effective means of rearing healthy and well-adjusted children and that a flourishing society depends on the rearing of healthy and well-adjusted children. "That is why law, though it

²¹ Cited in Girgis, Anderson, and George, *What Is Marriage?*, 43.

²² Girgis, Anderson, and George, *What Is Marriage?*, 44.

²³ Girgis, Anderson, and George, *What Is Marriage?*, 63.

²⁴ Girgis, Anderson, and George, *What Is Marriage?*, 62.

may take no notice of ordinary friendships, should recognize and support conjugal marriages over all other alternative arrangements."²⁵ There is a firm, demonstrable link between stable heterosexual marriages and the welfare of children. If we can agree that there is also a link between children's welfare and every dimension of the public good, then we should resist trends and legislation that sever or weaken this link.²⁶

III. Social Harms of the Revisionist View

Christians and others who disapprove of same-sex marriage are accused of intruding upon a matter that is essentially about private behavior. Ryan MacPherson sums up why this is, in fact, a public concern: "What harms the family ultimately will ruin society and civil government, and vice versa; similarly, what strengthens the family will ultimately improve society and civil government."²⁷ This is at the heart of George's case. His agenda in *What is Marriage?* is not about private behavior, but about what sort of relationships should be formalized and regulated by the state. He sums up his whole line of reasoning with three points: 1) law affects beliefs; 2) beliefs affect behaviors; 3) beliefs and behaviors affect the common good.²⁸ The revisionist proposal would harm society by reinforcing a flawed idea of what marriage is. "It would teach that marriage is about emotional union and cohabitation, without any inherent connections to bodily union or family life. As people internalize this view, their ability to realize genuine marital union would diminish. This would be bad in itself, since marital union is good in itself."²⁹ To the extent that marriage is misunderstood, it will be harder to understand its norms and urge them on others.

Of course, the revisionist view of marriage as a fundamentally emotional and domestic arrangement is not limited to those who advocate same-sex marriage. Many cultural developments in the last half-century have combined to instill this understanding widely, even among Christians. The rise in divorce is a good example. Social pressure and law once

²⁵ Girgis, Anderson, and George, *What Is Marriage?*, 7.

²⁶ Girgis, Anderson, and George, *What Is Marriage?*, 52.

²⁷ Ryan C. MacPherson, "The Natural Law of the Family," in *Natural Law: A Lutheran Reappraisal*, ed. Robert C. Baker and Roland Cap Ehlke (St. Louis: Concordia Publishing House, 2011), 202.

²⁸ Girgis, Anderson, and George, *What Is Marriage?*, 54.

²⁹ Girgis, Anderson, and George, *What Is Marriage?*, 8.

supported the view that, in the majority of cases, marriage should be a permanent arrangement. That is why our marriage rite states that it should not be entered into lightly or inadvisably. However, no-fault divorce laws make sense when marriage is seen as primarily an emotional pact. Emotions wax and wane. People tend to require social pressures to get married and stay married.³⁰ While in former times the law strongly encouraged couples to stay together, now marriage is the easiest of all legal contracts to dissolve.³¹

The development of the birth control pill and other forms of contraception—whether one views these as morally acceptable or not—has separated the unitive act of marriage from the procreative one. When sex is not tied to the generation and nurture of children, the institution of marriage is destabilized. The erosion of permanence and exclusivity as marital norms did not begin with the same-sex marriage movement, but the damage is compounded by it. George writes that “in the revisionist account of marriage, where organic bodily union, an orientation to family life, and broad domestic sharing are at best optional, so are permanence and exclusivity.”³²

Dan Savage, a syndicated columnist and homosexual activist, writes a regular column carried by dozens of newspapers in North America and Europe. He is the creator of the *It Gets Better Project*, a series of short Internet videos in which celebrities and leaders give encouraging remarks targeted at LGBT teenagers who are the victims of bullying. Contributors include President Obama and Vice President Biden, whose *It Gets Better Project* videos are linked on the White House website. Savage is a key figure in the movement and is frequently invited to campuses with his anti-bullying campaign. While bullying is a destructive behavior that can cause lasting harm, Savage has an ulterior motive behind his campaign, namely, the promotion of new sexual norms. In the June 30, 2011, edition of *The New York Times Magazine*, Mark Oppenheimer featured Savage in an article entitled “Married, with Infidelities.” He writes:

“The mistake that straight people made,” Savage told me, “was imposing the monogamous expectation on men. Men were never expected to be monogamous. Men had concubines, mistresses and access to prostitutes, until everybody decided marriage had to be

³⁰ Girgis, Anderson, and George, *What Is Marriage?*, 39.

³¹ Girgis, Anderson, and George, *What Is Marriage?*, 57.

³² Girgis, Anderson, and George, *What Is Marriage?*, 34.

egalitarian and fairsey." In the feminist revolution, rather than extending to women "the same latitude and license and pressure-release valve that men had always enjoyed," we extended to men the confines women had always endured. "And it's been a disaster for marriage."³³

Savage and his partner prefer the term "monogamish." It is like monogamy, but not quite. It seems comparable to what some in the "swinging 70s" might have called an open marriage. The redefinition of marriage in the current debate may well have further reaching implications than some of the more moderate LGBT advocates anticipate. There is, for example, research showing that the vast majority of homosexual male couples expect outside sexual activities to occur, even when they have committed partners. "By contrast, 99 percent of opposite-sex couples expect—that is, demand of each other and anticipate—sexual exclusivity in marriage."³⁴

Dan Savage's honesty, at least, is appreciated. He is right that certain movements in recent decades have been disastrous for marriage, but not for the reasons he identifies. It almost sounds like he is making an argument from nature, as if to say that it is natural for men to have multiple sexual partners. To many, this has the ring of truth, but only if sexual intercourse exists primarily for the sake of pleasure. Hopefully, a convincing case has been made above that marriage as a comprehensive bodily union is rightly ordered toward children and family life. In that scenario, infidelities are injurious in that they divide the precious resources of time and material goods. Savage's influential views confirm those of Robert George when he writes, "If marriage is understood as an essentially emotional union, then marital norms, especially permanence and exclusivity, will make less sense."³⁵

Laws that distinguish marriage bonds from other bonds, such as platonic friendship, or the relationships between teammates or roommates, will always leave some arrangements out.³⁶ Insofar as the sexual revisionist view takes hold, we should expect additional arrangements to be

³³ Mark Oppenheimer, "Married with Infidelities," *The New York Times Magazine*, June 30, 2011, <http://www.nytimes.com/2011/07/03/magazine/infidelity-will-keep-us-together.html?pagewanted=all&r=1&> (accessed December 8, 2013).

³⁴ Girgis, Anderson, and George, *What Is Marriage?*, 71.

³⁵ Girgis, Anderson, and George, *What Is Marriage?*, 67.

³⁶ Girgis, Anderson, and George, *What Is Marriage?*, 80.

seriously proposed. Indeed, if marriage is fundamentally an emotional and domestic bond, there is little reason to deny it to members of the same sex, or groups of three or more, for that matter.

Redefining marriage harms “lower-income communities and African Americans the most. In fact, a leading indicator of whether someone will know poverty or prosperity is whether she grew up knowing the love and security of her married mother and father.”³⁷ It is in the best interest of everyone to reestablish the understanding of marriage as a comprehensive union oriented toward procreation and characterized by exclusivity and permanence.

In many places, marriage of any sort is becoming an endangered species. In most of the European Union, for instance, marriage is at an all-time low. The marriage rate declined from 7.9 marriages per 1000 inhabitants in 1970 to 4.4. in 2010, a decline of 36 percent.³⁸ The downward trend is true in the United States as well. In 1960, 72 percent of those 18 or older were married. The percentage fell to 57 percent in 2000, and today it is just 51 percent, according to the latest census data.³⁹ Younger adults appear to be more cynical about marriage as an institution. They are getting married less often and are waiting longer when they do. Since these are the first children to come of age after the relaxation of divorce laws, it is frequently surmised that their hesitance to marry is reflective of the pain of their parents’ divorces.

It is not unusual to hear expressions of hostility toward marriage altogether. J. Larry Yoder reports a conversation he had with a denominational staffer who stated, “I consider marriage a patriarchal invention of power designed to subjugate women.”⁴⁰ If marriage is viewed as merely a social construction instead of divine in origin or something built into human nature, then its redefinition or dissolution is accepted.

³⁷ Girgis, Anderson, and George, *What Is Marriage?*, 45.

³⁸ Eurostat. “Marriage and Divorce Statistics” (October 2012), http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Marriage_and_divorce_statistics (accessed December 10, 2013).

³⁹ “Marriage in America: The Fraying Knot,” *The Economist* (January 12, 2013), <http://www.economist.com/news/united-states/21569433-americas-marriage-rate-falling-and-its-out-wedlock-birth-rate-soaring-fraying> (accessed December 10, 2013).

⁴⁰ Marianne Howard Yoder and J. Larry Yoder, “Natural Law and the ELCA” in *Natural Law: A Lutheran Reappraisal*, 169.

Failed marriages are bad for children and ultimately burden all of society. Where marriages break down, “the state expands to fill the domestic vacuum by lawsuits to determine paternity, visitation rights, child support, and alimony. . . . As absentee fathers and out-of-wedlock births become common, a train of social pathologies follows, and with it greater demand for policing and state-provided social services.”⁴¹ Where marriage and family are undermined, the role of the state in our lives becomes more intrusive. “As the family weakens, our welfare and correctional bureaucracies grow.”⁴²

The need for children to be raised in intact families, amply confirmed by the social sciences, is the very reason the state regulates marriage in the first place.⁴³ “The revisionist view severs this important link. If marriage is centrally an emotional union, rather than one inherently ordered to family life, it becomes much harder to show why the state should concern itself with marriage any more than with friendship.”⁴⁴ Even if many rank-and-file revisionists continue to support monogamy as the legal norm, as George claims, it is not apparent why that must be the case.⁴⁵

With a revised definition of marriage, it becomes difficult, if not impossible, to limit marriage to two people. In fact, there are examples of prominent figures in the LGBT movement who do advocate for the recognition of polyamorous relationship and other novel configurations. George writes:

If you insist as a matter of *principle* that we should recognize same-sex relationships as marriages, the same principle will require you to accept (and favor legally recognizing) polyamorous . . . relationships as marriages. If you think conjugal marriage laws unjustly discriminate against same-sex relationships, you will have no way of showing why the same is not true of multi-partner and nonsexual ones.⁴⁶

This is not a slippery slope argument, but merely the logical outcome of the revisionist position. People who reject the conjugal view and say that love is all that matters—whether that love exists between two people of the

⁴¹ Girgis, Anderson, and George, *What Is Marriage?*, 45.

⁴² Girgis, Anderson, and George, *What Is Marriage?*, 9.

⁴³ Girgis, Anderson, and George, *What Is Marriage?*, 11.

⁴⁴ Girgis, Anderson, and George, *What Is Marriage?*, 16.

⁴⁵ Girgis, Anderson, and George, *What Is Marriage?*, 52.

⁴⁶ Girgis, Anderson, and George, *What Is Marriage?*, 20.

same sex or opposite sex—will have to acknowledge that, “by the same token, it would not matter if the love were among three or more people.”⁴⁷

Finally, those who uphold traditional views of sexual morality will face potential academic censure, penalties in the workplace, and other social pressures to conform. To affirm what all Christians, Jews, Muslims and many others have asserted for millennia now opens one to charges of bigotry, anti-intellectualism, and hatred. “Homophobia” with its clinical sounding name implies a mental health disorder. The public, political, educational, professional, and legal marginalization of any who make known their opposition can lead them to be treated as the societal equivalent of racists.

IV. Why Marriage Instead of Civil Unions?

The same-sex marriage debate is not about anyone’s private behavior, but about legal recognition of some relationships to the exclusion of others. Laws affect beliefs and behaviors. Clearly, shifting social attitudes have helped recent court cases overturn the traditional view. But legal recognition of same-sex unions as marriage definitely “affects our ideas of what is reasonable and appropriate.”⁴⁸ The revisionists are asking for equal status for same-sex unions, not merely equivalent financial and social benefits as conjugal marriages. The revisionists are specifically fighting for *marriage* rights, even in states where same-sex civil unions are legal, because they recognize that some relationships are stigmatized when not given the status of marriage. Natural law thinkers may not, therefore, object to civil unions, whereas they find tremendous social harm in calling these contracts marriages because it further erodes the traditional view that marriage is a comprehensive union of persons ordered toward procreation and characterized by exclusivity and permanence.

George would not oppose conferring certain benefits to civil unions between same-sex couples. Such things as hospital visitation rights, inheritance rights, and other recognitions could be granted to such unions. In fact, one does not need to be married to acquire these rights now. There are already legal avenues, such as the power of attorney for health care, whereby individuals can insure that advantages normally enjoyed by married couples are directed according to their wishes.

⁴⁷ George, “What Marriage Is—And What It Isn’t,” 36.

⁴⁸Girgis, Anderson, and George, *What Is Marriage?*, 54.

George's dispute is not with granting benefits to same-sex couples, for it is not the "conferral of benefits on same-sex relationship itself but *redefining marriage in the public mind* that bodes ill for the common good. . . . If the law defines marriage to include same-sex partners, many will come to misunderstand marriage. They will not see it as essentially comprehensive, or thus (among other things) as ordered to procreation and family life—but as essentially an emotional union."⁴⁹ A change in the law to recognize same-sex relationships as marriages sends a strong message to the public.

Privacy and Consent

Proponents of same-sex marriage argue that the sexual behavior of consenting adults should not be subject to criticism. What if the consenting adults are close relatives (e.g., brother and sister or father and daughter)? The reply is that such unions would still be banned because of the high likelihood of genetic abnormalities in any offspring. Presumably, if the two consenting relatives agree to be sterilized, removing any chance of offspring, then there can be no stricture.

The rectitude of actions by consenting adults is unquestioned. But why must they be adults? And why must they consent? Indeed, are not these terms culturally conditioned to a certain extent? Certainly, concepts of adulthood and consent differ between France, Saudi Arabia, tribes in the Amazon, and the United States. All societies place some restrictions on sexual behavior, regardless of the subject's consent. However, as Harry Jaffa points out, "Someone who cannot say that sodomy is unnatural cannot say that incest is unnatural."⁵⁰ A brother and sister could consent. The consent of subjects, rather than their nature or relationship, has become the key moral benchmark.

Traditional thinking says that man and woman are made for each other, that there is complementarity. The acceptance of same-sex behavior, enshrined in marriage law,

is predicated upon the assumption that male and female are not made for one another. It defines male apart from female, female apart from male; or it leaves those terms free-floating, without definition. Young

⁴⁹ Girgis, Anderson, and George, *What Is Marriage?*, 7; emphasis original.

⁵⁰ Harry V. Jaffa, *Homosexuality and the Natural Law* (Montclair, CA: Center for the Study of the Natural Law, Claremont Institute, 1990), 34.

men and young women already are growing up without understanding what they are to be for one another.⁵¹

The liberal Protestant churches that have approved blessing same-sex unions argue that this is a justice issue. Human laws may change according to culture and circumstance, but our human legislation is not beyond all scrutiny. The justness of human law is determined by whether it conforms to natural law. In his "Letter from a Birmingham Jail," Dr. Martin Luther King, Jr. cites Thomas Aquinas when stating, "An unjust law is a human law that is not rooted in eternal law and the natural law."⁵² He was talking about the immoral Jim Crow laws of the American South. His point, however, applies equally well in the debate over legalizing same-sex marriage. This helps to explain the general opposition of the African American churches, even though homosexual activists are working to frame the issue as a new civil rights movement. Dr. King believed that certain actions were wrong, even if the majority of the people consent to them. All civil legislation must conform to a higher divine law, which can be known by clear thinking and, in King's case, through Judeo-Christian formulations. Just laws conform to God's moral law, even if no one believes it.

Marriage is a temporal institution. In the new creation, there will be no marrying or giving in marriage. The shadow will give way to the substance. Jesus did not command his disciples to perform weddings. Though Jesus blessed marriage by his first recorded miracle at Cana (John 2:1-11), he did not officiate the ceremony. Some Lutherans might be tempted to sit on the sidelines of this battle by saying that marriage is purely a matter of the left-hand kingdom. The inadequacy of this attitude is demonstrated by Genesis, the testimony of Jesus, and St. Paul.

Public Health Concerns

Where the traditional conjugal view of marriage prevails, that is, one man and one woman in a life-long exclusive marriage to one another, then dozens of horrific, disfiguring, sterilizing, and potentially deadly venereal diseases can be largely avoided. Venereal diseases flourish where there is

⁵¹ Anthony Esolen, "Sanity & Matrimony: Ten Arguments in Defense of Marriage (Part 1 of 2), *Touchstone* 23, no. 4 (July/August 2010), <http://www.touchstonemag.com/archives/article.php?id=23-04-028-f> (accessed April 24, 2014).

⁵² Cited in Yoder and Yoder, "Natural Law and the ELCA," 160.

promiscuity. But a man and woman who are chaste before and during marriage presumably are protected.⁵³

Robert Gagnon provides extensive verification that the harms of homosexuality include catastrophic rates of disease and a significantly lower life expectancy. Homosexual males have a twenty-five to thirty year lower life-expectancy. The elevated rates of physical diseases such as rectal cancer, bowel disease, HIV/AIDS, mental illness, substance abuse, suicide, and domestic violence are well documented.⁵⁴ Ultimately, this concerns society in general, as costs generated by same-sex activity, as with other risky behaviors, will be borne by all.

The homosexual subculture does not generally value monogamy. In one study, 84 percent of white homosexual males and 77 percent of African-Americans had fifty or more sexual partners. Twenty-eight percent of white homosexual males reported having more than one thousand sexual partners. Most of these encounters are anonymous. The vast majority of heterosexual males report having fewer than ten sexual partners, but only three percent of white homosexual males have fewer than ten.⁵⁵ Even within the context of a committed relationship, homosexual men rarely exhibit monogamy, let alone life-long monogamy.⁵⁶ Remember Dan Savage's *monogamish*.

V. The Basis for Homosexual Inclinations

The causes of homosexual inclinations are still poorly understood. It is frequently claimed that people are born with a same-sex attraction. They say that one person is born with a heterosexual orientation; that is his nature. Another is born with a homosexual orientation; that is his nature. Would not an argument from natural law suggest that what might be unnatural for one person, could be natural for another?⁵⁷ From the earliest times until fairly recently, Judaism and Christianity universally deemed same-sex sexual behaviors as contrary to divine law. This view prevailed

⁵³ Jaffa, *Homosexuality and the Natural Law*, 17.

⁵⁴ Robert A. J. Gagnon, *The Bible and Homosexual Practice: Texts and Hermeneutics* (Nashville: Abingdon Press, 2001), 473.

⁵⁵ Gagnon, *The Bible and Homosexual Practice*, 453.

⁵⁶ Gagnon, *The Bible and Homosexual Practice*, 456.

⁵⁷ For further information on the history of the idea of sexual orientation, see Roland D. Martinson, "Sexual Orientation: The History and Significance of an Idea," *Word & World: Theology for Christian Ministry* 14, no. 3 (1994): 239–245.

until the modern era. Those engaging in such behaviors were not considered different in nature but were considered guilty of deviance.

The paradigm shifted in the nineteenth century with the birth of psychotherapy and the move to medicalize same-sex desire. Instead of labeling the desire a sin, the profession diagnosed it as a mental illness. Throughout most of the twentieth century, doctors continued to view homosexuality as a pathological condition. Researchers attempted therapies to cure people of homosexual desires. This approach was largely abandoned in 1973 when the American Psychiatric Association removed homosexuality from its diagnostic manual, indicating that the profession no longer considered homosexuality a disease or a disorder. Today, it is common for people to claim that their sexual desires are integral to their identity.⁵⁸

In fact, current scientific research of identical twins does not support the position that homosexual orientation is due to genetic causation. It appears that a complex combination of factors, including genes, intra-uterine and post-uterine biological development, environment, and choice are at work. The head of the human genome project recently opined that while genetic factors may lead to a predisposition, genetics alone are not determinative. Dr. Francis Collins succinctly reviewed the research on homosexuality and offers the following:

An area of particularly strong public interest is the genetic basis of homosexuality. Evidence from twin studies does in fact support the conclusion that heritable factors play a role in male homosexuality. However, the likelihood that the identical twin of a homosexual male will also be gay is about 20% (compared with 2–4 percent of males in the general population), indicating that sexual orientation is genetically influenced but not hardwired by DNA, and that whatever genes are involved represent predispositions, not predeterminations.⁵⁹

Similarly, a person might have a genetic predisposition toward alcoholism, but it is life experiences that determine whether the physical dependence

⁵⁸ With the shift in attitudes, our lexicon has also undergone change. We speak of “gender” and “sexuality” to refer to the interlocking aspects of desires, behavior, and social constructions. Your “sex” is determined by your anatomy; your “gender” is your view of yourself as male or female.

⁵⁹ A. Dean Byrd. “‘Homosexuality Is Not Hardwired,’ Concludes Dr. Francis S. Collins, Head of the Human Genome Project,” *National Association for Research and Therapy of Homosexuality*, <http://www.narth.org/docs/nothardwired.html> (accessed December 10, 2013).

will take hold. As is so frequently the case in this matter, when ideologies are exposed to sound reasoning and demonstrable evidence, the revisionist view suffers.

VI. A Lutheran Natural Law Case against Same-Sex Marriage

When Martin Luther was ordered at the Diet of Worms in 1521 to recant of his evangelical doctrine, he famously responded: “Unless I can be persuaded by plain reason and the Holy Scriptures . . . *I cannot and I will not recant anything, for to go against conscience is neither right nor safe. God help me. Amen.*”⁶⁰ *What is needed today in the Lutheran Church is not simply a persuasive biblical argument, but also one that employs plain reason.*

Many Protestant Christians are wary of natural law theory because they associate it with Roman Catholicism’s over-confidence on reason to discern divine truth and a weak view of original sin. This wariness goes too far, however, if it assumes that natural law did not play a key role in the thinking of the reformers. Martin Luther was very critical of Aquinas and the other scholastics on many points, yet on this major question he did not disparage them.

In 1525, Luther preached a sermon titled “How Christians Should Regard Moses,” in which he defines the role of Old Testament law for Christians. Why do Christians appear to follow some laws from the Old Testament but not others? He explains the differentiation between natural law, which is applicable to all people—Gentiles as well as the Jewish nation—and the parts of the Mosaic code that were only intended for the Hebrew people in order to set them apart and to foreshadow the coming Messiah.

Proponents of same-sex unions within the church equate the biblical stricture against same-sex sexual behavior with other biblical prohibitions, such as this one found in Deuteronomy 22:11: “You shall not wear cloth of wool and linen mixed together.” But Jews and Christians have always understood the differentiation between laws that, on the one hand, belong strictly to the Hebrew people of the old covenant and, on the other hand, are timeless, universal moral laws. Many moral directives are known, and we are held accountable to them from birth. Cain was indicted by God for murdering Abel, even though no written proscription against fratricide was known. God could hold Cain accountable for his actions on account of

⁶⁰ Quoted in Martin Brecht, *Martin Luther*, trans. James L. Schaaf, 3 vols. (Philadelphia: Fortress Press, 1985–93), 1:460.

the law inscribed on his heart. In an extended discussion of this topic, Luther observed:

Here the law of Moses has its place. It is no longer binding on us because it was given only to the people of Israel. And Israel accepted this law for itself and its descendants, while the Gentiles were excluded. To be sure, the Gentiles have certain laws in common with the Jews, such as these: there is one God, no one is to do wrong to another, no one is to commit adultery or murder or steal, and others like them. *This is written by nature into their hearts*; they did not hear it straight from heaven as the Jews did. This is why this entire text does not pertain to the Gentiles. . . .

We will regard Moses as a teacher, but we will not regard him as our lawgiver—unless he agrees with both the New Testament and *the natural law*. When these factious spirits come, however, and say, “Moses has commanded it,” then simply drop Moses and reply, “I am not concerned about what Moses commands.” “Yes,” they say, “he has commanded that we should have one God, that we should trust and believe in him, that we should not swear by his name; that we should honor father and mother; not kill, steal, commit adultery; not bear false witness, and not covet [Exod. 20:3–17]; should we not keep these commandments?” You reply: *Nature also has these laws. Nature provides* that we should call upon God. The Gentiles attest to this fact. For there never was a Gentile who did not call upon his idols, even though these were not the true God. This also happened among the Jews, for they had their idols as did the Gentiles; only the Jews have received the law. The Gentiles have it written in their heart, and there is no distinction [Rom. 3:22]. As St. Paul also shows in Romans 2:14–15, *the Gentiles, who have no law, have the law written in their heart*.

But just as the Jews fail, so also do the Gentiles. *Therefore it is natural* to honor God, not steal, not commit adultery, not bear false witness, not murder; and what Moses commands is nothing new. For what God has given the Jews from heaven, he has also written in the hearts of all men. Thus I keep the commandments which Moses has given, not because Moses gave the commandment, but because *they have been implanted in me by nature*, and Moses agrees exactly with nature, etc.⁶¹

Luther’s co-reformer in Wittenberg, Philip Melancthon, devoted a section to natural law in his *Loci Communes*, 1543. Like Luther, he believed

⁶¹ Martin Luther, *Martin Luther’s Basic Theological Writings*, trans. and ed. Timothy F. Lull (Minneapolis: Fortress Press, 1989), 107; emphasis added.

that "certain knowledge has been implanted in the minds of men by which they understand and evaluate many things."⁶² The reformers were quick to point out the limitations of natural knowledge, especially in matters that pertain to God. Special revelation, such as the Ten Commandments and the Golden Rule, became necessary because of the distorting effects of sin. In the state of innocence, man could perceive the divine law perfectly. After the fall into sin, this perception was badly obscured, though not entirely extinguished. Melanchthon writes:

To be sure, these principles governing our conduct ought to be as clear to us as the knowledge of numbers, and yet because of our original fall, a certain darkness has come over us and the human heart has conflicting desires over against the distinction between the upright and the immoral. . . . The knowledge of the Law remains, but our assent to it is weak because of the stubbornness of our heart. This knowledge is a testimony that we have had our origin in God and that we owe obedience to Him and that He accuses our disobedience.⁶³

Melanchthon ties the inborn knowledge of God's law to the *imago Dei*. Human beings, male and female, were created in the image of God.

Therefore the correct definition of the law of nature is this: The law of nature is the knowledge of the divine law which has been grafted into the nature of man. For this reason man is said to have been created in the image of God, because in him shone the image, that is, the knowledge of God and the likeness to the mind of God, that is, the understanding of the difference between the honorable and the shameful; and the powers of man concurred or agreed with this knowledge. . . . Although in this corruption of our nature the image of God has been so deformed that the knowledge of Him does not shine forth like it did, yet the knowledge does remain, but our heart contends against it and our doubts arise because of certain things which seem to conflict with this knowledge. . . . Yet the natural knowledge of God is not entirely extinct.⁶⁴

Luther's well-known indictments against human reason were not meant to drive us into fundamentalist biblicism. He asserted that *sola ratio* is incapable of fully knowing Jesus and his gospel apart from special revelation. Faith comes by hearing the preached revelation of Christ.

⁶² Philip Melanchthon, *Loci Communes*, 1543, trans. Jacob A. O. Preus, (St. Louis: Concordia Publishing House, 1992), 70.

⁶³ Melanchthon, *Loci Communes*, 70.

⁶⁴ Melanchthon, *Loci Communes*, 70-72.

However, the beloved *sola Scriptura* principle does not mean that human reason is totally incapable of acquiring any useful knowledge, even divine law. The ministerial use of reason is not disavowed.

As we have seen, Melancthon ascribes natural knowledge of God's eternal law to the image of God imprinted on the heart of mankind at creation.

The Formula of Concord reiterates the teaching of the Apology of the Augsburg Confession that the image of God in humankind (*imago Dei*) is not so totally destroyed by sin and the fall as to leave human beings totally incapable of discerning the difference between what is right and wrong, good and evil, true and false. The natural law is essential to the human quest for justice and in defense of human rights.⁶⁵

There are universal laws that originate with God and are embedded within man that can be discerned by our faculty of reason.

The church, along with all clear-thinking people, can and must teach these naturally known laws. Because moral law can be known by all people and applies to all people, as opposed to just Israel or just Christians, it is a fundamental element of the church's message to the world. Natural law arguments are ways the church can and must engage in the civil realm. Carl Braaten is right: "When the Church and its officials make moral pronouncements on any of these topics, it makes no sense if all they do is preach Christ or quote the Bible. Their position statements will be persuasive to non-Christians solely on the condition that they are backed by reasonable arguments intelligible to those who do not happen to believe in Christ and the Bible."⁶⁶

The natural law is a matter of the left-hand kingdom, but it is not only for the left hand. Bold proclamation of God's law is an essential aspect of the work of the church, as God's right-hand rule. Without a clear apprehension of the accusation of the law, the message of divine pardon through Christ is unintelligible. J. Yoder rightly notes:

The proclamation of the Gospel in our time presupposes a vigorous preaching of the Law. The law is not obliterated in the new covenant. Adultery is still sin. Honoring one's parents is required. Keeping God's name holy is not perfunctory but mandatory. . . . We will not begin to understand either the power or the beauty of the Gospel until

⁶⁵ Carl E. Braaten, "A Lutheran Affirmation of the Natural Law," in *Natural Law: A Lutheran Reappraisal*, 8.

⁶⁶ Braaten, "A Lutheran Affirmation of the Natural Law," 14.

we understand the requirements, the severity, and the judgment of the law.⁶⁷

It can be known by observation and rational thinking that homosexual behavior is contrary to nature. People do not need to read the Bible to know how our sexual organs are intended to be used. Men and women are physically complementary to each other in ways that individuals of the same sex are not. Occasional references to rare examples from the animal kingdom of same-sex activity do not deny the fact that opposite sex coupling is necessary, in every case, for the species to flourish and survive. Reading human emotions and motivations in non-human species based on appearances is not good science. Besides, if the rectitude of human actions can be determined by those observed in the non-human species, then killing and eating our young should be seen as natural and acceptable for humans. Many animals do it. Male-on-male rutting among non-human species could be an example of domination, making it more akin to rape than marital self-giving love among humans. There is no other satisfactory explanation from an evolutionary perspective. Even if there could be claimed some evolutionary advantage, we who accept the authority of Scripture maintain that human marriage embodies the divine mystery of God and his people in a way that is unique in all of creation, dogs and giraffes notwithstanding.

Starting with Aristotle, natural law theory teaches that everything is ordered toward a purpose. An acorn is intended to become an oak tree, for example. The purpose of the oak tree could be to provide shelter for human beings. The application to sex is not hard to fathom. "Sexual morality, according to natural law, would involve using one's sexual organs for their intended purpose (i.e., the purpose of the Creator/Designer)."⁶⁸ The sexual complementarity of men and women is not subject to debate; it is the relevance of this complementarity to marriage that is questioned.

Confessional Lutherans must care about this debate for the sake of loving the neighbor. Numerous societal detriments have been highlighted. Most importantly, it is not only society that suffers when same-sex behavior is approved. It is the individual homosexual man or woman who suffers in his or her relationship to God when the church fails in its duty to

⁶⁷ Yoder and Yoder, "Natural Law and the ELCA," 175.

⁶⁸ Yoder and Yoder, "Natural Law and the ELCA," 159.

denounce sin.⁶⁹ The words of Jesus certainly apply here, “I tell you that unless you repent you will perish” (Luke 13:2). Whenever the church’s message is altered to accommodate sinful actions, the power of the gospel is thwarted. Jesus not only said, “If you forgive the sins of any, they are forgiven them,” but also “if you withhold forgiveness from any, it is withheld” (John 20:23). This means that there really are sins that are not forgiven. The ingredient that makes the difference is repentance, as the *Small Catechism* makes clear (cf. Acts 3:19).

It is misleading to claim, as many do, that Jesus was silent on the issue of same-sex marriage or homosexual behavior. Though he does not address the topic explicitly, the same could be said of many other topics, such as bestiality and incest. By the reasoning of some, this means that Jesus approves of sodomizing the livestock and molesting the children. The more rational position is that Jesus is an exemplar of his culture and tradition and so affirms the moral teaching found in Moses. If Jesus had, in fact, tolerated homosexual behavior, this would have been extraordinary enough that, given the Jewish beliefs on the matter, it would have warranted being recorded. When Jesus does speak about marriage, for example, in Mark 10:1–9, he directs his interlocutors back to Genesis 1 and 2. As Robert Gagnon observes, “On matters relating to sexual ethics Jesus often adopted stricter, not more lenient, demands than most other Jews of his time. . . . Rather than adopt a more liberal stance toward divorce, Jesus closed this loophole in the Law.”⁷⁰

Traditional conjugal marriage is not just a peripheral social teaching but goes to the heart of the gospel. The Apostle Paul describes how husbands and wives should relate to one another and then transitions to saying that the higher application of these teachings is to Christ and his bride, the church. Even if we in our denomination never solemnize same-sex marriage, it will nevertheless become even more difficult for our people to understand the meaning of sexuality in an already severely confused time. Quite simply, this impacts everyone.

VII. Conclusion

As helpful as it is, a natural law argument against legalizing same-sex marriage will probably not prevail on its own. The natural law argument assumes that a right understanding of human behavior can be discerned

⁶⁹ Gagnon, *The Bible and Homosexual Practice*, 484.

⁷⁰ Gagnon, *The Bible and Homosexual Practice*, 197, 203.

by reason; we, however, do not live in a time characterized by rationality. Decisions about right and wrong are not well-reasoned; they are governed more by emotion and will. Philosopher Marianne Yoder and theologian J. Larry Yoder, both professors of the Evangelical Lutheran Church in America, describe with considerable dismay the progress of the pro-homosexual lobby in their denomination. In a denominational convention in Minneapolis in 2009, the ELCA approved the blessing of same-sex unions and ordaining non-celibate homosexual clergy. The Yoders' evaluation of this landmark disposal of catholic teaching and practice is that it came about by means of powerful political machinations and emotional appeals, not well-reasoned arguments or dispassionate theological reflection.⁷¹

This issue is only a symptom of a larger problem, a flawed epistemology. Aristotle claimed that every *ethos* implies a *mythos*. In other words, character development (*ethos*) requires a coherent narrative (or *mythos*). Without a sound metanarrative, our society is floundering to know how to live. Marilyn Yoder says, "Emotivism is the prevailing ethical understanding in our culture today, and perhaps the majority of people in our democratic society think that is as it should be, even though emotivism is a path to radical subjectivism."⁷² Without a clearly realized plot to shape our thinking, our behavior will be directed by passions and preferences. Worse, without an awareness of law that is applicable to all people at all times, the old adage comes true: might makes right. In postmodern society, truth becomes little more than an expression of power.⁷³ The benefit of postmodernism is what it corrects; the hazard is where it overcorrects. Postmodern philosophy underscores the elusiveness of meaning and knowledge. Yet, unchecked, postmodernism's distrust of rationalism will lead to nihilism. We will have so overcorrected ourselves that we end up in the ditch on the other side of the road.

Maybe the best we can hope for is to slow the pace of the movement to give the world time to consider all the implications involved. It will be much harder to reverse same-sex marriage laws once they have been passed. Though on the face of things it seems that an argument from the natural law is unlikely to change minds, it is still worth making. As one

⁷¹ Yoder and Yoder, "Natural Law and the ELCA," 168.

⁷² Yoder and Yoder, "Natural Law and the ELCA," 168.

⁷³ As J Larry Yoder contends, "the 'first principle' of the ELCA: power, and who has it." Yoder and Yoder, "Natural Law and the ELCA," 172.

historian observes, "Sometimes seeds that you were sure were dead, suddenly sprout."⁷⁴

In the end, the Lord of history and his kingdom will prevail. Traditional Christians should not resign themselves to pessimism in this time of great confusion. There was once a time in Great Britain and the United States when banning the slave trade was unthinkable. While on this side of the pond it took a bloody civil war to resolve the issue, in England Christian leaders, such as William Wilberforce, were able to persuade enough people of the rightness of the abolitionist cause that a tipping point was finally reached. Christian teaching has been attacked before. The remnant has always been preserved. Through the ages the church militant strives both to make God rightly known and to serve our neighbor in love. A clear defense of conjugal marriage, because it elucidates the gospel and benefits human flourishing, is part of the church's responsibility today.

⁷⁴ Jaffa, *Homosexuality and the Natural Law*, 12.